

**ANNOTATED
AGENDA
CITY OF ANTIOCH PLANNING COMMISSION
ANTIOCH COUNCIL CHAMBERS
THIRD & "H" STREETS**

WEDNESDAY, FEBRUARY 4, 2015

6:30 P.M.

**NO PUBLIC HEARINGS WILL BEGIN AFTER 10:00 P.M.
UNLESS THERE IS A VOTE OF THE PLANNING COMMISSION
TO HEAR THE MATTER**

APPEAL

All items that can be appealed under 9-5.2509 of the Antioch Municipal Code must be appealed within five (5) working days of the date of the decision. The final appeal date of decisions made at this meeting is 5:00 p.m. on **WEDNESDAY, FEBRUARY 11, 2015.**

If you wish to speak, either during "public comments" or during an agenda item, fill out a Speaker Request Form and place in the Speaker Card Tray. This will enable us to call upon you to speak. Each speaker is limited to not more than 3 minutes. During public hearings, each side is entitled to one "main presenter" who may have not more than 10 minutes. These time limits may be modified depending on the number of speakers, number of items on the agenda or circumstances. No one may speak more than once on an agenda item or during "public comments". Groups who are here regarding an item may identify themselves by raising their hands at the appropriate time to show support for one of their speakers.

ROLL CALL

6:32 P.M.

Commissioners	Hinojosa, Chair
	Motts, Vice Chair (absent)
	Miller
	Westerman
	Zacharatos

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

CONSENT CALENDAR

All matters listed under Consent Calendar are considered routine and are recommended for approval by the staff. There will be one motion approving the items listed. There will be no separate discussion of these items unless members of the Commission, staff or the public request specific items to be removed from the Consent Calendar for separate action.

1. **APPROVAL OF MINUTES:** January 21, 2015 **APPROVED**

* * * END OF CONSENT CALENDAR * *

MINUTES

CONTINUED PUBLIC HEARING

2. **UP-14-13 – INK'D UP TATTOO** – Juanito Valentine requests approval of a use permit to operate a tattoo studio employing three to four people with hours of operation from 10:00 am to 10:00 pm daily. The proposed studio is located in an existing commercial development and no exterior modifications to the building are proposed. The project site is located at 1614 A Street, on the northwest corner of 17th and A Streets (**APN 067-360-002**).

Applicant has appealed the January 21st Planning Commission Action to the City Council.

STAFF REPORT

NEW PUBLIC HEARINGS

STAFF REPORT

3. **Z-13-04 – The City of Antioch** requests approval of a Zoning Ordinance text amendment to establish regulations regarding the location of tobacco and paraphernalia retailers. The proposed ordinance would be applicable city-wide.

RESOLUTION NO. 2015-02

4. **Z-15-01 – The City of Antioch** requests approval of a Zoning Ordinance text amendment to establish regulations regarding the location of bingo operations. The proposed ordinance would be applicable city-wide.

RESOLUTION NO. 2015-03

ORAL COMMUNICATIONS

STAFF REPORT

WRITTEN COMMUNICATIONS

COMMITTEE REPORTS

ADJOURNMENT (7:13 p.m.)

Notice of Availability of Reports

This agenda is a summary of the discussion items and actions proposed to be taken by the Planning Commission. For almost every agenda item, materials have been prepared by the City staff for the Planning Commission's consideration. These materials include staff reports which explain in detail the item before the Commission and the reason for the recommendation. The materials may also include resolutions or ordinances which are proposed to be adopted. Other materials, such as maps and diagrams, may also be included. All of these materials are available at the Community Development Department located on the 2nd floor of City Hall, 3rd and H Streets, Antioch, California, 94509, between the hours of 8:00 a.m. and 11:30 a.m. or by appointment only between 1:00 p.m. and 5:00 p.m. Monday through Friday for inspection and copying (for a fee). Copies are also made available at the Antioch Public Library for inspection. Questions on these materials may be directed to the staff member who prepared them, or to the Community Development Department, who will refer you to the appropriate person.

Notice of Opportunity to Address the Planning Commission

The public has the opportunity to address the Planning Commission on each agenda item. You may be requested to complete a yellow Speaker Request form. Comments regarding matters not on this Agenda may be addressed during the "Public Comment" section on the agenda.

Accessibility

The meetings are accessible to those with disabilities. Auxiliary aids will be made available for persons with hearing or vision disabilities upon request in advance at (925) 779-7009 or TDD (925) 779-7081.

**CITY OF ANTIOCH
PLANNING COMMISSION MINUTES**

**Regular Meeting
6:30 p.m.**

**January 21, 2015
City Council Chambers**

CALL TO ORDER

Chair Hinojosa called the meeting to order at 6:30 p.m. on Wednesday, January 21, 2015, in the City Council Chambers. She stated that all items that can be appealed under 9-5.2509 of the Antioch Municipal Code must be appealed within five (5) working days of the decision. The final appeal date of decisions made at this meeting is 5:00 p.m. on Wednesday, January 28, 2015.

ROLL CALL

Present: Commissioners Zacharatos, Miller and Westerman
Chair Hinojosa and Vice Chair Motts
Absent: Commissioner Pinto
Staff: Associate Planner, Alexis Morris
City Attorney, Lynn Tracy Nerland
Minutes Clerk, Cheryl Hammers

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

None.

CONSENT CALENDAR

1. Approval of Minutes: December 17, 2014

On motion by Commissioner Westerman, and seconded by Vice Chair Motts, the Planning Commission approved the Minutes of December 17, 2014.

AYES: Hinojosa, Motts, Zacharatos, Miller and Westerman
NOES: None
ABSTAIN: None
ABSENT: Pinto

END OF CONSENT CALENDAR

NEW PUBLIC HEARINGS

2. **UP-14-10 – ANTIOCH FELLOWSHIP CHURCH** – requests approval of a Use Permit to establish and operate a church, including administrative offices, meeting rooms, a bookstore, a coffee café, and outdoor play areas. The project site is located within the former Orchard Supply Hardware (OSH) building located in Williamson Ranch Plaza. No exterior modifications to the building are proposed. The project site is located at 4873 Lone Tree Way (**APN 056-011-041**).

Associate Planner Morris provided a summary of the staff report dated January 8, 2015.

OPENED PUBLIC HEARING

Gary Laski, consultant representing the Church, stated that he had others with him tonight including the project architect, Thomas Bouffard, who were here to answer questions. He thanked staff and gave a brief history of the church. Mr. Laski said that this location is not in a residential neighborhood, that it will not cause traffic issues given the traffic study showing no significant impacts, that the location is easily accessible to church members, that this building has been sitting vacant for some time, and that this allows the church to move into a renovated building rather than constructing a new building. He said that parking and site improvements are already in place and the size of the building allows for the church to use what they need now with the possibility to expand in the future as needed. That this church will draw people to the shopping center on the weekends who will also frequent other stores and shops and he showed slides of other church locations in Vacaville and Fairfield where churches are located within commercial spaces. He said that the church is prepared to start construction drawings immediately and are ready to move forward.

Vice Chair Motts asked if they had spoken with potential neighbors including Staples to which applicants responded that they have a letter from Staples who indicates that the CC&Rs will be redrafted, that Staples will require parking protection but that Staples wants the church to market Staples to its members.

Commissioner Westerman asked about activities during the week, what other activities were anticipated, and will the church always be occupied to which applicant stated that the church will be occupied weekdays 8-5 with services held on the weekends.

Yasmeen Imow stated that staff will be at the church 9-5, a youth group on Wednesday evenings, a prayer meeting on Thursday evenings, and possible special events as requested.

Applicant said that there is a condition that if there is going to be activities beyond what is called out, that the church will have to get a permit from the City and approval to do that.

Gene Quiocito spoke to say that when he and his wife were looking to purchase their first home, Antioch was not on top of the list but after viewing homes and comparing

costs, they chose to purchase their first home here. That they attended a church in Oakland and from the first time they visited Fellowship Church they knew it was the church for them. He said that they chose this church because it loves this City and that it has the City's best interests in mind with no strings attached.

Jean Nichols said that she has gone up to a similar church in a shopping center in Vacaville and they spent the day in that plaza which was very convenient. She said that she knows a number of people who have a relationship with this church, that it is a good organization with a good heart and that she would strongly support it.

CLOSED PUBLIC HEARING

Commissioner Westerman said that this proposal appears to be a good fit both for the church and the City, that it provides a permanent home for the church, that it is cost effective, and that it will bring people to the area. He said that as far as the City, it removes one empty building which is a good thing and he supports this project.

Vice Chair Motts stated that in general he likes to see commercial stay commercial but he realizes the challenges in Antioch and asked staff to comment on the viability in terms of commercial.

AP Morris said that staff fields a lot of calls about locations, that they are seeing that type of activity pick up, but that she hasn't seen any big national chain tenants interested in this location.

Vice Chair Motts said that he could support the project given the realities of the situation.

In response to Chair Hinojosa, AP Morris said that the parking there is shared parking, that there are separate parcels but staff looks at all uses and parking is based on totality which was looked at in the traffic study.

Chair Hinojosa said that she questions whether this exact location is best used by a church because it is in the middle of a shopping center but given the fact that this building has been vacant for a number of years, it is better to have a use. She said that she has heard positives and benefits and she can support this project.

Commissioner Miller asked staff about the new building being constructed next to this site to which AP Morris said that the construction is the Walmart expansion which will add additional parking and square footage to their existing building.

Commissioner Zacharatos said that she thinks this would be very good for the Williamson Plaza and for the church and she would like to support it.

RESOLUTION NO. 2015-**

On Motion by Commissioner Westerman and seconded by Commissioner Zacharatos, the Planning Commission approves the use permit (UP-14-10) to allow the establishment and operation of the Fellowship Church located in the Williamson Ranch Plaza, subject to all conditions.

AYES: *Hinojosa, Motts, Zacharatos, Miller and Westerman*
NOES: *None*
ABSTAIN: *None*
ABSENT: *Pinto*

- 3. UP-14-13 – INK'D UP TATTOO** – Juanito Valentine requests approval of a use permit to operate a tattoo studio employing three to four people with hours of operation from 10:00 am to 10:00 pm daily. The proposed studio is located in an existing commercial development and no exterior modifications to the building are proposed. The project site is located at 1614 A Street, on the northwest corner of 17th and A Streets (**APN 067-360-002**).

Associate Planner Morris provided a summary of the staff report dated January 16, 2015.

In response to Commissioner Zacharatos, AP Morris said that there are no existing requirements on the building for hours of operation.

OPENED PUBLIC HEARING

Applicant, Juanito Valentine, said that he lives three blocks from the proposed location and that he is from the neighborhood having went to school here and church here. He said that he has always been an artist, that he used to work at another tattoo shop in Antioch where he learned the profession and that he is flexible with whatever can be done to make this work. That the hours are not an issue and that he had proposed 10 am to 10 pm for people getting off of work and getting back into Antioch. He said that there is no exception for the youth, that he is not trying to do anything adverse to the community, and that he has walked through his neighborhood and talked to people.

Vice Chair Motts asked about existing customer base to which applicant said that while he has a customer base, he cannot exercise that because he can't do tattoos now given that he doesn't have a shop and can't work out of his house.

Chair Hinojosa asked applicant if scaling back the hours would be hurtful to operations to which applicant said that yes to a degree; that he can scale down the hours during the week, but would ask for more hours on weekends.

In response to Chair Hinojosa, applicant said that he looked at an existing shop in Pittsburg; that he was looking at one unit and they wanted to rent him both units. That he was looking at another spot downtown but in talking to the previous owners, there was floor and mold problems. He said that he is learning the zoning part of it but that

location is everything.

Commissioner Zacharatos asked applicant about the square footage and if that was feasible for business to which applicant stated that it was at this moment.

Sandra Kelly, block captain for the C Street area, said that this tattoo parlor came up in one of their meetings, that they did not feel it was a fit for their neighborhood, that it has been a constant battle for them to keep drug and gang problems at bay and that there have been lots of burglaries and several shootings. She said that they are starting to see more children in the neighborhood again, that they support family friendly businesses and useful businesses to the neighborhood, and that they would like businesses to have reasonable hours. She said that people have signed a petition, that they have concerns of high traffic and for school children, that they are concerned of impacts on Rivertown and they do not feel this is an appropriate use for their neighborhood.

Jean Nichols said that she has been a resident of Antioch for close to 30 years, that within several miles of her home there are bars and other businesses, that if given the choice she would not move into this area, requested that the Planning Commission deny the tattoo parlor, and asked that they not be clustered with some of the others.

Chair Hinojosa said that she received a petition to deny which contained approximately 25 signatures stating "the neighbors in this area feel that the Ink'd Up tattoo parlor is an inappropriate fit for our neighborhood. There are already several businesses of this kind in close proximity to our homes. The proposal calls for the business to be open until ten o'clock, which is too late when it abuts a residence. It is not a business that will be of benefit to local residents, and will attract unwanted outside traffic into our residential neighborhood".

Additionally, attached to the back of the petition is an e-mail sent to staff by Darnelle Shaw stating "I agree with my C Street Neighborhood Watch group who are against having a Tattoo Parlor in our neighborhood. There seems to be plenty of Tattoo Parlors near the area. More traffic in that area, could be disruptive, especially to the residents who live along Seventh Street. I suggest that they look elsewhere, like maybe along the Lone Tree Way Street where other businesses have been growing."

Applicant said that while he can understand from a parent's point of view, he grew up in the neighborhood and is willing to do whatever he needs to do to work this out.

CLOSED PUBLIC HEARING

Vice Chair Motts clarified with staff that there are currently three approved tattoo studios in Antioch with business licenses, that there was a fourth on Sunset which has closed, and that she did not find any evidence of a fifth.

Commissioner Miller asked staff about the standard closing time to which AP Morris said that depends on the business and that there are restaurants, bars, financial institutions, Starbucks, offices and other uses in that area. She said hours are different

with some closing later and some closing earlier and that closing hours past 9:00 p.m. are common.

Commissioner Westerman said that at one time many years ago, tattooing had a negative image. He said that he thinks the business is good, that he doesn't think there will be a lot of noise and not a lot of traffic generated. That while this is not a family business and not a place to take the kids, he is not sure what else would go in there and would rather have a tattoo parlor than an empty space; that he is going to wait to see what others have to say.

Commissioner Zacharatos said that she hears the community saying family friendly businesses. That her concern is that it is very close to homes, that she is inclined to side with the community and homeowners, and this should not be at this location.

Vice Chair Motts said that he feels this is not the most appropriate use for this location. That the applicant is very genuine but that this location will be part of the entry to the new revitalized Rivertown area. He said that the community is pretty well served and that another spot would be preferable.

Commissioner Miller said that he thinks it is a great idea, that this does not define the area, that the applicant has passion, and that it is located off of A Street with a lot of small businesses.

Chair Hinojosa said that this is a tough one. She said that she is extremely sympathetic to the community; however, there is a lot of stigmas with tattoo parlors. That you have to have a certain income to afford good art work, that in our generation this appeals to the masses across the board and she is open minded about that, and she thinks that the site is zoned appropriately and it is difficult to find other locations. She said that staff has done a good job conditioning the project, that she doesn't want to do anything with the hours that would impact the business, and that she is inclined to support this project.

Commissioner Westerman said that given the discussion, he is inclined to support the project as well.

Vice Chair Motts said that while he realizes tattoos are mainstream, there is a perception and reality that it is affiliated with gangs, whether reality or not, and that for him, this is not something he could support.

Commissioner Miller made a motion to approve, seconded by Commissioner Westerman. Commissioners Zacharatos and Vice Chair Motts voted no; Commissioner Miller, Commissioner Westerman and Chair Hinojosa voted yes.

CA Nerland said that four votes are needed and that it is up to the Planning Commission if they want to continue the item.

Chair Hinojosa said that maybe commissioners can be persuaded.

Commissioner Miller said that maybe those voting yes can offer some additional insight, that it was pointed out by staff that there weren't any police calls from previous tattoo parlors, that they are not attracting the wrong element, and this could be a positive impact to the neighborhoods near A Street.

Commissioner Westerman said that although there are three already that if there were too many, somebody would go out of business. He said that educated and accomplished people get tattoos and he thinks it is main stream.

Chair Hinojosa commented on the police call statistics indicating no calls for service for any of the other locations and said that in all of the years, A Street has been a commercial area with a diversity of uses. She said for the time being the site is zoned appropriately for this use.

Commissioner Zacharatos said that she has nothing against tattoos but that she wouldn't want it in her neighborhood.

Vice Chair Motts said that it is a matter of perception, that he is in favor of anything that changes that but he is not sure this does. That for him, he has a general concern of what they approve and the direction they take in the City especially as you go north of the freeway.

Chair Hinojosa stated that they are at a standstill and there is an option but to continue for Commissioner Pinto's input.

CA Nerland stated that the majority of the Planning Commission may want to reopen the public hearing and continue for two weeks to February 4th and see if anything changes in meantime. Or there is an option to leave the action where it stands tonight which means the use was not approved.

Chair Hinojosa said that she is inclined to give the applicant a chance.

CA Nerland said that the Planning Commission can make a motion to reopen the hearing and said that given the two items already scheduled for February 4th, feels that the 4th can handle this item as well and doesn't expect those two items to be huge. She clarified that there may be additional information coming forward so she would leave it to the Chair's discretion if people who spoke tonight can speak again on February 4th.

RESOLUTION NO. 2015-**

On Motion by Commissioner Miller and seconded by Commissioner Westerman, the Planning Commission reopened the public hearing and continued the item to February 4, 2015.

AYES:	<i>Hinojosa, Motts, Zacharatos, Miller and Westerman</i>
NOES:	<i>None</i>
ABSTAIN:	<i>None</i>
ABSENT:	<i>Pinto</i>

ORAL COMMUNICATIONS

Chair Hinojosa welcomed the new Planning Commission member.

WRITTEN COMMUNICATIONS

None.

COMMITTEE REPORTS

Vice Motts stated that the Transplan meeting was cancelled last week.


ADJOURNMENT

Chair Hinojosa adjourned the Planning Commission at 7:55 p.m.

Respectfully Submitted,
Cheryl Hammers



**DEPARTMENT OF
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Planning Commissioners
From: Alexis Morris, Associate Planner 
Date: January 28, 2015
Subject: **Item #2: UP-14-13 – INK'D UP TATTOO**

At the January 21st Planning Commission meeting, the use permit application for Ink'd Up Tattoo Studio was not acted on due to a lack of majority decision on the item. The Planning Commission re-opened the public hearing and continued the item to February 4th.

On January 28th, the applicant, Juanito Valentine, filed the attached appeal of the Planning Commission's action to the City Council. Because an appeal has been filed, the Planning Commission does not need to take any action on the item at the February 4th meeting.

Staff has notified interested members of the public of this change and they will be notified of the City Council hearing date.

Ink'D Up Tattoo's
Juanito Valentine
61 E.13th Street
Antioch, Ca 94509
925-338-5651
Smilestattoo72.jv@gmail.com

I must thank you for the time you have put into writing up papers, sending out notices....ect. I thank you. Though I must admit that I am not too happy with the outcome at the public hearing on Jan,21st. But all is well.
After speaking with alexis from the planing department, I would like to proceed with her advise and appeal the commissioners decision..

Thank you for your time

Respectfully
Juanito S. Valentine
Owner and Tattoo Artist

RECEIVED

JAN 28 2015

CITY OF ANTIOCH
COMMUNITY DEVELOPMENT

**STAFF REPORT TO THE PLANNING COMMISSION
FOR CONSIDERATION AT THE FEBRUARY 4, 2015**

Prepared by: Tina Wehrmeister, Community Development Director *TW*
Date: January 29, 2015
Subject: Ordinance Establishing Zoning Regulations for Tobacco and Paraphernalia Retailers

RECOMMENDATION

It is recommended that the Planning Commission approve the attached resolution recommending that the City Council adopt the ordinance (Exhibit 1 to the resolution) establishing zoning regulations for Tobacco and Paraphernalia Retailers within the City of Antioch.

BACKGROUND

On May 28, 2013, the City Council adopted an urgency ordinance establishing a temporary moratorium on the issuance of permits, licenses, or approvals for construction, establishment or operation of Tobacco and Paraphernalia Retailer businesses. The Council extended the moratorium on July 9, 2013 and on April 22, 2014. This moratorium cannot be extended beyond April 22, 2015. The staff reports for these meetings (Attachment C) and Ordinance 2086-C-S (Attachment B) are included and provide more details regarding the issues and need to establish zoning regulations to address public safety, health and welfare issues raised by Tobacco and Paraphernalia Retailers.

Staff is currently studying regulations for the operation of Tobacco and Paraphernalia Retailer businesses and will make a future recommendation to the City Council. Staff is bringing the zoning ordinance forward first to ensure that the City has regulations in place regarding appropriate locations for Tobacco and Paraphernalia Retailers before the moratorium expires.

PROPOSED ZONING ORDINANCE

The proposed ordinance (attached as an exhibit to the resolution) formally codifies the definitions of Tobacco and Paraphernalia Retailers and Paraphernalia. The substantive additions to the Code are included in Sections 2, 3 and 4 of the proposed ordinance and are discussed below:

- Section 9-5.203 defines Tobacco and Paraphernalia Retailers as an establishment that sells Tobacco Products, Electronic Smoking Devices or Paraphernalia. Retail businesses larger than 5,000 s.f. having less than 5% of their sales area devoted to

tobacco products, electronic smoking devices, or paraphernalia are exempt from this definition. Definitions have been expanded to include electronic cigarettes (sometimes referred to as e-cigarettes) and vaping products.

- Section 9-5.3803, Table of Land Use Regulations, would be amended to list Tobacco and Paraphernalia Retailers and require a Use Permit in the Regional Commercial Zone (C-3). Tobacco and Paraphernalia Retailers are commercial in nature but due to potential impacts described in the previous staff reports included under Attachment C, staff felt that Convenience Commercial (C-1) or Neighborhood Commercial Zones (C-2) zones which are dispersed throughout the City and intended to serve residential neighborhoods would not be an appropriate location for these uses. A map of C-3 Zone is attached (see Attachment "D")
- Section 9-5.3843(A) proposes additional locational criteria for Tobacco and Paraphernalia Retailers.
 - They must front an arterial street. This criterion is proposed because of the high number of calls for service related to burglaries, theft, alarm calls, and assault, relative to other types of retail businesses. By fronting on an arterial street, the business will be easily viewed by the general public and, most importantly, Police Department patrol vehicles. Limited police resources are such that patrol of internal parking lot fronting businesses will be difficult and could result in a detrimental impact on adjoining businesses and a less safe situation for the Tobacco and Paraphernalia Retailer itself.
 - A 500 foot buffer-zone is proposed to prevent an over-concentration of Tobacco and Paraphernalia Retailers or other establishments which typically generate high volumes of Police Department calls for services, such as liquor stores, computer gaming and internet access businesses and card rooms. A 500-foot buffer zone from sensitive uses, such as schools, parks, recreational centers where youth congregate, is also proposed. This buffer distance is consistent with the existing liquor establishment and computer gaming and internet access business ordinances.
- Section 9-5.3843(B) requires that the businesses comply with other parts of the Municipal Code concerning smoking and tobacco and paraphernalia retailers regarding issues such as self-service displays and the Tobacco Free Youth Ordinance, among other items. This section serves primarily to alert the applicant and staff to these Code provisions.

The provisions above would be applicable to new Tobacco and Paraphernalia Retailers locating in Antioch or existing businesses that are changing location. However, existing State and local laws that govern operations still apply to existing businesses. Furthermore, if any of these uses began illegally after the moratorium, these uses would be subject to the land use restrictions.

ATTACHMENTS

- A. Proposed Resolution with Proposed Zoning Ordinance attached as Exhibit 1
- B. Ordinance 2086-C-S adopted on April 22, 2014 extending an interim urgency zoning ordinance regarding Tobacco and Paraphernalia Retailers.
- C. Staff report for the April 22, 2014 City Council meeting which contains July 9, 2013 and May 28, 2013 staff reports as attachments.
- D. C-3 Zone location map

ATTACHMENT "A"

RESOLUTION NO. 2015-**

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR TOBACCO AND PARAPHERNALIA RETAILERS

WHEREAS, the Planning Commission of the City of Antioch did receive an application from the **City of Antioch** requesting approval of an amendment to the Zoning Ordinance of the Antioch Municipal Code to establish regulations for Tobacco and Paraphernalia Retailers (Z-13-04); and,

WHEREAS, Pursuant to CEQA Statutes Section 15061(b)(3), the proposed amendments to the Antioch Municipal Code are exempt from CEQA because it can be seen with certainty to have no possibility of a significant effect on the environment; and,

WHEREAS, the Planning Commission duly gave notice of public hearing as required by law; and,

WHEREAS, on February 4, 2015, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission, after reviewing the staff report and considering testimony offered, does hereby recommend that the City Council **ADOPT** the attached ordinance establishing regulations for Tobacco and Paraphernalia Retailers (Z-13-04).

* * * * *

I HEREBY CERTIFY the foregoing resolution was duly adopted by the Planning Commission of the City of Antioch, County of Contra Costa, State of California, at a regular meeting of said Planning Commission held on the 4th day of February, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tina Wehrmeister, Secretary to the
Planning Commission

A1

EXHIBIT 1

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH DEFINING AND ESTABLISHING ZONING REGULATIONS FOR TOBACCO AND PARAPHERNALIA RETAILERS

SECTION 1. Findings. The Antioch City Council hereby finds, determines and declares as follows:

A. The City of Antioch holds the right to make and enforce all laws and regulations not in conflict with general laws, and the City holds all rights and powers established by state law.

B. On April 22, 2014, the City Council adopted Ordinance No. 2086-C-S extending a moratorium on Tobacco and Paraphernalia Retailers pursuant to findings regarding a current and immediate threat to the public health, safety and welfare from the effects and impacts of Tobacco and Paraphernalia Retailers, including but not limited to incidents involving burglary and attempted burglary, armed robbery, fights and disturbances including those involving juveniles, petty theft, assault, threats, loitering, panhandling, harassment, stolen vehicles, and passing counterfeit bills. The findings in Ordinance No. 2086-C-S are incorporated into this ordinance.

C. The Planning Commission conducted a duly noticed public hearing on February 4, 2015 at which time a resolution was approved to initiate and recommend to the City Council that this ordinance be adopted. The City Council held a duly noticed public hearing on _____ at which time all interested persons were allowed to address the Council regarding adoption of this ordinance.

D. The City Council finds that the public necessity requires the proposed zoning ordinance amendments to allow Tobacco and Paraphernalia Retailers only in the Commercial C-3 zoning district and to impose requirements regarding over-concentration and distance from sensitive uses to avoid the detrimental impacts from the use described above; said amendments are not detrimental to properties within Antioch, and that the proposed zoning ordinance amendment is in conformance with the Antioch General Plan.

SECTION 2. Section 9-5.203 of the Antioch Municipal Code is hereby amended to add the following definitions, alphabetically listed, with no other amendments to this Section:

ELECTRONIC SMOKING DEVICE "Electronic Smoking Device" means an electronic device which can be used to deliver an inhaled dose of nicotine, or other substances (vaping), including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an

electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

TOBACCO PRODUCT "Tobacco Product" means:

- (a) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
- (b) Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, cigar, pipe, or hookah.
- (c) Notwithstanding any provision of subsections (a) and (b) to the contrary, "tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

TOBACCO AND PARAPHERNALIA RETAILER shall mean any establishment that sells any Tobacco Products, Electronic Smoking Devices or Paraphernalia as defined in this ordinance. Retail businesses larger than 5,000 s.f. having less than 5% of their sales area devoted to tobacco products, electronic smoking devices, or paraphernalia are exempt from this definition.

PARAPHERNALIA shall have the definition set forth in California Health & Safety Code section 11014.5, as that section may be amended from time to time.

SECTION 3. Section 9-5.3803 Table of Land Use Regulations is hereby amended to add the following to require a Use Permit for Tobacco and Paraphernalia Retailers in the C-3 zone (Regional Commercial) and to not permit the use in other zoning districts, with no other amendments to this section:

[illegible]

A3

SECTION 4. Section 9-5.3843 is hereby added as follows:

9-5.3843 TOBACCO AND PARAPHERNALIA RETAILER BUSINESSES

(A) In addition to requiring a Use Permit in the C-3 zone the following locational criteria shall apply:

- (1) The primary customer access point must be located on and fronting an arterial street as defined in the General Plan.
- (2) No Tobacco and Paraphernalia Retailer Business shall be operated within a radius of 500 feet from any other Tobacco and Paraphernalia Retailer Business; any school, public park, playground, recreational center, day care center, or other similar use; any computer gaming and internet access business; any on- or off-sale liquor establishment excluding those exempted in 9-5.3831(B); or any card room.

(B) Tobacco and Paraphernalia Retailer Business are also required to comply with Title 5, Chapter 16 and Title 6, Chapter 8 of the Municipal Code regulating paraphernalia display and smoking and manner of tobacco sales respectively. Requirements of these sections shall be a condition of the Use Permit.

SECTION 5. CEQA.

This Ordinance is subject to the CEQA exemption contained in CEQA Guideline section 15061 (b) (3) because it can be seen with certainty to have no possibility of a significant effect on the environment. The proposed ordinance restricts future use of existing developed parking lots.

SECTION 6. Publication; Effective Date.

This Ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption by the City Council at a second reading and shall be posted and published in accordance with the California Government Code.

SECTION 7. Severability.

Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was introduced at a regular meeting of the City Council of the City of Antioch held on the ____ day of ____ and passed and introduced at a regular meeting thereof, held on the ____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "B"

ORDINANCE NO. 2086-C-S

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH EXTENDING AN INTERIM URGENCY ZONING ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 PROHIBITING THE ISSUANCE OF PERMITS, LICENSES OR APPROVALS FOR CONSTRUCTION, ESTABLISHMENT OR OPERATION OF TOBACCO AND PARAPHERNALIA RETAILER BUSINESSES WITHIN THE CITY ON AN INTERIM BASIS PENDING CONSIDERATION OF AMENDMENTS TO THE ANTIOCH MUNICIPAL CODE

The City Council of the City of Antioch does ordain as follows:

SECTION 1. Interim Urgency Zoning Ordinance. This ordinance is adopted pursuant to the authority of Section 65858 of the Government Code of the State of California, the Antioch City Municipal Code and applicable laws.

SECTION 2. Findings. The Antioch City Council hereby finds, determines and declares as follows:

A. The City of Antioch holds the right to make and enforce all laws and regulations not in conflict with general laws, and the City holds all rights and powers established by state law.

B. The City has received and anticipates additional requests for the construction, establishment and operation of Tobacco and Paraphernalia Retailer businesses (as defined herein) within the City. However, the provisions of the City Municipal Code that may regulate the construction, operation and establishment of Tobacco and Paraphernalia Retailer businesses in the City are inadequate and need review, study, and revision. The current provisions also fail to fully take into account the impacts related to the location and manner of construction, establishment and operation of Tobacco and Paraphernalia Retailer businesses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community.

C. Tobacco and Paraphernalia Retailer businesses often have local school students and minors as their target market, and thereby may encourage the assembly of significant numbers of minors without supervision by parents or guardians, not to mention use of tobacco products or illegal substances. Seven of the twelve Tobacco and Paraphernalia Retailers listed below are located within several blocks of schools. Further, given concerns about attendance at the Antioch Unified School District such congregation of students should not be allowed during regular school hours.

D. The City Council of the City of Antioch is concerned with exposure of youth to tobacco products and prevalence of smoking among youth:

1. In California, 11.9% of the adult population¹ and 14.6% of teenagers² currently smoke.

¹ Cal. Dep't Health Servs, Tobacco Control Program, Smoking Prevalence Among California Adults (April 2011).

² Cal. Dep't Health Servs, Tobacco Control Sec., 30-Day Smoking Prevalence Among California Youth (September 2009).

2. Although it is unlawful to sell tobacco products and/or tobacco paraphernalia to minors,³ 5.6% of California retailers surveyed do sell to minors.⁴ These numbers are more concerning locally. According to the California Health Department's Food and Drug Branch, the sales rate to minors in Contra Costa County overall is 22%⁵. In other words, stores in Contra Costa County on average sell tobacco to youth one in every four times they try to buy cigarettes.

E. The City Council of the City of Antioch is also concerned with the increased calls for service, increasing reports of violent criminal behavior and related detrimental neighborhood effects associated with Tobacco and Paraphernalia Retailers. The City of Antioch needs additional time to study this issue and determine if concentration and/or location of Tobacco and Paraphernalia Retailers in close proximity to other uses with generally high rates of calls for service such as bars or liquor stores would exasperate these concerns. The City of Antioch is also concerned about uses with high rates of calls for service in proximity to youth including schools and parks.

F. The City of Antioch, as well as neighboring cities, have experienced criminal activity associated with Tobacco and Paraphernalia Retailers, including incidents involving burglary and attempted burglary, armed robbery, fights and disturbances including those involving juveniles, petty theft, assault, threats, loitering, panhandling, harassment, stolen vehicles, and passing counterfeit bills. For example, the Antioch Police Department has documented a significant amount of calls for service involving a variety of crimes in these businesses and within the shopping centers in which Tobacco and Paraphernalia Retailers are located. Included below as findings are representational incidents associated with Tobacco and Paraphernalia Retailers for the 12 month period from May 9, 2012 – May 9, 2013 (not all businesses were in operation for the entire period) when this moratorium was initially adopted by the City Council on May 28, 2013. Under each address in *italics* is updated information on calls for service for the period of May 9, 2013 to present:

1. Cigarette 4 Less, 3142 Contra Loma Blvd: two (2) calls for service related to an alarm and an alleged fight between juveniles in the area.

Seven (7) calls for service related to alarms and suspicious subjects.

2. Cigarette 4 Less, 2549 San Jose Drive: eleven (11) calls for service related to alarms, petty thefts, a civil complaint and an assault.

Six (6) calls for service related to alarms, assault, theft, and requests for extra patrol.

3. Smoke Shop, 4532 Lone Tree Way: five (5) calls for service related to a robbery, petty thefts, unfounded 911 call and a fight inside the store.

Two (2) calls for service related to petty theft.

4. Smoke Shop DBA Cigarette 4 Less, 2767 Lone Tree Way: two (2) calls for service related to an armed robbery and false alarm.

³ Cal. Penal Code § 308

⁴ Cal. Dep't Health Servs, Tobacco Control Sec., Youth Tobacco Purchase Survey 1995-2011

⁵ California Department of Health Services Food and Drug Branch Compliance Checks, 2003.

Four (4) calls for service related to burglary, armed robbery, counterfeit bills, and an unattended child.

5. Cigarette 4 Less, 2727 Hillcrest Ave: five (5) calls for service related to alarms, a threat complaint, armed robbery and a suspicious circumstance.

Five (5) calls for service related to suspicious persons, counterfeit bills, alarms, and robbery.

6. Sycamore Smoke & More, 1096 Sycamore Drive: thirty-one (31) calls for service related to unwanted guests, loitering complaints, assaults, panhandling and fighting.

Seventeen (17) calls for service related to loitering, disturbances, gambling, drug dealing, suspicious subjects, and 911 hang up.

7. Cigarette 4 Less, 3708 Lone Tree Way: six (6) calls for service related to alarms, juvenile disturbance and a burglary of the business.

Two (2) call for service related to an alarm and assault.

8. Tower Zone Smoke Shop, 2717 Contra Loma Blvd.: five (5) calls for service related to an armed robbery, petty theft and 911 hang-up.

One (1) call for service related to an unwanted guest.

9. Lone Tree Cigarette & More Inc., 4839 Lone Tree Way Suite C: eight (8) calls for service related to alarms, armed robbery, petty theft, harassment and suspicious persons.

Seven (7) calls for service related to alarms, armed robbery, and disturbances.

10. Smoke Shop Mini Market, 1515 A Street: eleven (11) calls for service related to threats, loitering, juvenile disturbance, panhandling, stolen cars, an alarm, counterfeit bill and petty theft.

Five (5) calls for service related to alarms, disturbances, assault, theft, and robbery.

11. Discount Cigarette & Cigar Store, 1615 A Street: nine (9) calls for service related to an alarm, a fight in the parking lot in front of the business, medical call, burglary, unwanted guest, a suspicious person, a suspicious circumstance and a fraud (counterfeit) complaint.

Three (3) calls for service related to alarms, theft, and harassment.

12. Fusion Novelties, 1336 Sunset Drive: one (1) call for service related to a vandalism – broken window.

Zero. This business closed during the reporting period.

G. In addition to the increased calls for service and increasing reports of violent criminal behavior described above, the City Council is also concerned that Tobacco and Paraphernalia Retailers are not complying with applicable State and local laws related to tobacco and paraphernalia sales. Code Enforcement staff inspected the businesses listed above and found violations of California Health and Safety Code 11364.5 and Antioch Municipal Code Title 5, Chapter 16 related to paraphernalia sales; Municipal Code Section 9-5.519 related to tobacco advertising; Municipal Code 9-5.508 related to general advertising; and California Business and Professions Code 22962 and Municipal Code 6-8.13 related to self service display of tobacco.

H. Without the enactment of this Ordinance, multiple applicants could quickly receive entitlements, which would allow additional Tobacco and Paraphernalia Retailers that pose a threat to the public health, safety, and welfare. The City Council hereby determines that the Municipal Code is in need of updating to protect the public health, safety, and welfare from dangers caused by Tobacco and Paraphernalia Retailers. The City requires additional time to prepare, evaluate and adopt reasonable regulations regarding the construction, placement, concentration and operation of Tobacco and Paraphernalia Retailers so that such regulations are applied in a nondiscriminatory manner.

I. In order to prevent the frustration of these studies and the implementation of new regulations, the public interest, health, safety, and welfare require immediate enactment of this Ordinance. The absence of this Ordinance would impair the orderly and effective implementation of contemplated Municipal Code amendments, and any further authorization of these uses within the City during the period of the interim zoning regulations may be in conflict with or may frustrate the contemplated updates and revisions of the Municipal Code.

J. Based on the foregoing, the City finds that there is a current and immediate threat to the public health, safety, or welfare and that this Ordinance is necessary in order to protect the City from the potential effects and impacts of Tobacco and Paraphernalia Retailers in the City, potential increases in crime, impacts on parking availability in the business areas of the City, the aesthetic impacts to the City, and other similar or related effects on property values and the quality of life in the City's neighborhoods.

K. The City Council further finds that this interim zoning regulation is a matter of local and City-wide importance and is not directed towards any particular business that currently seeks to construct or operate a Tobacco and Paraphernalia Retailer business.

L. The City Council finds that this Ordinance is authorized by the City's police powers. The City Council further finds that the length of the interim zoning regulations imposed by this Ordinance will not in any way deprive any person of rights granted by state or federal laws, because the interim zoning regulation is short in duration and essential to protect the public health, safety and welfare.

SECTION 3. Interim Regulations. The following provisions are hereby adopted as interim zoning standards pertaining to the review or approval of any entitlements or the issuance of any permits or licenses pursuant to the Antioch Municipal Code for Tobacco and Paraphernalia Retailers. The approval of any entitlements or the issuance of any permit or license in the City in conflict with these provisions is expressly prohibited:

A. Restricted Activities. For a period of one additional year (12 months) following the enactment of this Ordinance, no person shall be issued a permit, license or land use

entitlement for the construction, placement, or operation of new Tobacco and Paraphernalia Retailer businesses within the City. The City Manager or his or her designee shall review any application for a permit, license or land use entitlement to determine applicability of the provisions of this Ordinance. City Staff, City boards and City commissions are directed to refrain from issuing any application for any permits, licenses or land use entitlement, including, but not limited to, use permits, variances, building permits, licenses and certificates of occupancy, necessary for construction, placement, or operation of a Tobacco and Paraphernalia Retailer business. These prohibitions shall remain in effect during the 12 months following enactment of this Ordinance. Tobacco and Paraphernalia Retailer businesses existing on May 28, 2013 when the first urgency ordinance prohibiting these uses was adopted by the City Council may continue to operate at their current locations provided that they are in compliance with State law and the Antioch Municipal Code.

B. Definitions. In addition to the definitions contained in the City's Municipal Code, the following words and phrases shall, for the purposes of this Ordinance, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with the current provisions of the Municipal Code, the following definitions shall prevail:

1. **TOBACCO AND PARAPHERNALIA RETAILER** shall mean any establishment that sells any substance containing tobacco including but not limited to cigarettes, cigars, chewing tobacco and dipping tobacco, cigarette papers, or any other instruments or paraphernalia as defined in this ordinance. Retail businesses larger than 5,000 s.f. having less than 5% of their sales area devoted to tobacco or paraphernalia are exempt from this definition.
2. **PARAPHERNALIA** shall have the definition set forth in California Health & Safety Code section 11014.5, as that section may be amended from time to time.

SECTION 4. CEQA. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 16061 (b) (3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date. This interim ordinance shall take effect immediately upon its adoption and shall continue in effect for 12 months from the date of its adoption by not less than a four-fifths vote of the Antioch City Council, unless superseded by a subsequent ordinance of the City Council.

SECTION 7. Report of Council. Ten days prior to the expiration of this Ordinance, or any extension thereof, this Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this ordinance, or any extension thereof.

SECTION 8. Declaration of Urgency. This ordinance is hereby declared to be an urgency measure necessary for the immediate protection of the public health, safety and welfare. This Council hereby finds that there is a current and immediate threat to the public health, safety and welfare. The reasons for this urgency are declared and set forth in Section 2 of this Ordinance and are incorporated herein by reference.

SECTION 9. Publication; Certification. The City Clerk shall certify to the adoption of this Ordinance and cause same to be published in accordance with State law.

* * * * *

I HEREBY CERTIFY that the foregoing Ordinance was introduced and adopted as an urgency ordinance pursuant to the terms of California Government Code Section 65858 at a regular meeting of the City Council of the City of Antioch on the 22nd day of April, 2014, by the following vote:

AYES: Council Members Wilson, Rocha, Tiscareno, Agopian and Mayor Harper

NOES: None.

ABSENT: None.

ABSTAIN: None.

/s/ Wade Harper

Wade Harper, Mayor of the City of Antioch

ATTEST:

/s/ Arne Simonsen

Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "C"

STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE MEETING OF APRIL 22, 2014

Prepared by: Tina Wehrmeister, Community Development Director *tw*
Date: April 17, 2014
Subject: **Adoption of an Urgency Ordinance Extending a Temporary Moratorium on the Establishment and Operation of Tobacco and Paraphernalia Retailers**

RECOMMENDATION

It is recommended that the City Council adopt the attached urgency ordinance extending a temporary moratorium on the issuance of permits, licenses, or approvals for construction, establishment or operation of Tobacco and Paraphernalia Retailer businesses within the City of Antioch on an interim basis pending consideration of amendments to the Antioch Municipal Code for a period of one year and declaring the urgency to do so (four-fifths vote).

BACKGROUND / DISCUSSION

On May 28, 2013, the City Council adopted an urgency ordinance establishing a temporary moratorium on the issuance of permits, licenses, or approvals for construction, establishment or operation of Tobacco and Paraphernalia Retailer businesses. The staff report for that City Council meeting provides more details regarding the issue and the urgent need for a temporary moratorium to address public safety, health and welfare issues raised by these Tobacco and Paraphernalia Retailer businesses (as defined in the ordinance). The moratorium was extended by the City Council for a period of 10 months, 15 days on July 9, 2013. The July 9, 2013 staff report is included as Attachment "A" and contains the May 28, 2013 report.

Pursuant to Government Code Section 65858 the initial moratorium is effective for 45 days and can be extended for up to a total of 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 for extension of the moratorium.

Due to staffing levels, the complexity of the issues to be studied and the ongoing public safety, health and welfare issues raised by Tobacco and Paraphernalia Retailer businesses, it is recommended that the moratorium be extended for an additional year. Proper noticing procedures were followed in advance of this item being placed on the agenda. Further extensions are not permitted under the Government Code; therefore, staff will draft a regular ordinance for consideration within the next twelve months.

Staff has been in contact with ChangeLab Solutions (formerly TALC – Tobacco Assistance Legal Center) and staff from the Contra Costa Tobacco Prevention Coalition to discuss the City's options regarding land use as well as licensing ordinances. As mentioned, these issues are complex and additional time is needed to prepare and present an ordinance(s) for consideration.

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4-22-14

C1

FISCAL IMPACT

There is no direct fiscal impact with the adoption of the proposed urgency ordinance. There will be staff time expended to prepare ordinances addressing Tobacco and Paraphernalia Retailers and to review and make recommendations regarding regulations for existing businesses.

There may be a negative sales tax and property tax impact because no new tobacco retailers can operate; however, the City Council previously found that the negative impacts from such businesses outweighed any potential loss revenue to the City.

OPTIONS

The Council may choose not to adopt the urgency ordinance extending the moratorium. This will leave the City without a zoning ordinance specifically addressing Tobacco and Paraphernalia Retailer businesses.

ATTACHMENTS

A: July 9, 2013 staff report (contains the May 28, 2013 staff report)

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH EXTENDING AN INTERIM URGENCY ZONING ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 PROHIBITING THE ISSUANCE OF PERMITS, LICENSES OR APPROVALS FOR CONSTRUCTION, ESTABLISHMENT OR OPERATION OF TOBACCO AND PARAPHERNALIA RETAILER BUSINESSES WITHIN THE CITY ON AN INTERIM BASIS PENDING CONSIDERATION OF AMENDMENTS TO THE ANTIOCH MUNICIPAL CODE

The City Council of the City of Antioch does ordain as follows:

SECTION 1. Interim Urgency Zoning Ordinance. This ordinance is adopted pursuant to the authority of Section 65858 of the Government Code of the State of California, the Antioch City Municipal Code and applicable laws.

SECTION 2. Findings. The Antioch City Council hereby finds, determines and declares as follows:

A. The City of Antioch holds the right to make and enforce all laws and regulations not in conflict with general laws, and the City holds all rights and powers established by state law.

B. The City has received and anticipates additional requests for the construction, establishment and operation of Tobacco and Paraphernalia Retailer businesses (as defined herein) within the City. However, the provisions of the City Municipal Code that may regulate the construction, operation and establishment of Tobacco and Paraphernalia Retailer businesses in the City are inadequate and need review, study, and revision. The current provisions also fail to fully take into account the impacts related to the location and manner of construction, establishment and operation of Tobacco and Paraphernalia Retailer businesses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community.

C. Tobacco and Paraphernalia Retailer businesses often have local school students and minors as their target market, and thereby may encourage the assembly of significant numbers of minors without supervision by parents or guardians, not to mention use of tobacco products or illegal substances. Seven of the twelve Tobacco and Paraphernalia Retailers listed below are located within several blocks of schools. Further, given concerns about attendance at the Antioch Unified School District such congregation of students should not be allowed during regular school hours.

D. The City Council of the City of Antioch is concerned with exposure of youth to tobacco products and prevalence of smoking among youth:

1. In California, 11.9% of the adult population¹ and 14.6% of teenagers² currently smoke.

¹ Cal. Dep't Health Servs, Tobacco Control Program, Smoking Prevalence Among California Adults (April 2011).

² Cal. Dep't Health Servs, Tobacco Control Sec., 30-Day Smoking Prevalence Among California Youth (September 2009).

2. Although it is unlawful to sell tobacco products and/or tobacco paraphernalia to minors,³ 5.6% of California retailers surveyed do sell to minors.⁴ These numbers are more concerning locally. According to the California Health Department's Food and Drug Branch, the sales rate to minors in Contra Costa County overall is 22%⁵. In other words, stores in Contra Costa County on average sell tobacco to youth one in every four times they try to buy cigarettes.

E. The City Council of the City of Antioch is also concerned with the increased calls for service, increasing reports of violent criminal behavior and related detrimental neighborhood effects associated with Tobacco and Paraphernalia Retailers. The City of Antioch needs additional time to study this issue and determine if concentration and/or location of Tobacco and Paraphernalia Retailers in close proximity to other uses with generally high rates of calls for service such as bars or liquor stores would exasperate these concerns. The City of Antioch is also concerned about uses with high rates of calls for service in proximity to youth including schools and parks.

F. The City of Antioch, as well as neighboring cities, have experienced criminal activity associated with Tobacco and Paraphernalia Retailers, including incidents involving burglary and attempted burglary, armed robbery, fights and disturbances including those involving juveniles, petty theft, assault, threats, loitering, panhandling, harassment, stolen vehicles, and passing counterfeit bills. For example, the Antioch Police Department has documented a significant amount of calls for service involving a variety of crimes in these businesses and within the shopping centers in which Tobacco and Paraphernalia Retailers are located. Included below as findings are representational incidents associated with Tobacco and Paraphernalia Retailers for the 12 month period from May 9, 2012 – May 9, 2013 (not all businesses were in operation for the entire period) when this moratorium was initially adopted. Under each address in *italics* is updated information on calls for service for the period of May 9, 2013 to present:

1. Cigarette 4 Less, 3142 Contra Loma Blvd: two (2) calls for service related to an alarm and an alleged fight between juveniles in the area.

Seven (7) calls for service related to alarms and suspicious subjects.

2. Cigarette 4 Less, 2549 San Jose Drive: eleven (11) calls for service related to alarms, petty thefts, a civil complaint and an assault.

Six (6) calls for service related to alarms, assault, theft, and requests for extra patrol.

3. Smoke Shop, 4532 Lone Tree Way: five (5) calls for service related to a robbery, petty thefts, unfounded 911 call and a fight inside the store.

Two (2) calls for service related to petty theft.

4. Smoke Shop DBA Cigarette 4 Less, 2767 Lone Tree Way: two (2) calls for service related to an armed robbery and false alarm.

³ Cal. Penal Code § 308

⁴ Cal. Dep't Health Servs, Tobacco Control Sec., Youth Tobacco Purchase Survey 1995-2011

⁵ California Department of Health Services Food and Drug Branch Compliance Checks, 2003.

Four (4) calls for service related to burglary, armed robbery, counterfeit bills, and an unattended child.

5. Cigarette 4 Less, 2727 Hillcrest Ave: five (5) calls for service related to alarms, a threat complaint, armed robbery and a suspicious circumstance.

Five (5) calls for service related to suspicious persons, counterfeit bills, alarms, and robbery.

6. Sycamore Smoke & More, 1096 Sycamore Drive: thirty-one (31) calls for service related to unwanted guests, loitering complaints, assaults, panhandling and fighting.

Seventeen (17) calls for service related to loitering, disturbances, gambling, drug dealing, suspicious subjects, and 911 hang up.

7. Cigarette 4 Less, 3708 Lone Tree Way: six (6) calls for service related to alarms, juvenile disturbance and a burglary of the business.

Two (2) call for service related to an alarm and assault.

8. Tower Zone Smoke Shop, 2717 Contra Loma Blvd.: five (5) calls for service related to an armed robbery, petty theft and 911 hang-up.

One (1) call for service related to an unwanted guest.

9. Lone Tree Cigarette & More Inc., 4839 Lone Tree Way Suite C: eight (8) calls for service related to alarms, armed robbery, petty theft, harassment and suspicious persons.

Seven (7) calls for service related to alarms, armed robbery, and disturbances.

10. Smoke Shop Mini Market, 1515 A Street: eleven (11) calls for service related to threats, loitering, juvenile disturbance, panhandling, stolen cars, an alarm, counterfeit bill and petty theft.

Five (5) calls for service related to alarms, disturbances, assault, theft, and robbery.

11. Discount Cigarette & Cigar Store, 1615 A Street: nine (9) calls for service related to an alarm, a fight in the parking lot in front of the business, medical call, burglary, unwanted guest, a suspicious person, a suspicious circumstance and a fraud (counterfeit) complaint.

Three (3) calls for service related to alarms, theft, and harassment.

12. Fusion Novelties, 1336 Sunset Drive: one (1) call for service related to a vandalism – broken window.

Zero. This business closed during the reporting period.

G. In addition to the increased calls for service and increasing reports of violent criminal behavior described above, the City Council is also concerned that Tobacco and Paraphernalia Retailers are not complying with applicable State and local laws related to tobacco and paraphernalia sales. Code Enforcement staff inspected the businesses listed below and found violations of California Health and Safety Code 11364.5 and Antioch Municipal Code Title 5, Chapter 16 related to paraphernalia sales; Municipal Code Section 9-5.519 related to tobacco advertising; Municipal Code 9-5.508 related to general advertising; and California Business and Professions Code 22962 and Municipal Code 6-8.13 related to self service display of tobacco.

H. Without the enactment of this Ordinance, multiple applicants could quickly receive entitlements, which would allow additional Tobacco and Paraphernalia Retailers that pose a threat to the public health, safety, and welfare. The City Council hereby determines that the Municipal Code is in need of updating to protect the public health, safety, and welfare from dangers caused by Tobacco and Paraphernalia Retailers. The City requires additional time to prepare, evaluate and adopt reasonable regulations regarding the construction, placement, concentration and operation of Tobacco and Paraphernalia Retailers so that such regulations are applied in a nondiscriminatory manner.

I. In order to prevent the frustration of these studies and the implementation of new regulations, the public interest, health, safety, and welfare require immediate enactment of this Ordinance. The absence of this Ordinance would impair the orderly and effective implementation of contemplated Municipal Code amendments, and any further authorization of these uses within the City during the period of the interim zoning regulations may be in conflict with or may frustrate the contemplated updates and revisions of the Municipal Code.

J. Based on the foregoing, the City finds that there is a current and immediate threat to the public health, safety, or welfare and that this Ordinance is necessary in order to protect the City from the potential effects and impacts of Tobacco and Paraphernalia Retailers in the City, potential increases in crime, impacts on parking availability in the business areas of the City, the aesthetic impacts to the City, and other similar or related effects on property values and the quality of life in the City's neighborhoods.

K. The City Council further finds that this interim zoning regulation is a matter of local and City-wide importance and is not directed towards any particular business that currently seeks to construct or operate a Tobacco and Paraphernalia Retailer business.

L. The City Council finds that this Ordinance is authorized by the City's police powers. The City Council further finds that the length of the interim zoning regulations imposed by this Ordinance will not in any way deprive any person of rights granted by state or federal laws, because the interim zoning regulation is short in duration and essential to protect the public health, safety and welfare.

SECTION 3. Interim Regulations. The following provisions are hereby adopted as interim zoning standards pertaining to the review or approval of any entitlements or the issuance of any permits or licenses pursuant to the Antioch Municipal Code for Tobacco and Paraphernalia Retailers. The approval of any entitlements or the issuance of any permit or license in the City in conflict with these provisions is expressly prohibited:

A. Restricted Activities. For a period of one year (12 months) following the enactment of this Ordinance, no person shall be issued a permit, license or land use entitlement

for the construction, placement, or operation of new Tobacco and Paraphernalia Retailer businesses within the City. The City Manager or his or her designee shall review any application for a permit, license or land use entitlement to determine applicability of the provisions of this Ordinance. City Staff, City boards and City commissions are directed to refrain from issuing any application for any permits, licenses or land use entitlement, including, but not limited to, use permits, variances, building permits, licenses and certificates of occupancy, necessary for construction, placement, or operation of a Tobacco and Paraphernalia Retailer business. These prohibitions shall remain in effect during the 12 months following enactment of this Ordinance. Existing Tobacco and Paraphernalia Retailer businesses may continue to operate at their current locations provided that they are in compliance with State law and the Antioch Municipal Code.

B. Definitions. In addition to the definitions contained in the City's Municipal Code, the following words and phrases shall, for the purposes of this Ordinance, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with the current provisions of the Municipal Code, the following definitions shall prevail:

1. **TOBACCO AND PARAPHERNALIA RETAILER** shall mean any establishment that sells any substance containing tobacco including but not limited to cigarettes, cigars, chewing tobacco and dipping tobacco, cigarette papers, or any other instruments or paraphernalia as defined in this ordinance. Retail businesses larger than 5,000 s.f. having less than 5% of their sales area devoted to tobacco or paraphernalia are exempt from this definition.
2. **PARAPHERNALIA** shall have the definition set forth in California Health & Safety Code section 11014.5, as that section may be amended from time to time.

SECTION 4. CEQA. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 16061 (b) (3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date. This interim ordinance shall take effect immediately upon its adoption and shall continue in effect for 12 months from the date of its adoption by not less than a four-fifths vote of the Antioch City Council, unless superseded by a subsequent ordinance of the City Council.

SECTION 7. Report of Council. Ten days prior to the expiration of this Ordinance, or any extension thereof, this Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this ordinance, or any extension thereof.

SECTION 8. Declaration of Urgency. This ordinance is hereby declared to be an urgency measure necessary for the immediate protection of the public health, safety and welfare. This Council hereby finds that there is a current and immediate threat to the public health, safety and welfare. The reasons for this urgency are declared and set forth in Section 2 of this Ordinance and are incorporated herein by reference.

SECTION 9. Publication; Certification. The City Clerk shall certify to the adoption of this Ordinance and cause same to be published in accordance with State law.

* * * * *

I HEREBY CERTIFY that the foregoing Ordinance was introduced and adopted as an urgency ordinance pursuant to the terms of California Government Code Section 65858 at a regular meeting of the City Council of the City of Antioch on the 22nd day of April, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "A"

STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE MEETING OF JULY 9, 2013

Prepared by: Tina Wehrmeister, Community Development Director *Tw*

Date: June 27, 2013

Subject: Adoption of an Urgency Ordinance Extending a Temporary Moratorium on the Establishment and Operation of Tobacco and Paraphernalia Retailers and including the prohibition on Computer Gaming at Tobacco and Paraphernalia Retailers

RECOMMENDATION

It is recommended that the City Council adopt the attached urgency ordinance extending a temporary moratorium on the issuance of permits, licenses, or approvals for construction, establishment or operation of Tobacco and Paraphernalia Retailer businesses within the City of Antioch and including the prohibition on Computer Gaming and Internet Access Businesses at Tobacco and Paraphernalia Retailers on an interim basis pending consideration of amendments to the Antioch Municipal Code for a period of 10 months and 15 days and declaring the urgency to do so (four-fifths vote).

Existing businesses will not be impacted by the recommended urgency ordinance extension as long as they do not engage in Computer Gaming and Internet Access Businesses at the same location.

BACKGROUND / DISCUSSION

On May 28, 2013, the City Council adopted an urgency ordinance establishing a temporary moratorium on the issuance of permits, licenses, or approvals for construction, establishment or operation of Tobacco and Paraphernalia Retailer businesses. The staff report for that City Council meeting is included as Attachment "A" and provides more details regarding the issue and the urgent need for a temporary moratorium to address public safety, health and welfare issues raised by these Tobacco and Paraphernalia Retailer businesses (as defined in the ordinance).

Pursuant to Government Code Section 65858 the initial moratorium is effective for 45 days and can be extended for up to a total of 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 for extension of the moratorium.

Due to staffing levels, the complexity of the issues to be studied and the ongoing public safety, health and welfare issues raised by Tobacco and Paraphernalia Retailer businesses, it is recommended that the moratorium be extended for 10 months and 15 days. Any further extension would require an additional noticed public hearing. Proper noticing procedures were followed in advance of this item being placed on the agenda.

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Staff has been in contact with ChangeLab Solutions (formerly TALC – Tobacco Assistance Legal Center) and staff from the Contra Costa Tobacco Prevention Coalition to discuss the City's options regarding land use as well as licensing ordinances. As mentioned, these issues are complex and additional time is needed to prepare and present an ordinance(s) for consideration.

In addition, it has come to staff's attention that Computer Gaming and Internet Access Businesses are approaching Tobacco and Paraphernalia Retailers to operate computer gaming businesses with less than 4 computers apparently to avoid the application of the moratorium on such uses with more than 4 computers. The staff report to the City Council on February 28, 2012 regarding Computer Gaming and Internet Access Businesses is attached by way of background, as well as Ordinance No. 2056-C-S dated April 10, 2012 that adopted a moratorium on new Computer Gaming and Internet Access Business with more than 4 computers.

As indicated in the staff report and Ordinance, there is a moratorium on computer gaming and internet access businesses with more than 4 computers because the provisions of the Municipal Code regarding these businesses are inadequate and need review, study, and revision. The current provisions also fail to fully take into account the impacts related to the location and manner of construction, establishment and operation of computer gaming and internet access businesses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community. Given the high number of calls for service and nature of such calls at computer gaming and internet access businesses, combined with the number and nature of calls for service at Tobacco and Paraphernalia Retailers and current lack of compliance with federal, state and local laws at many of these Tobacco and Paraphernalia Retailers as discussed in the City Council staff report on May 28, 2013, it is recommended that these businesses be prohibited from combining until further review can be undertaken even if there are four or less computers involved.

FISCAL IMPACT

There is no direct fiscal impact with the adoption of the proposed urgency ordinance. There will be staff time expended to prepare ordinances addressing Tobacco and Paraphernalia Retailers and to review and make recommendations regarding regulations for existing businesses.

OPTIONS

The Council may choose not to adopt the urgency ordinance extending the moratorium. This will leave the City without a zoning ordinance specifically addressing Tobacco and Paraphernalia Retailer businesses.

ATTACHMENTS

- A. May 28, 2013 staff report
- B. February 28, 2012 staff report regarding Computer Gaming and Internet Access Businesses
- C. Ordinance No. 2056-C-S dated April 10, 2012

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH EXTENDING AN INTERIM URGENCY ZONING ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 PROHIBITING THE ISSUANCE OF PERMITS, LICENSES OR APPROVALS FOR CONSTRUCTION, ESTABLISHMENT OR OPERATION OF TOBACCO AND PARAPHERNALIA RETAILER BUSINESSES WITHIN THE CITY ON AN INTERIM BASIS PENDING CONSIDERATION OF AMENDMENTS TO THE ANTIOCH MUNICIPAL CODE

The City Council of the City of Antioch does ordain as follows:

SECTION 1. Interim Urgency Zoning Ordinance. This ordinance is adopted pursuant to the authority of Section 65858 of the Government Code of the State of California, the Antioch City Municipal Code and applicable laws.

SECTION 2. Findings. The Antioch City Council hereby finds, determines and declares as follows:

A. The City of Antioch holds the right to make and enforce all laws and regulations not in conflict with general laws, and the City holds all rights and powers established by state law.

B. The City has received and anticipates additional requests for the construction, establishment and operation of Tobacco and Paraphernalia Retailer businesses (as defined herein) within the City. However, the provisions of the City Municipal Code that may regulate the construction, operation and establishment of Tobacco and Paraphernalia Retailer businesses in the City are inadequate and need review, study, and revision. The current provisions also fail to fully take into account the impacts related to the location and manner of construction, establishment and operation of Tobacco and Paraphernalia Retailer businesses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community.

C. Tobacco and Paraphernalia Retailer businesses often have local school students and minors as their target market, and thereby may encourage the assembly of significant numbers of minors without supervision by parents or guardians, not to mention use of tobacco products or illegal substances. Seven of the twelve Tobacco and Paraphernalia Retailers listed below are located within several blocks of schools. Further, given concerns about attendance at the Antioch Unified School District such congregation of students should not be allowed during regular school hours.

D. The City Council of the City of Antioch is concerned with exposure of youth to tobacco products and prevalence of smoking among youth:

1. In California, 11.9% of the adult population¹ and 14.6% of teenagers² currently smoke.
2. Although it is unlawful to sell tobacco products and/or tobacco paraphernalia to minors,³ 5.6% of California retailers surveyed do sell to minors.⁴ These numbers

¹ Cal. Dep't Health Servs, Tobacco Control Program, Smoking Prevalence Among California Adults (April 2011).

² Cal. Dep't Health Servs, Tobacco Control Sec., 30-Day Smoking Prevalence Among California Youth (September 2009).

are more concerning locally. According to the California Health Department's Food and Drug Branch, the sales rate to minors in Contra Costa County overall is 22%⁵. In other words, stores in Contra Costa County on average sell tobacco to youth one in every four times they try to buy cigarettes.

E. The City Council of the City of Antioch is also concerned with the increased calls for service, increasing reports of violent criminal behavior and related detrimental neighborhood effects associated with Tobacco and Paraphernalia Retailers. The City of Antioch needs additional time to study this issue and determine if concentration and/or location of Tobacco and Paraphernalia Retailers in close proximity to other uses with generally high rates of calls for service such as bars or liquor stores would exasperate these concerns. The City of Antioch is also concerned about uses with high rates of calls for service in proximity to youth including schools and parks.

F. The City of Antioch, as well as neighboring cities, have experienced criminal activity associated with Tobacco and Paraphernalia Retailers, including incidents involving burglary and attempted burglary, armed robbery, fights and disturbances including those involving juveniles, petty theft, assault, threats, loitering, panhandling, harassment, stolen vehicles, and passing counterfeit bills. For example, the Antioch Police Department has documented a significant amount of calls for service involving a variety of crimes in these businesses and within the shopping centers in which Tobacco and Paraphernalia Retailers are located. Included below as findings are representational incidents associated with Tobacco and Paraphernalia Retailers for the 12 month period from May 9, 2012 – May 9, 2013 (not all businesses were in operation for the entire period):

1. Cigarette 4 Less, 3142 Contra Loma Blvd: two (2) calls for service related to an alarm and an alleged fight between juveniles in the area.
2. Cigarette 4 Less, 2549 San Jose Drive: eleven (11) calls for service related to alarms, petty thefts, a civil complaint and an assault.
3. Smoke Shop, 4532 Lone Tree Way: five (5) calls for service related to a robbery, petty thefts, unfounded 911 call and a fight inside the store.
4. Smoke Shop DBA Cigarette 4 Less, 2767 Lone Tree Way: two (2) calls for service related to an armed robbery and false alarm.
5. Cigarette 4 Less, 2727 Hillcrest Ave: five (5) calls for service related to alarms, a threat complaint, armed robbery and a suspicious circumstance.
6. Sycamore Smoke & More, 1096 Sycamore Drive: thirty-one (31) calls for service related to unwanted guests, loitering complaints, assaults, panhandling and fighting.
7. Cigarette 4 Less, 3708 Lone Tree Way: six (6) calls for service related to alarms, juvenile disturbance and a burglary of the business.

³ Cal. Penal Code § 308

⁴ Cal. Dep't Health Servs, Tobacco Control Sec., Youth Tobacco Purchase Survey 1995-2011

⁵ California Department of Health Services Food and Drug Branch Compliance Checks, 2003.

8. Tower Zone Smoke Shop, 2717 Contra Loma Blvd.: five (5) calls for service related to an armed robbery, petty theft and 911 hang-up.
9. Lone Tree Cigarette & More Inc., 4839 Lone Tree Way Suite C: eight (8) calls for service related to alarms, armed robbery, petty theft, harassment and suspicious persons.
10. Smoke Shop Mini Market, 1515 A Street: eleven (11) calls for service related to threats, loitering, juvenile disturbance, panhandling, stolen cars, an alarm, counterfeit bill and petty theft.
11. Discount Cigarette & Cigar Store, 1615 A Street: nine (9) calls for service related to an alarm, a fight in the parking lot in front of the business, medical call, burglary, unwanted guest, a suspicious person, a suspicious circumstance and a fraud (counterfeit) complaint.
12. Fusion Novelties, 1336 Sunset Drive: one (1) call for service related to a vandalism – broken window.

G. In addition to the increased calls for service and increasing reports of violent criminal behavior described above, the City Council is also concerned that Tobacco and Paraphernalia Retailers are not complying with applicable State and local laws related to tobacco and paraphernalia sales. Code Enforcement staff has inspected the businesses listed below and found violations of California Health and Safety Code 11364.5 and Antioch Municipal Code Title 5, Chapter 16 related to paraphernalia sales; Municipal Code Section 9-5.519 related to tobacco advertising; Municipal Code 9-5.508 related to general advertising; and California Business and Professions Code 22962 and Municipal Code 6-8.13 related to self service display of tobacco:

1. Buchanan Smoke Shop, 2329A Buchanan Road: notice of violation for illegal display of paraphernalia. This location opened in April 2013 and is therefore not listed above as they did not have calls for service during the 12 month period.
2. Lone Tree Cigarette & More Inc., 4839 Lone Tree Way Suite C: notice of violation for illegal display of paraphernalia and tobacco related signs.
3. Cigarette 4 Less, 3142 Contra Loma Blvd: notice of violation for illegal display of paraphernalia, general signage, and self service tobacco.
4. Smoke Shop DBA Cigarette 4 Less, 2767 Lone Tree Way: notice of violation for illegal display of paraphernalia, and self service tobacco.
5. Cigarette 4 Less, 2727 Hillcrest Ave: notice of violation for illegal display of paraphernalia.
6. Cigarette 4 Less, 3708 Lone Tree Way: notice of violation for illegal display of paraphernalia, and self service tobacco.
7. Tower Zone Smoke Shop, 2717 Contra Loma Blvd.: notice of violation for illegal display of paraphernalia.

8. Smoke Shop Mini Market, 1515 A Street: notice of violation for illegal display of paraphernalia.
9. Discount Cigarette & Cigar Store, 1615 A Street: notice of violation for illegal display of paraphernalia.
10. Fusion Novelties, 1336 Sunset Drive: notice of violation for illegal display of paraphernalia.

H. Without the enactment of this Ordinance, multiple applicants could quickly receive entitlements which would allow additional Tobacco and Paraphernalia Retailers that pose a threat to the public health, safety, and welfare. The City Council hereby determines that the Municipal Code is in need of updating to protect the public health, safety, and welfare from dangers caused by Tobacco and Paraphernalia Retailers. The City requires additional time to prepare, evaluate and adopt reasonable regulations regarding the construction, placement, concentration and operation of Tobacco and Paraphernalia Retailers so that such regulations are applied in a nondiscriminatory manner.

I. In addition, Computer Gaming and Internet Access Businesses have created additional issues that need to be reviewed before allowing such uses, even with less than 4 computers, to be located with Tobacco and Paraphernalia Retailers, as summarized below and discussed further in the staff report to the City Council on February 28, 2012 and Ordinance No. 2056-C-S, which are incorporated into these findings:

1. Computer Gaming and Internet Access Businesses often have local school students and minors as their target market, and thereby may encourage the assembly of significant numbers of minors without supervision by parents or guardians. Further, given concerns about attendance at the Antioch Unified School District such congregation of students should not be allowed during regular school hours.
2. 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 may be considered 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 area and businesses, such as observed lines of individuals waiting to access these businesses. Some Computer Gaming and Internet Access Businesses may stage late-night gaming sessions, which may encourage violation of the City's curfew ordinance or create and promote other late-night noise and related impacts on the surrounding community. 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. 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.
3. The City Council of the City of Antioch is also concerned with the increased calls for service, increasing reports of violent criminal behavior and related detrimental

neighborhood effects associated with Computer Gaming and Internet Access Businesses.

4. The City of Antioch, as well as neighboring cities, has 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 and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the 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.

J. In order to prevent the frustration of these studies and the implementation of new regulations, the public interest, health, safety, and welfare require immediate enactment of this Ordinance. The absence of this Ordinance would impair the orderly and effective implementation of contemplated Municipal Code amendments, and any further authorization of these uses within the City during the period of the interim zoning regulations may be in conflict with or may frustrate the contemplated updates and revisions of the Municipal Code.

K. Based on the foregoing, the City finds that there is a current and immediate threat to the public health, safety, or welfare and that this Ordinance is necessary in order to protect the City from the potential effects and impacts of Tobacco and Paraphernalia Retailers in the City, potential increases in crime, impacts on parking availability in the business areas of the City, the aesthetic impacts to the City, and other similar or related effects on property values and the quality of life in the City's neighborhoods.

L. The City Council further finds that this interim zoning regulation is a matter of local and City-wide importance and is not directed towards any particular business that currently seeks to construct or operate a Tobacco and Paraphernalia Retailer business.

M. The City Council finds that this Ordinance is authorized by the City's police powers. The City Council further finds that the length of the interim zoning regulations imposed by this Ordinance will not in any way deprive any person of rights granted by state or federal laws, because the interim zoning regulation is short in duration and essential to protect the public health, safety and welfare.

SECTION 3. Interim Regulations. The following provisions are hereby adopted as interim zoning standards pertaining to the review or approval of any entitlements or the issuance of any permits or licenses pursuant to the Antioch Municipal Code for Tobacco and Paraphernalia Retailers. The approval of any entitlements or the issuance of any permit or license in the City in conflict with these provisions is expressly prohibited:

A. Restricted Activities. For a period of 10 month and 15 days following the enactment of this Ordinance, no person shall be issued a permit, license or land use entitlement for the construction, placement, or operation of new Tobacco and Paraphernalia Retailer businesses within the City or an existing Tobacco and Paraphernalia Retailer business that includes a Computer Gaming and Internet Access Business. The City Manager or his or her designee shall review any application for a permit, license or land use entitlement to determine applicability of the provisions of this Ordinance. City Staff, City boards and City commissions

are directed to refrain from issuing any application for any permits, licenses or land use entitlement, including, but not limited to, use permits, variances, building permits, licenses and certificates of occupancy, necessary for construction, placement, or operation of a Tobacco and Paraphernalia Retailer business. These prohibitions shall remain in effect during the 10 months and 15 days following enactment of this Ordinance. Existing Tobacco and Paraphernalia Retailer businesses may continue to operate at their current locations provided that they are in compliance with State law and the Antioch Municipal Code and do not operate a "Computer Gaming and Internet Access Business" at the same location.

B. Definitions. In addition to the definitions contained in the City's Municipal Code, the following words and phrases shall, for the purposes of this Ordinance, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with the current provisions of the Municipal Code, the following definitions shall prevail:

1. **TOBACCO AND PARAPHERNALIA RETAILER** shall mean any establishment that sells any substance containing tobacco including but not limited to cigarettes, cigars, chewing tobacco and dipping tobacco, cigarette papers, or any other instruments or paraphernalia as defined in this ordinance. Retail businesses larger than 5,000 s.f. having less than 5% of their sales area devoted to tobacco or paraphernalia are exempt from this definition.
2. **PARAPHERNALIA** shall have the definition set forth in California Health & Safety Code section 11014.5, as that section may be amended from time to time.
3. For purposes of this Ordinance, a **COMPUTER GAMING AND INTERNET ACCESS BUSINESS** shall mean an establishment that provides a computer or other electronic devices for access to the world wide web, internet, e-mail, video games or computer software programs which operate alone or are networked (via LAN, WAN or otherwise) or which function as a client/server program, and which seeks compensation, in any form, from users. Computer Gaming and Internet Access Business is synonymous with a personal computer ("PC") café, internet café, cyber café, sweepstakes gaming facilities, business center, internet sales business and internet center, but does not include a Public Use or Internet Learning Center as defined herein.
4. **PUBLIC USE OR INTERNET LEARNING BUSINESS** shall mean an establishment that provides computer access which is operated by the City of Antioch, 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 in any form other than school tuition.

SECTION 4. CEQA. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 16061 (b) (3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date. This interim ordinance shall take effect immediately upon its adoption and shall continue in effect for 10 months and 15 days from the date of its adoption by not less than a four-fifths vote of the Antioch City Council, unless superseded by a subsequent ordinance of the City Council.

SECTION 7. Report of Council. Ten days prior to the expiration of this Ordinance, or any extension thereof, this Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this ordinance, or any extension thereof.

SECTION 8. Declaration of Urgency. This ordinance is hereby declared to be an urgency measure necessary for the immediate protection of the public health, safety and welfare. This Council hereby finds that there is a current and immediate threat to the public health, safety and welfare. The reasons for this urgency are declared and set forth in Section 2 of this Ordinance and are incorporated herein by reference.

SECTION 9. Publication; Certification. The City Clerk shall certify to the adoption of this Ordinance and cause same to be published in accordance with State law.

* * * * *

I HEREBY CERTIFY that the foregoing Ordinance was introduced and adopted as an urgency ordinance pursuant to the terms of California Government Code Section 65858 at a regular meeting of the City Council of the City of Antioch on the 9th day of July, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "A"

STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE MEETING OF MAY 28, 2013

Prepared by: Tina Wehrmeister, Community Development Director *Tw*
Reviewed by: Jim Jakel, City Manager
Lynn Tracy Nerland, City Attorney
Date: May 23, 2013
Subject: Adoption of an Urgency Ordinance Establishing a Temporary Moratorium on the Establishment and Operation of Tobacco and Paraphernalia Retailers

RECOMMENDATION

It is recommended that the City Council adopt the attached urgency ordinance establishing a temporary moratorium on the establishment and operation of any new Tobacco and Paraphernalia Retailers to become effective immediately (4/5 vote required).

BACKGROUND INFORMATION & DISCUSSION

Public Nuisance Complaints

Over the past several years, both the Community Development Department and the Police Department have received numerous complaints regarding loitering and crime associated with Tobacco and Paraphernalia Retailers (as defined in the attached ordinance, also known as smoke shops). A review of one year of Police Department calls for service indicates that the twelve Tobacco and Paraphernalia Retailers listed in the ordinance findings generated 96 calls for service including incidents involving burglary and attempted burglary, armed robbery, fights and disturbances including those involving juveniles, petty theft, assault, threats, loitering, panhandling, harassment, stolen vehicles, and passing counterfeit bills.

Underage Tobacco Use

Many Tobacco and Paraphernalia Retailers are located in close proximity to schools, parks, and residential neighborhoods. Seven of the twelve listed Tobacco and Paraphernalia Retailers are located within several blocks of schools. Youth access to tobacco products and paraphernalia is concerning. According to the California Health Department's Food and Drug Branch, the sales rate to minors in Contra Costa County overall is 22%. In other words, stores in Contra Costa County on average sell tobacco to youth one in every four times they try to buy cigarettes.

Violations of State and Local Laws regarding Paraphernalia

The California Health and Safety Code Section 11364.5 and Title 5, Chapter 16 of the Antioch Municipal Code contain provisions regulating the manner of sale of paraphernalia. A Code Enforcement inspection of ten Tobacco and Paraphernalia Retailers found that all were in violation of these State and local laws which require that paraphernalia be kept and displayed in

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a separate room or enclosure and that access by anyone under the age of 18 not accompanied by a parent or legal guardian is prohibited. Most Tobacco and Paraphernalia Retailers display paraphernalia in the general sales area of the store in violation of State and local law. Paraphernalia is defined in State and local law as: all equipment, products, and materials of any kind which are intended for use or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. "Paraphernalia" includes, but is not limited to, all of the following:

1. Kits intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
2. Kits intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
3. Isomerization devices intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance.
4. Testing equipment intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances.
5. Scales and balances intended for use or designed for use in weighing or measuring controlled substances.
6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, intended for use or designed for use in cutting controlled substances.
7. Separation gins and sifters intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
8. Blenders, bowls, containers, spoons, and mixing devices intended for use or designed for use in compounding controlled substances.
9. Capsules, balloons, envelopes, and other containers intended for use or designed for use in packaging small quantities of controlled substances.
10. Containers and other objects intended for use or designed for use in storing or concealing controlled substances.
11. Hypodermic syringes, needles, and other objects intended for use or designed for use in parenterally injecting controlled substances into the human body.
12. Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as the following:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.

- b. Water pipes.
- c. Carburetion tubes and devices.
- d. Smoking and carburetion masks.
- e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand.
- f. Miniature cocaine spoons, and cocaine vials.
- g. Chamber pipes.
- h. Carburetor pipes.
- i. Electric pipes.
- j. Air-driven pipes.
- k. Chillums.
- l. Bongs.
- m. Ice pipes or chillers.

Violations of Local Laws regarding Self Serve Tobacco Displays

The California Business and Professions Code Section 22962 and Antioch Municipal Code Section 6-8.13 prohibit sale or display of any tobacco product by means of a self-service display rack, counter-top or shelf that allows any self-service customer access to any tobacco product. All tobacco products must be offered for sale exclusively by means of seller assistance and shall be located exclusively in a locked case, located behind counters out of reach of customers, or in a similar location that is inaccessible to customers, requiring seller assistance for the customer to obtain access to the tobacco products. Three of the inspected Tobacco and Paraphernalia Retailers were in violation these regulations. This is particularly concerning given the ease of access to youth. Many Tobacco and Paraphernalia Retailers also sell candy, snacks and other products that are attractive to youth.

Violations of Local Laws regarding Tobacco Advertising and General Advertising

Section 9-5.519 of the Antioch Municipal Code regulates tobacco related signage and states that advertising promoting tobacco products is prohibited when located within 1,600 feet of an elementary or secondary school, public playground or playing field when visible from the public street or sidewalk. One of the inspected Tobacco and Paraphernalia Retailers was in violation of this Code.

Section 9-5.508(L)(2) prohibits signage, either temporary or permanent, where placed within, upon, or over any public street right-of-way, parking area, sidewalk, required landscaping or utility pole. One of the inspected Tobacco and Paraphernalia Retailers was in violation of this Code.

Urgency Ordinance

The Zoning Ordinance does not currently specifically define or regulate Tobacco and Paraphernalia Retailers. Therefore, Tobacco and Paraphernalia Retailers are considered general or specialty retailers and are permitted uses in a variety of commercial districts.

The Municipal Code does contain regulations regarding various aspects and issues related to tobacco and paraphernalia sales such as those discussed above and included in Title 6, Chapter 8 related to smoking in general; however, the Code does not include regulations as to the time, place, or manner for Tobacco and Paraphernalia Retailers such as proximity to schools and parks and over concentration. Staff needs additional time to study these issues. Therefore, staff is recommending adoption of the proposed moratorium pursuant to Government Code Section 65858 that would prohibit any more of these uses in Antioch while these issues are being reviewed. Existing uses would not be impacted by this Urgency Ordinance, but are discussed below. Note that retail businesses larger than 5,000 s.f. having less than 5% of their sales area devoted to tobacco or paraphernalia are exempt from the definition of Tobacco and Paraphernalia Retailer.

Existing Tobacco and Paraphernalia Retailers

Both Code Enforcement and Police Department staff has been drastically reduced, with Code Enforcement being completely eliminated for a period of approximately three years. This means that proactive enforcement of local and State laws regulating Tobacco and Paraphernalia Retailers has not been possible and as evidenced by the notices of violation issued by Code Enforcement these businesses are not voluntarily complying with State and local laws.

Staff is reviewing existing regulations given the extensive non-compliance issues with State and local laws described above. Part of this review would look at whether the noncompliance is a staffing/enforcement issue or whether further regulations more specifically tied to the public nuisance provisions in the Municipal Code would be appropriate and legal.

FISCAL IMPACT

There is no significant fiscal impact anticipated with the adoption of the proposed urgency ordinance. There will be staff time expended to prepare the land use ordinance addressing Tobacco and Paraphernalia Retailers and to review and make recommendations regarding regulations for existing businesses.

OPTIONS

The Council may choose not to adopt the urgency ordinance.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH ADOPTING
AN INTERIM URGENCY ZONING ORDINANCE PURSUANT TO CALIFORNIA
GOVERNMENT CODE SECTION 65858 PROHIBITING THE ISSUANCE OF
PERMITS, LICENSES OR APPROVALS FOR CONSTRUCTION, ESTABLISHMENT
OR OPERATION OF TOBACCO AND PARAPHERNALIA RETAILERS WITHIN THE
CITY ON AN INTERIM BASIS PENDING CONSIDERATION OF AMENDMENTS TO
TITLE 9 OF THE ANTIOCH MUNICIPAL CODE FOR A PERIOD OF FORTY-FIVE
DAYS AND DECLARING THE URGENCY THEREOF

The City Council of the City of Antioch does ordain as follows:

SECTION 1. Interim Urgency Zoning Ordinance. This ordinance is adopted pursuant to the authority of Section 65858 of the Government Code of the State of California, the Antioch City Municipal Code and applicable laws.

SECTION 2. Findings. The Antioch City Council hereby finds, determines and declares as follows:

A. The City of Antioch holds the right to make and enforce all laws and regulations not in conflict with general laws, and the City holds all rights and powers established by state law.

B. The City has received and anticipates additional requests for the construction, establishment and operation of Tobacco and Paraphernalia Retailer businesses (as defined herein) within the City. However, the provisions of the City Municipal Code that may regulate the construction, operation and establishment of Tobacco and Paraphernalia Retailer businesses in the City are inadequate and need review, study, and revision. The current provisions also fail to fully take into account the impacts related to the location and manner of construction, establishment and operation of Tobacco and Paraphernalia Retailer businesses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community.

C. Tobacco and Paraphernalia Retailer businesses often have local school students and minors as their target market, and thereby may encourage the assembly of significant numbers of minors without supervision by parents or guardians, not to mention use of tobacco products or illegal substances. Seven of the twelve Tobacco and Paraphernalia Retailers listed below are located within several blocks of schools. Further, given concerns about attendance at the Antioch Unified School District such congregation of students should not be allowed during regular school hours.

D. The City Council of the City of Antioch is concerned with exposure of youth to tobacco products and prevalence of smoking among youth:

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1. In California, 11.9% of the adult population¹ and 14.6% of teenagers² currently smoke.
2. Although it is unlawful to sell tobacco products and/or tobacco paraphernalia to minors,³ 5.6% of California retailers surveyed do sell to minors.⁴ These numbers are more concerning locally. According to the California Health Department's Food and Drug Branch, the sales rate to minors in Contra Costa County overall is 22%⁵. In other words, stores in Contra Costa County on average sell tobacco to youth one in every four times they try to buy cigarettes.

E. The City Council of the City of Antioch is also concerned with the increased calls for service, increasing reports of violent criminal behavior and related detrimental neighborhood effects associated with Tobacco and Paraphernalia Retailers. The City of Antioch needs additional time to study this issue and determine if concentration and/or location of Tobacco and Paraphernalia Retailers in close proximity to other uses with generally high rates of calls for service such as bars or liquor stores would exasperate these concerns. The City of Antioch is also concerned about uses with high rates of calls for service in proximity to youth including schools and parks.

F. The City of Antioch, as well as neighboring cities, have experienced criminal activity associated with Tobacco and Paraphernalia Retailers, including incidents involving burglary and attempted burglary, armed robbery, fights and disturbances including those involving juveniles, petty theft, assault, threats, loitering, panhandling, harassment, stolen vehicles, and passing counterfeit bills. For example, the Antioch Police Department has documented a significant amount of calls for service involving a variety of crimes in these businesses and within the shopping centers in which Tobacco and Paraphernalia Retailers are located. Included below as findings are representational incidents associated with Tobacco and Paraphernalia Retailers for the 12 month period from May 9, 2012 – May 9, 2013 (not all businesses were in operation for the entire period):

1. Cigarette 4 Less, 3142 Contra Loma Blvd: two (2) calls for service related to an alarm and an alleged fight between juveniles in the area.
2. Cigarette 4 Less, 2549 San Jose Drive: eleven (11) calls for service related to alarms, petty thefts, a civil complaint and an assault.
3. Smoke Shop, 4532 Lone Tree Way: five (5) calls for service related to a robbery, petty thefts, unfounded 911 call and a fight inside the store.

¹ Cal. Dep't Health Servs, Tobacco Control Program, Smoking Prevalence Among California Adults (April 2011).

² Cal. Dep't Health Servs, Tobacco Control Sec., 30-Day Smoking Prevalence Among California Youth (September 2009).

³ Cal. Penal Code § 308

⁴ Cal. Dep't Health Servs, Tobacco Control Sec., Youth Tobacco Purchase Survey 1995-2011

⁵ California Department of Health Services Food and Drug Branch Compliance Checks, 2003.

4. Smoke Shop DBA Cigarette 4 Less, 2767 Lone Tree Way: two (2) calls for service related to an armed robbery and false alarm.
5. Cigarette 4 Less, 2727 Hillcrest Ave: five (5) calls for service related to alarms, a threat complaint, armed robbery and a suspicious circumstance.
6. Sycamore Smoke & More, 1096 Sycamore Drive: thirty-one (31) calls for service related to unwanted guests, loitering complaints, assaults, panhandling and fighting.
7. Cigarette 4 Less, 3708 Lone Tree Way: six (6) calls for service related to alarms, juvenile disturbance and a burglary of the business.
8. Tower Zone Smoke Shop, 2717 Contra Loma Blvd.: five (5) calls for service related to an armed robbery, petty theft and 911 hang-up.
9. Lone Tree Cigarette & More Inc., 4839 Lone Tree Way Suite C: eight (8) calls for service related to alarms, armed robbery, petty theft, harassment and suspicious persons.
10. Smoke Shop Mini Market, 1515 A Street: eleven (11) calls for service related to threats, loitering, juvenile disturbance, panhandling, stolen cars, an alarm, counterfeit bill and petty theft.
11. Discount Cigarette & Cigar Store, 1615 A Street: nine (9) calls for service related to an alarm, a fight in the parking lot in front of the business, medical call, burglary, unwanted guest, a suspicious person, a suspicious circumstance and a fraud (counterfeit) complaint.
12. Fusion Novelties, 1336 Sunset Drive: one (1) call for service related to a vandalism – broken window.

G. In addition to the increased calls for service and increasing reports of violent criminal behavior described above, the City Council is also concerned that Tobacco and Paraphernalia Retailers are not complying with applicable State and local laws related to tobacco and paraphernalia sales. Code Enforcement staff has inspected the businesses listed below and found violations of California Health and Safety Code 11364.5 and Antioch Municipal Code Title 5, Chapter 16 related to paraphernalia sales; Municipal Code Section 9-5.519 related to tobacco advertising; Municipal Code 9-5.508 related to general advertising; and California Business and Professions Code 22962 and Municipal Code 6-8.13 related to self service display of tobacco:

1. Buchanan Smoke Shop, 2329A Buchanan Road: notice of violation for illegal display of paraphernalia. This location opened in April 2013 and is therefore not listed above as they did not have calls for service during the 12 month period.

2. Lone Tree Cigarette & More Inc., 4839 Lone Tree Way Suite C: notice of violation for illegal display of paraphernalia and tobacco related signs.
3. Cigarette 4 Less, 3142 Contra Loma Blvd: notice of violation for illegal display of paraphernalia, general signage, and self service tobacco.
4. Smoke Shop DBA Cigarette 4 Less, 2767 Lone Tree Way: notice of violation for illegal display of paraphernalia, and self service tobacco.
5. Cigarette 4 Less, 2727 Hillcrest Ave: notice of violation for illegal display of paraphernalia.
6. Cigarette 4 Less, 3708 Lone Tree Way: notice of violation for illegal display of paraphernalia, and self service tobacco.
7. Tower Zone Smoke Shop, 2717 Contra Loma Blvd.: notice of violation for illegal display of paraphernalia.
8. Smoke Shop Mini Market, 1515 A Street: notice of violation for illegal display of paraphernalia.
9. Discount Cigarette & Cigar Store, 1615 A Street: notice of violation for illegal display of paraphernalia.
10. Fusion Novelties, 1336 Sunset Drive: notice of violation for illegal display of paraphernalia.

H. Without the enactment of this Ordinance, multiple applicants could quickly receive entitlements which would allow additional Tobacco and Paraphernalia Retailers that pose a threat to the public health, safety, and welfare. The City Council hereby determines that the Municipal Code is in need of updating to protect the public health, safety, and welfare from dangers caused by Tobacco and Paraphernalia Retailers. The City requires additional time to prepare, evaluate and adopt reasonable regulations regarding the construction, placement, concentration and operation of Tobacco and Paraphernalia Retailers so that such regulations are applied in a nondiscriminatory manner.

I. In order to prevent the frustration of these studies and the implementation of new regulations, the public interest, health, safety, and welfare require immediate enactment of this Ordinance. The absence of this Ordinance would impair the orderly and effective implementation of contemplated Municipal Code amendments, and any further authorization of these uses within the City during the period of the interim zoning regulations may be in conflict with or may frustrate the contemplated updates and revisions of the Municipal Code.

J. Based on the foregoing, the City finds that there is a current and immediate threat to the public health, safety, or welfare and that this Ordinance is necessary in order to protect the City from the potential effects and impacts of Tobacco and Paraphernalia Retailers in the City, potential increases in crime, impacts on parking availability in the business areas of the City, the aesthetic impacts to the City, and other similar or related effects on property values and the quality of life in the City's neighborhoods.

K. The City Council further finds that this interim zoning regulation is a matter of local and City-wide importance and is not directed towards any particular business that currently seeks to construct or operate a Tobacco and Paraphernalia Retailer business.

L. The City Council finds that this Ordinance is authorized by the City's police powers. The City Council further finds that the length of the interim zoning regulations imposed by this Ordinance will not in any way deprive any person of rights granted by state or federal laws, because the interim zoning regulation is short in duration and essential to protect the public health, safety and welfare.

SECTION 3. Interim Regulations. The following provisions are hereby adopted as interim zoning standards pertaining to the review or approval of any entitlements or the issuance of any permits or licenses pursuant to the Antioch Municipal Code for Tobacco and Paraphernalia Retailers. The approval of any entitlements or the issuance of any permit or license in the City in conflict with these provisions is expressly prohibited:

- A. **Restricted Activities.** For a period of forty-five (45) days following the enactment of this Ordinance, no person shall be issued a permit, license or land use entitlement for the construction, placement, or operation of new Tobacco and Paraphernalia Retailer businesses within the City. The City Manager or his or her designee shall review any application for a permit, license or land use entitlement to determine applicability of the provisions of this Ordinance. City Staff, City boards and City commissions are directed to refrain from issuing any application for any permits, licenses or land use entitlement, including, but not limited to, use permits, variances, building permits, licenses and certificates of occupancy, necessary for construction, placement, or operation of a Tobacco and Paraphernalia Retailer business. These prohibitions shall remain in effect during the forty-five (45) days following enactment of this Ordinance. Existing Tobacco and Paraphernalia Retailer businesses may continue to operate at their current locations provided that they are in compliance with State law and the Antioch Municipal Code.
- B. **Definitions.** In addition to the definitions contained in the City's Municipal Code, the following words and phrases shall, for the purposes of this Ordinance, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be

in conflict with the current provisions of the Municipal Code, the following definitions shall prevail:

1. **TOBACCO AND PARAPHERNALIA RETAILER** shall mean any establishment that sells any substance containing tobacco including but not limited to cigarettes, cigars, chewing tobacco and dipping tobacco, cigarette papers, or any other instruments or paraphernalia as defined in this ordinance. Retail businesses larger than 5,000 s.f. having less than 5% of their sales area devoted to tobacco or paraphernalia are exempt from this definition.
2. **PARAPHERNALIA** shall have the definition set forth in California Health & Safety Code section 11014.5, as that section may be amended from time to time.

SECTION 4. CEQA. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 16061 (b) (3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date. This interim ordinance shall take effect immediately upon its adoption and shall continue in effect for forty-five (45) days from the date of its adoption by not less than a four-fifths vote of the Antioch City Council, and shall thereafter be of no further force and effect, unless, after notice pursuant to Government Code Section 65090 and public hearing, the Antioch City Council extends this Ordinance, and the interim zoning regulations adopted thereby, pursuant to Government Code Section 65858.

SECTION 7. Report of Council. Ten days prior to the expiration of this Ordinance, or any extension thereof, this Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this ordinance, or any extension thereof.

SECTION 8. Declaration of Urgency. This ordinance is hereby declared to be an urgency measure necessary for the immediate protection of the public health, safety

and welfare. This Council hereby finds that there is a current and immediate threat to the public health, safety and welfare. The reasons for this urgency are declared and set forth in Section 2 of this Ordinance and are incorporated herein by reference.

SECTION 9. Publication; Certification. The City Clerk shall certify to the adoption of this Ordinance and cause same to be published in accordance with State law.

* * * * *

I **HEREBY CERTIFY** that the foregoing Ordinance was introduced and adopted as an urgency ordinance pursuant to the terms of California Government Code Section 65858 at a regular meeting of the City Council of the City of Antioch on the ____ day of ____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:



Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "B"

STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE MEETING OF FEBRUARY 28, 2012

Prepared by: Tina Wehrmeister, Community Development Director 
Reviewed by: Jim Jakel, City Manager 
Date: February 23, 2012
Subject: Computer Gaming and Internet Access Businesses

RECOMMENDATION


It is recommended that the City Council:

1. Motion to read the Interim Urgency Zoning Ordinance, Urgency Ordinance and Regular Ordinance by title only;
2. Motion to adopt the attached Interim Urgency Zoning Ordinance prohibiting the issuance of permits, licenses or approvals for construction, establishment or operation of any computer gaming and internet access business within the City of Antioch on an interim basis pending consideration of amendments to Title 9 of the Antioch Municipal Code for a period of forty-five days and declaring the urgency thereof (four-fifths vote required) (Attachment "A");
3. Motion to adopt an Urgency Ordinance amending Title 5 of the Antioch Municipal Code by adding Chapter 11 pertaining to the licensing procedures and regulations for Computer Gaming and Internet Access Businesses and making findings declaring the urgency thereof (four-fifths vote required) (Attachment "B");
4. Motion to introduce a Regular Ordinance amending Title 5 of the Antioch Municipal Code by adding Chapter 11 pertaining to the licensing procedures and regulations for Computer Gaming and Internet Access Businesses (majority vote required) (Attachment "C"); and
5. Motion to adopt a resolution to initiate an amendment to the Zoning Ordinance to address computer gaming and internet access businesses (majority vote required) (Attachment "D").

BACKGROUND INFORMATION

Operations at Internet Room, T's Internet Café and Cot on the Web

During the past two years, the City received business license applications for the Internet Room (2962 Delta Fair Boulevard), T's Internet Café (1908 A Street and previously at 1836 A Street and 1653 A Street) and Cot on the Web (2333 Buchanan Road), which were described as offering "print, copy, fax services and internet access" or "internet sales" (Attachment "E"). In effect, City staff envisioned Kinko's-like businesses offering copying, computer and fax services

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to small businesses and individuals and thus the businesses were allowed to open as permitted uses at the given locations.

However, the City began receiving complaints regarding nuisance and illegal activities occurring in and near these facilities, such as loitering, vandalism, panhandling, theft, and assaults. The Police Department prepared a summary chart showing calls at each location and the surrounding vicinity before and during the time the use opened (Attachment "F"). Of particular note, at 1836 A Street, before T's Internet Café opened there were 157 calls for service from that location and neighboring businesses over a 7-month period from February 1, 2009 through August 30, 2009. While T's Internet Café was operating at 1836 A Street, calls for service increased to 240 (a 52% increase) over a 7-month period from February 1, 2010 through August 30, 2010. When T's Internet Café closed at that location, calls for service from that location and neighboring businesses went back down to 158 calls for service over the 7-month period from February 1, 2011 through August 30, 2011, almost identical to the rates before T's Internet Café opened.

Attachment "G" shows 9-1-1 calls for service at each location. The Police Department also indicates that the following number of arrests were made at each location for the given time period. This does not mean that all of the arrested individuals committed crimes at these locations, but reflects that those engaged in criminal activity frequent these locations. The arrests were for violations including robbery, illegal drug use and sales, burglary, assaults, public intoxication, as well as arrests for outstanding warrants:

<u>Business</u>	<u>Location</u>	<u>Time Period</u>	<u># Arrests</u>
Internet Room	2962 Delta Fair Blvd.	2/11/11-02/15/12	2
T's Internet Café	1908 A Street	08/20/11-12/31/11	9
T's Internet Café	1653 A Street	09/01/10-08/31/11	14
T's Internet Café	1836 A Street	03/06/10-07/23/10	5
Cot on the Web	2333 Buchanan #A	09/01/11-02/15/12	1

Upon visiting these businesses during the course of investigating complaints, staff found that the primary activity of the patrons at each of these locations is playing a sweepstakes game, which resembles video slot machines. A copy of the "Sweepstakes Rules" from the Cot on the Web is attached (Attachment "H"). Concerns were raised that the on-going "sweepstakes games" appeared to be potentially illegal gambling; although, that is not the focus of the action before the City Council.

Ms. Simmons, the owner of T's Internet Café (now closed) and Cot on the Web has stated that her business sells internet time and also runs a sweepstakes as a promotional tool to draw customers. The customer receives a number of sweepstakes entries proportional to the amount of internet time purchased. The customer then plays the sweepstakes entries on the computer via an interface that resembles a video slot machine. At Cot on the Web, the potential maximum single winnings are over \$1,000. At the Internet Room, staff was told that a maximum single winning payout could reach \$2,800.

Determination that Use was a Mechanical or Electrical Game

With rising concerns about the general health, safety, and welfare of the community, staff determined that the primary activity at these facilities was not offering internet, copy, print and fax services to small businesses, but rather a gaming business. Putting aside whether this gaming activity is illegal gambling under state law, the Community Development Director

determined that the use was more properly classified as a Mechanical or Electronic Game, pursuant to Municipal Code Section 9-5.3816 (Attachment "I"). Such uses are prohibited within 1000 feet of a playground or school and a use permit is required for other locations.

Once this determination was made, staff sent Notices of Violation to the existing internet café/sweepstakes businesses and did not permit T's Internet Café to relocate without first obtaining a use permit (Attachment "J"). The owners of all three businesses have appealed that determination (Attachment "K"). In part, Allan Moore, the attorney for the Internet Room, indicates that his client is engaged in internet activities protected by the First Amendment and that the California Appellate Court in *Vo v. City of Garden Grove* (115 Cal. App. 4th 425(2004)) does not allow for unfettered discretion in issuing a use permit for such a use. However, in discussions with staff, the businesses expressed a willingness to work with the City to address the concerns through appropriate regulations.

Urgency Ordinance

To adopt a regular ordinance, a first reading of the ordinance is held and then a second reading to adopt the ordinance at a regular meeting of the City Council. A regular ordinance is effective 30 days after adoption. An urgency ordinance is adopted at one meeting and takes effect immediately following a 4/5 vote of the City Council finding that there is a need for the immediate preservation of the public peace, health and safety.

It is not uncommon for a city council to adopt an urgency ordinance followed by taking the steps to adopt a regular ordinance in case there is any question about the findings for the immediate preservation of the public peace, health and safety.

Interim Ordinances/Moratoriums

An interim zoning ordinance is often called a moratorium and takes effect immediately to prohibit a use. Pursuant to Government Code Section 65858, the City may establish a moratorium prohibiting any use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council, Planning Commission or the Planning Department is considering in order to protect and preserve the public safety, health and welfare. A moratorium lasts only 45 days, but 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 for extension of the moratorium. Interim ordinances require a 4/5 vote of the City Council.

In order to initiate a zoning ordinance, a Resolution of Initiation is required by the Antioch Municipal Code directing staff, and then presumably the Planning Commission, to consider whether amendments to the zoning ordinance (Title 9 of the Antioch Municipal Code) are appropriate.

DISCUSSION

Rather than continue to debate whether the existing computer gaming and internet access businesses fall within the existing Mechanical or Electronic Game Ordinance in Antioch Municipal Code Section 9-5.3816 through appeals to the Board of Administrative Appeals, staff recommends that the City Council use its regulatory police power to study and address these uses and their impacts. Staff proposes the following definition for these uses:

"Computer Gaming and Internet Access Business" shall mean an establishment that provides more than four (4) computers or other electronic devices for access to the world wide web, internet, e-mail, video games or computer software programs which operate alone or are networked (via LAN, WAN or otherwise) or which function as a client/server program, and which seeks compensation, in any form, from users. Computer Gaming and Internet Access Business is synonymous with a personal computer ("PC") café, internet café, cyber café, sweepstakes gaming facilities, business center, internet sales business and internet center, but does not include a Public Use or Internet Learning Center as defined herein.

"Public Use or Internet Learning Center" shall mean an establishment that provides computer access which is operated by the City of Antioch, 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 in any form other than school tuition.

It is presumed that the businesses would not feel compelled to continue with their appeals of the Community Development Director's determination that their businesses fall under Mechanical or Electronic Game Ordinance in Antioch Municipal Code Section 9-5.3816, as the more specific Interim Zoning Ordinance and Urgency Ordinance will in effect supersede the application of the Mechanical or Electronic Game Ordinance making the appeals moot.

During this study period, no new computer gaming and internet access businesses could open and the existing two businesses would be required to follow the regulations set forth in the Urgency Ordinance (Attachment "B"). This approach should alleviate any concerns that the City is negatively impacting anyone's ability to access the internet and possible First Amendment rights. During this study period, City staff can meet with the representatives of these businesses to better address the issues that have been raised.

It should also be noted that computers accessing the internet are available at no charge at the Library Annex at the Antioch Community Center at Prewett Park and at the Antioch Library located at 501 W. 18th Street.

Urgency Findings

The existing computer gaming and internet access businesses have created impacts that create immediate threats to the public peace, health or safety, as more specifically shown in the testimony provided by the Police Department including the log of the calls for service at each facility; summary showing calls for service at each location and the surrounding vicinity before and during the time the use opened; and arrests from these various locations.

Threats to public health, safety and welfare experienced in Antioch at the computer gaming and internet access businesses include criminal activity associated with robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism, property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these computer gaming and internet access businesses. Truancy and curfew violations have also been experienced in other communities.

Operation of additional computer gaming and internet access businesses will increase these negative impacts while the use is being studied. Further, additional computer gaming and internet access businesses could create conflicts among land uses or conflict with the City's

long-term planning goals. Thus, it is recommended that the City Council also adopt a resolution initiating an Amendment to the Zoning Ordinance to formally commence the process for studying land use issues related to computer gaming and internet access businesses, including whether the uses should only be allowed in specific zoning districts, whether there should be limitations on the concentration of uses, and similar issues.

Proposed Regulations

The proposed regulations set forth in the Urgency Ordinance and Regular Ordinance to establish a licensing scheme for Computer Gaming and Internet Access Businesses and address operational issues like prohibiting minors in the business during school hours, hours of operation, establishment of an interior waiting area with seats to avoid loitering, staffing levels, surveillance system, alarm system, security guards, prohibition on private rooms and the like. Staff has already scheduled a meeting with the business operators for Monday, February 27, 2012 to address these regulations and related items. Staff will be reporting at the City Council meeting regarding the outcome of this meeting.

FISCAL IMPACT

The computer gaming and internet access businesses are causing negative impacts to the City's limited police resources, so it is prudent to address the negative impacts.

There is no direct fiscal impact with the adoption of the proposed Interim Urgency Zoning Ordinance and Urgency Ordinance, introduction of the Regular Ordinance and adoption of the Resolution Initiating a Zoning Amendment. There will be staff time expended to meet with business representatives and to finalize a Regular Ordinance and prepare a Zoning Amendment, if appropriate.

OPTIONS

1. If the Council chose not to adopt the Interim Urgency Zoning Ordinance by 4/5 vote, then additional computer gaming and internet access businesses could open without the benefit of the City further studying the impacts of these businesses and appropriate land use regulations.
2. If the Council chose not to adopt the Urgency Ordinance by 4/5 vote, then the Regular Ordinance can be introduced on a majority vote. The Regular Ordinance would require a second reading for adoption and then be effective 30 days later.
3. The Council could choose not to initiate a Resolution for a Zoning Amendment, but staff recommends that the Council start the process for staff, and potentially Planning Commission, to at least study the issue to determine if Zoning Ordinance Amendments would be appropriate for this computer gaming and internet access business use.

ATTACHMENTS

- A. Interim Urgency Zoning Ordinance prohibiting the issuance of permits, licenses or approvals for construction, establishment or operation of any computer gaming and internet access business within the City of Antioch on an interim basis pending consideration of amendments to Title 9 of the Antioch Municipal Code for a period of forty-five days and declaring the urgency thereof

- B. Urgency Ordinance amending Title 5 of the Antioch Municipal Code by adding Chapter 11 pertaining to the licensing procedures and regulations for Computer Gaming and Internet Access Businesses and making findings declaring the urgency thereof
- C. Regular Ordinance amending Title 5 of the Antioch Municipal Code by adding Chapter 11 pertaining to the licensing procedures and regulations for Computer Gaming and Internet Access Businesses
- D. Resolution to initiate an amendment to the Zoning Ordinance to address Computer Gaming and Internet Access Businesses
- E. Business License Applications for Internet Room, T's Internet Café and Cot on the Web
- F. Comparison of Calls for Service prepared by the Police Department
- G. Log of Calls for Service at the Internet Room, T's Internet Café and Cot on the Web
- H. Sweepstakes Rules from Cot on the Web
- I. Municipal Code Section 9-5.3816
- J. Determination by Community Development Director regarding uses
- K. Appeals by the Internet Room, T's Internet Café and Cot on the Web

ATTACHMENT "A"

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH ADOPTING AN INTERIM URGENCY ZONING ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 PROHIBITING THE ISSUANCE OF PERMITS, LICENSES OR APPROVALS FOR CONSTRUCTION, ESTABLISHMENT OR OPERATION OF COMPUTER GAMING AND INTERNET ACCESS BUSINESSES WITHIN THE CITY ON AN INTERIM BASIS PENDING CONSIDERATION OF AMENDMENTS TO TITLE 9 OF THE ANTIOCH MUNICIPAL CODE FOR A PERIOD OF FORTY-FIVE DAYS AND DECLARING THE URGENCY THEREOF

The City Council of the City of Antioch does ordain as follows:

SECTION 1. Interim Urgency Zoning Ordinance. This ordinance is adopted pursuant to the authority of Section 65858 of the Government Code of the State of California, the Antioch City Municipal Code and applicable laws.

SECTION 2. Findings. The Antioch City Council hereby finds, determines and declares as follows:

A. The City of Antioch holds the right to make and enforce all laws and regulations not in conflict with the general laws, and the City holds all rights and powers established by state law.

B. The City has received and anticipates additional requests for the construction, establishment and operation of Computer Gaming and Internet Access Businesses (as defined herein) within the City. However, the provisions of the City Municipal Code that may regulate the construction, 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 fully take into account the impacts related to the location and manner of construction, establishment and operation of Computer Gaming and Internet Access Businesses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community.

C. Computer Gaming and Internet Access Businesses often have local school students and minors as their target market, and thereby may encourage the assembly of significant numbers of minors without supervision by parents or guardians. Further, given concerns about attendance at the Antioch Unified School District such congregation of students should not be allowed during regular school hours.

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 may be considered 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,

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creating unknown impacts on the surrounding area and businesses, such as observed lines of individuals waiting to access these businesses. Some Computer Gaming and Internet Access Businesses may stage late-night gaming sessions, which may encourage violation of the City's curfew ordinance or create and promote other late-night noise and related impacts on the surrounding community. 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. 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.

E. The City Council of the City of Antioch is also concerned with the increased calls for service, increasing reports of violent criminal behavior and related detrimental neighborhood effects associated with Computer Gaming and Internet Access Businesses.

F. The City of Antioch, as well as neighboring cities, 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 and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the 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 include the representational incidents below as findings as follows:

1. On April 13, 2010, there was a call for service from T's Internet Café at 1836 A Street because of a fight over someone owing someone money and on July 23, 2010 a call for service regarding another fight.
2. At T's Internet Café at 1653 A Street on September 11, 2010, there was a call for service regarding possible assault, drug violations and carjacking. On November 18, 2010, a male robbed money from the business with a sawed-off shot gun and shot at one of the workers. On February 2, 2011, there was a call for service regarding drug selling. On July 21, 2011, there was a report of a car theft and then a fight broke out.
3. At the Internet Room at 2962 Delta Fair Boulevard, on January 28, 2012, there was a report of a stolen vehicle.
4. At T's Internet Café at 1908 A Street on August 20, 2011, someone was throwing things at the business and threatening to harm the employees.
5. While at Computer Gaming and Internet Access Businesses in Antioch, individuals have been arrested for robbery, narcotics violations, carjacking and other crimes, as well as on outstanding warrants. While some of

these crimes may have occurred elsewhere, it does show a propensity for individuals who engage in criminal activity to patronize Computer Gaming and Internet Access Businesses.

6. At 2962 Delta Fair Boulevard, calls for service have increased at that location and at neighboring businesses as much as 450% since the Internet Room started operating.
7. At 1836 A Street, before T's Internet Café opened there were 157 calls for service from that location and neighboring businesses over a 7-month period from February 1, 2009 through August 30, 2009. While T's Internet Café was operating at 1836 A Street, calls for service increased to 240 (a 52% increase) over a 7-month period from February 1, 2010 through August 30, 2010. When T's Internet Café closed at that location, calls for service from that location and neighboring businesses went back down to 158 calls for service over the 7-month period from February 1, 2011 through August 30, 2011, almost identical to the rates before T's Internet Café opened.

G. Without the enactment of this Ordinance, multiple applicants could quickly receive entitlements which 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 is 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 construction, placement and operation of Computer Gaming and Internet Access Businesses so that such regulations are applied in a nondiscriminatory manner.

H. In order to prevent the frustration of these studies and the implementation of new regulations, the public interest, health, safety, and welfare require immediate enactment of this Ordinance. The absence of this Ordinance would impair the orderly and effective implementation of contemplated Municipal Code amendments, and any further authorization of these uses within the City during the period of the interim zoning regulations may be in conflict with or may frustrate the contemplated updates and revisions of the Municipal Code.

I. Based on the foregoing, the City finds that there is a current and immediate threat to the public health, safety, or welfare and that this Ordinance is necessary in order to protect the City from the potential effects and impacts of Computer Gaming and Internet Access Businesses in the City, potential increases in crime, impacts on parking availability in the business areas of the City, the aesthetic impacts to the City, and other similar or related effects on property values and the quality of life in the City's neighborhoods.

J. The City Council further finds that this interim zoning regulation is a matter of local and City-wide importance and is not directed towards any particular business that

currently seeks to construct or operate a Computer Gaming and Internet Access Business.

K. The City Council finds that this Ordinance is authorized by the City's police powers. The City Council further finds that the length of the interim zoning regulations imposed by this Ordinance will not in any way deprive any person of rights granted by state or federal laws, because the interim zoning regulation is short in duration and essential to protect the public health, safety and welfare.

SECTION 3. Interim Regulations. The following provisions are hereby adopted as interim zoning standards pertaining to the review or approval of any entitlements or the issuance of any permits or licenses pursuant to the Antioch Municipal Code for Computer Gaming and Internet Access Businesses. The approval of any entitlements or the issuance of any permit or license in the City in conflict with these provisions is expressly prohibited:

A. **Restricted Activities.** For a period of forty-five (45) days following the enactment of this Ordinance, no person shall be issued a permit, license or land use entitlement for the construction, placement, or operation of new Computer Gaming and Internet Access Businesses within the City. The City Manager or his or her designee shall review any application for a permit, license or land use entitlement to determine applicability of the provisions of this Ordinance. City Staff, City boards and City commissions are directed to refrain from issuing any application for any permits, licenses or land use entitlement, including, but not limited to, use permits, variances, building permits, licenses and certificates of occupancy, necessary for construction, placement, or operation of a Computer Gaming and Internet Access Business. These prohibitions shall remain in effect during the forty-five (45) days following enactment of this Ordinance. The two existing Computer Gaming and Internet Access Businesses may continue to operate at their current locations: Internet Room at 2962 Delta Fair Boulevard and Cot on the Web at 2333 Buchanan Road.

B. **Definitions.** In addition to the definitions contained in the City's Municipal Code, the following words and phrases shall, for the purposes of this Ordinance, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with the current provisions of the Municipal Code, the following definitions shall prevail:

1. "Computer Gaming and Internet Access Business" shall mean an establishment that provides more than four (4) computers or other electronic devices for access to the world wide web, internet, e-mail, video games or computer software programs which operate alone or are networked (via LAN, WAN or otherwise) or which function as a client/server program, and which seeks compensation, in any form, from

users. Computer Gaming and Internet Access Business is synonymous with a personal computer ("PC") café, internet café, cyber café, sweepstakes gaming facilities, business center, internet sales business and internet center, but does not include a Public Use or Internet Learning Center as defined herein.

2. "Public Use or Internet Learning Center" shall mean an establishment that provides computer access which is operated by the City of Antioch, 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 in any form other than school tuition.

SECTION 4. CEQA. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 16061 (b) (3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date. This interim ordinance shall take effect immediately upon its adoption and shall continue in effect for forty-five (45) days from the date of its adoption by not less than a four-fifth's vote of the Antioch City Council, and shall thereafter be of no further force and effect, unless, after notice pursuant to Government Code Section 65090 and public hearing, the Antioch City Council extends this Ordinance, and the interim zoning regulations adopted thereby, pursuant to Government Code Section 65858.

SECTION 7. Report of Council. Ten days prior to the expiration of this Ordinance, or any extension thereof, this Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this ordinance, or any extension thereof.

SECTION 8. Declaration of Urgency. This ordinance is hereby declared to be an urgency measure necessary for the immediate protection of the public health, safety and welfare. This Council hereby finds that there is a current and immediate threat to

the public health, safety and welfare. The reasons for this urgency are declared and set forth in Section 2 of this Ordinance and are incorporated herein by reference.

SECTION 9. Publication; Certification. The City Clerk shall certify to the adoption of this Ordinance and cause same to be published in accordance with State law.

* * * * *

I **HEREBY CERTIFY** that the foregoing Ordinance was introduced and adopted as an urgency ordinance pursuant to the terms of California Government Code Section 65858 at a regular meeting of the City Council of the City of Antioch on the 28th day of February, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

James D. Davis, Mayor of the City of Antioch

ATTEST:

Denise Skaggs, City Clerk of the City of Antioch

ATTACHMENT "B"

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH AMENDING TITLE 5 OF THE ANTIOCH MUNICIPAL CODE BY ADDING A NEW CHAPTER 11 PERTAINING TO THE LICENSING PROCEDURES AND REGULATIONS FOR COMPUTER GAMING AND INTERNET ACCESS BUSINESSES AND MAKING FINDINGS DECLARING THE URGENCY THEREOF

The City Council of the City of Antioch does ordain as follows:

SECTION 1. The City Council finds as follows:

A. The City Council of the City of Antioch is concerned with the increasing reports of violent criminal behavior and related detrimental neighborhood effects associated with Computer Gaming and Internet Access Businesses.

B. The City of Antioch, as well as neighboring cities, 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 and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the 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 include the representational incidents below as findings as follows:

1. On April 13, 2010, there was a call for service from T's Internet Café at 1836 A Street because of a fight over someone owing someone money and on July 23, 2010 a call for service regarding another fight.
2. At T's Internet Café at 1653 A Street on September 11, 2010, there was a call for service regarding possible assault, drug violations and carjacking. On November 18, 2010, a male robbed money from the business with a sawed-off shot gun and shot at one of the workers. On February 2, 2011, there was a call for service regarding drug selling. On July 21, 2011, there was a report of a car theft and then a fight broke out.
3. At the Internet Room at 2962 Delta Fair Boulevard, on January 28, 2012, there was a report of a stolen vehicle.
4. At T's Internet Café at 1908 A Street on August 20, 2011, someone was throwing things at the business and threatening to harm the employees.
5. While at Computer Gaming and Internet Access Businesses in Antioch, individuals have been arrested for robbery, narcotics violations, carjacking

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and other crimes, as well as on outstanding warrants. While some of these crimes may have occurred elsewhere, it does show a propensity for individuals who engage in criminal activity to patronize Computer Gaming and Internet Access Businesses.

6. At 2962 Delta Fair Boulevard, calls for service have increased at that location and at neighboring businesses as much as 450% since the Internet Room started operating.
7. At 1836 A Street, before T's Internet Café opened there were 157 calls for service from that location and neighboring businesses over a 7-month period from February 1, 2009 through August 30, 2009. While T's Internet Café was operating at 1836 A Street, calls for service increased to 240 (a 52% increase) over a 7-month period from February 1, 2010 through August 30, 2010. When T's Internet Café closed at that location, calls for service from that location and neighboring businesses went back down to 158 calls for service over the 7-month period from February 1, 2011 through August 30, 2011, almost identical to the rates before T's Internet Café opened.

C. Computer Gaming and Internet Access Businesses often have local school students and minors as their target market, and thereby may encourage the assembly of significant numbers of minors without supervision by parents or guardians. Further, given concerns about attendance at the Antioch Unified School District such congregation of students should not be allowed during regular school hours.

D. The City Council of the City of Antioch finds that the activities of Computer Gaming and Internet Access Businesses have become frequently associated with detrimental impacts to the surrounding area.

E. The Antioch Municipal Code does not currently provide adequate standards and regulations concerning the review, approval and operation of Computer Gaming and Internet Access Businesses. Section 9-5.3816 pertaining to Mechanical or Electronic Games is at least 30 years old and does not specifically address regulations pertinent to Computer Gaming and Internet Access Businesses.

F. The City Council finds, determines and declares that the current threat to the public health, safety and welfare of the City and its citizens necessitates the immediate enactment of this Ordinance to help deter and prevent crimes and criminal activity from occurring at and around Computer Gaming and Internet Access Businesses.

G. The City Council further finds that this Ordinance constitutes a matter of Citywide importance and is not directed towards nor targeted at any particular parcel of property, any particular business or any proposed occupant.

SECTION 2. Title 5 of the Antioch Municipal Code is hereby amended by the addition of a new Chapter 11, to read as follows:

"Chapter 11"

COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

Sections:

<u>5-11.01</u>	Purpose.
<u>5-11.02</u>	Definitions.
<u>5-11.10</u>	Computer Gaming and Internet Access Business - License required.
<u>5-11.11</u>	Term of license.
<u>5-11.12</u>	Renewal of license.
<u>5-11.20</u>	License application and issuance.
<u>5-11.30</u>	Transfer of license.
<u>5-11.40</u>	Alterations to Computer Gaming and Internet Access Business.
<u>5-11.50</u>	License revocation.
<u>5-11.60</u>	Operational standards and regulations.
<u>5-11.70</u>	Abatement of nuisance.
<u>5-11.80</u>	Penalty.
<u>5-11.90</u>	License fees.

§ 5-11.01 Purpose.

It is the purpose and intent of this chapter to regulate Computer Gaming and Internet Access Businesses to promote the protection of the public from the dangers of fire and hazards to health, to ensure the full protection of minors, and for the general preservation of the peace and welfare of the community. It is the intent of the City to establish minimally intrusive protocols to provide reasonable accountability for computer gaming and internet access and use at Computer Gaming and Internet Access Businesses. The City finds such accountability to be reasonably necessary to minimize the risk of use of the computer and/or internet by persons at Computer Gaming and Internet Access Businesses for criminal purposes and to increase the opportunities for the safe apprehension of such persons patronizing Computer Gaming and Internet Businesses for criminal purposes, while recognizing rights of individuals to use the internet and Computer Gaming and Internet Access Businesses for legitimate purposes.

§ 5-11.02 Definitions.

A. "Computer Gaming and Internet Access Business" shall mean an establishment that provides more than four (4) computers or other electronic devices for access to the world wide web, internet, e-mail, video games or computer software programs which operate alone or are networked (via LAN, WAN or otherwise) or which function as a client/server program, and which seeks compensation, in any form, from users. Computer Gaming and Internet Access Business is synonymous with a personal computer ("PC") café, internet café,

cyber café, sweepstakes gaming facilities, business center, internet sales business and internet center, but does not include a Public Use or Internet Learning Center as defined herein.

B. "Public Use or Internet Learning Business" shall mean an establishment that provides computer access which is operated by the City of Antioch, 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 in any form other than school tuition.

§ 5-11.10 Computer Gaming and Internet Access Businesses - License required.

It is unlawful for any person to engage in, conduct or carry on, in or upon any premises or real property located within the City, the activities of an Computer Gaming and Internet Access Business, unless such person has been granted a valid license pursuant to the provisions of this chapter. A separate license shall be required for each location within the City where a Computer Gaming and Internet Access Business is to be established. Public Use or Internet Learning Business shall be exempt from the license requirements herein.

§ 5-11.11 Term of license.

The term of a Computer Gaming and Internet Access Business license, unless sooner suspended or revoked, shall be one year.

§ 5-11.12 Renewal of license.

A Computer Gaming and Internet Access Business license, issued pursuant to the provisions of this chapter, that has not been suspended or revoked, may be renewed, upon payment of the renewal application fee, for a period not to exceed one year upon written application to the Community Development Director made at least sixty (60) days prior to the expiration date of the current valid license. This application for renewal of a license shall contain all of the information required by Section § 5-11.120 of this chapter and shall be processed in accordance with the provisions of this chapter.

§ 5-11.20 License application and issuance.

A. Any person desiring to obtain a license or to renew an existing license to operate a Computer Gaming and Internet Access Business shall file a written application with the Community Development Director. The application shall be signed under the penalty of perjury. Prior to submitting the application, a nonrefundable fee, in an amount established by resolution of the City Council, shall be paid to the City to defray the cost of the investigation and issuance

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required by this chapter. The license issuance or renewal fee required under this chapter shall be in addition to any other license or fee required under this code.

B. Neither the filing of an application for a license or renewal thereof nor payment of an application or renewal fee shall authorize the operation of a Computer Gaming and Internet Access Business until such license has been granted or renewed.

C. Each applicant for a Computer Gaming and Internet Access Business license or renewal thereof shall furnish the following information:

1. The present or proposed address where the business is to be conducted;
2. The full and true name under which the business will be conducted;
3. The full and true name and any other names used by the applicant and owner of the business, if the owner is not the applicant;
4. The applicant and owner's present residential and business addresses and telephone numbers;
5. Each residential and business address of the applicant and the owner for the five-year period immediately preceding the date of filing the application and the inclusive dates of each address;
6. The California driver's license or identification number of the applicant and owner;
7. A precise description of the activities and/or services to be provided;
8. A detailed site and floor plan of the proposed business, depicting the building and unit proposed and including interior dimensions and off-street parking spaces required by the City's zoning code;
9. A detailed description of the food and beverage service, if any, that will be offered to patrons;
10. The dates and hours during which the Computer Gaming and Internet Access Business is desired to be conducted and a list of the fees to be charged patrons;

11. The name(s) of the person(s) responsible for the operation, management, and supervision of the Computer Gaming and Internet Access Business;

12. A statement as to whether the applicant, owner, or any person to be responsible for the operation, management, and supervision of the Computer Gaming and Internet Access Business has, within the past five (5) years, had any permit or license issued in conjunction with a Computer Gaming and Internet Access Business in any jurisdiction, and whether during that period the license was suspended or revoked. If so, then the application shall provide the name of the issuing agency and an explanation of the suspension or revocation;

13. Signature of the property owner indicating approval of the submission of the license application; and

14. Such other information as the Community Development Director may require to discover the truth of the matters required to be set forth in the application.

D. The applicant shall present proof to the Community Development Director that the required application or application renewal fee has been paid, and shall present the application containing the information and supporting documentation required by subsection C of this section. A copy of the application shall be distributed to the City's Planning and Building Divisions, the Police Department and the Fire District for review.

E. When any change occurs regarding the written information required by subsection C of this section to be included in the application, the applicant or license holder, as the case may be, shall give written notification of such change to the Community Development Director within five (5) business days of such change.

F. The Community Development Director shall have a reasonable time, not to exceed thirty (30) days to investigate the facts set forth in the application and to receive comments from the City's Planning and Building Departments, the Police Department and the Fire District. The Community Development Director shall, within sixty (60) days after the date of the filing of the application, grant the license or renewal thereof only if it is found that all of the following requirements have been met:

1. The required fees have been paid;

2. The application and all information contained therein conform in all respects to the provisions of this chapter;

3. The applicant has not knowingly made a material misrepresentation of fact in the application;

4. The proposed Computer Gaming and Internet Access Business would comply with this chapter and all other applicable city, county and state laws including, but not limited to, health, zoning, fire and safety requirements and standards, and that, as proposed, the Computer Gaming and Internet Access Business would not tend to generate criminal activities, present unnecessary criminal opportunities, or tend to cause violations of curfews by minors due to failure to comply with Federal or State law or the Municipal Code including but not limited to Operational Standards set forth below ;

5. The applicant is at least eighteen (18) years of age;

6. The Computer Gaming and Internet Access Business site and floor plan have been reviewed by the City's Planning and Building Departments and the Police Department and Fire District, which have approved the same as well as all fire and panic safety equipment required to be installed; all requirements of the Americans with Disabilities Act have been satisfied; and that the maximum occupancy has been established, will be posted and will not likely be exceeded based on the floor plan; and,

7. The Community Development Director has not received evidence that the applicant has, within the previous five (5) years, had any license or entitlement to operate a Computer Gaming and Internet Access Business revoked due to the applicant's commission of a crime or violation of the operational standards or conditions of approval applicable to a Computer Gaming and Internet Access Business; provided, however, a Computer Gaming and Internet Access Business license may be granted subject to additional conditions designed to preclude a recurrence of the events or activities causing the prior license revocation.

G. If the Community Development Director does not find that all of the requirements of subsection F of this section have been met, the application shall be denied.

1. In the event that an application for a license or renewal thereof is denied, written notice of the denial shall be given to the applicant within sixty (60) days after the date of the filing of the application specifying the ground(s) of the denial and a description of the hearing rights provided by Section § 5-11.20(G)(2), below. Notice of denial of the application may be personally served or served by first-class postage prepaid and addressed to the applicant at the address set forth in the application. Mailed notice shall be deemed received three (3) days after mailing.

2. The decision of the Community Development Director may be appealed by filing a written notice requesting a hearing within ten (10) calendar days of the decision of the Community Development Director. The appeal may be heard by a Hearing Officer (for purposes of this section, the term Hearing

Officer shall mean the City Manager or a Hearing Officer appointed by the City Manager) or by the Board of Administrative Appeals, pursuant to Chapter 4 of Title 1 of the Municipal Code.

a. The hearing shall be conducted within forty-five (45) days of the request.

b. The hearing shall be conducted under such rules of procedure as are appropriate to quasi-judicial proceedings, provided that the applicant and the City shall be entitled to present relevant evidence, testify under oath, and call witnesses who shall testify under oath. The Hearing Officer/Board of Administrative Appeals shall not be bound by the statutory rules of evidence in the hearing. The applicant shall have the burden of proof that the Community Development Director's determination was wrong. The hearing shall be recorded so that a transcript of the hearing can be prepared by either party.

c. At the conclusion of the hearing, the Hearing Officer/Board of Administrative Appeals shall decide whether the grounds for denial, revocation or non-renewal exist. Within ten (10) days after the conclusion of the hearing, the Hearing Officer/Board of Administrative Appeals shall file with the City Clerk, together with the recording of the hearing, a written decision supported by written findings based on the evidence submitted and a statement of the order. A copy of the decision shall be forwarded by certified mail, postage prepaid, to the applicant by the City Clerk. The decision of the Hearing Officer/Board of Administrative Appeals shall become effective three (3) days after its mailing to the applicant unless timely appealed as provided in the following Section.

H. The decision of the Hearing Officer or Board of Administrative Appeals shall be final unless appealed to the City Council by the filing of a written appeal with the City Clerk by the City Manager or member of the Council within ten (10) calendar days of mailing of the decision. All such appeals shall be filed with the City Clerk and shall be public records. The City Council shall, at a duly noticed meeting within forty-five (45) days from the date the written appeal was filed, independently review the entire record, including the recording or transcript of the hearing and any oral or written arguments which may be offered to the City Council by the appellant. At the conclusion of the review, a majority of the City Council members present may decide to sustain the decision, modify the decision, or order the decision stricken and issue such order as the City Council finds is supported by the entire record. The lack of a majority to take action means that the decision of the Hearing Officer or Board of Administrative Appeals remains in effect. The action of the City Council shall be final and conclusive, shall be rendered in writing within ten days, and shall be immediately mailed or delivered to the applicant.

I. Notwithstanding any provisions in this chapter regarding the occurrence of any action within a specified period of time, the applicant may

request additional time beyond that provided or may request a continuance regarding any decision or consideration by the City of the pending appeal. Extensions of time sought by applicants shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on applications.

J. The time for a court challenge to a decision under this section is governed by California Code of Civil Procedure § 1094.8 and notice of the City's decision and its findings shall include citation to California Code of Civil Procedure § 1094.8.

§ 5-11.30 Transfer of license.

Unless prior application is made, thereafter approved, and a license issued thereon, upon the sale or transfer of any interest in a Computer Gaming and Internet Access Business, the license shall immediately become null and void. A new application must be made and a new fee paid by any person desiring to own or operate the Computer Gaming and Internet Access Business. Any application involving the sale or transfer of any interest in an existing Computer Gaming and Internet Access Business, as well as any license which may thereafter be granted, shall be subject to the provisions of this chapter.

§ 5-11.40 Alterations to Computer Gaming and Internet Access Businesses.

A. A holder of a valid Computer Gaming and Internet Access Business license shall notify the Community Development Director, in writing, of any proposed change in the business location, floor plan or business name at least thirty (30) days prior to such change.

B. Nothing in this section shall excuse the owner of a Computer Gaming and Internet Access Business from obtaining all other approvals necessary to change a location, floor plan or business name, including but not limited to building permits.

§ 5-11.50 License revocation.

A. If the City finds that any person holding an Computer Gaming and Internet Access Business license has violated or allowed the violation of any of the provisions of this chapter or has conducted business in a manner that could have been grounds for license denial, the license may be revoked following notice and a hearing.

B. No revocation shall become effective until the license holder has been notified in writing of the right to a hearing pursuant to the provisions of section § 5-11.20(G) of this chapter. Notice of the pending revocation and right

to appeal shall be given to the license holder either by personal delivery or registered mail, addressed to the license holder at the address set forth in the license application. Mailed notice shall be deemed received three (3) days after mailing.

C. If a request for hearing is filed within ten (10) calendar days from the notice provided in B above, the City shall conduct an appeal hearing as provided in section § 5-11.20(G) H, I and J, above. The revocation shall be stayed pending the decision, unless, in the determination of the City Manager, immediate suspension pending the hearing is necessary due to an immediate threat to the public health, safety or welfare. Otherwise, the revocation shall become effective upon expiration of the appeal period.

§ 5-11.60 Operational standards and regulations.

A. Prohibitions regarding Minors.

1. Minors (under 18 years of age), unless legally emancipated, shall not be permitted to enter or remain in a Computer Gaming and Internet Access Business during any time that he or she is required to be in attendance at school unless accompanied by a parent or legal guardian.

2. Minors (under 18 years of age), unless legally emancipated, shall not be permitted to enter or remain in a Computer Gaming and Internet Access Business during the hours of the Juvenile Protection Curfew of 11:01 p.m. through 5:00 a.m. seven nights a week, pursuant to Article 2 of Chapter 10 of Title 5 of the Antioch Municipal Code.

3. Signs shall be placed at the entrance of the business and inside the business setting forth these restrictions in lettering of at least two (2) inches in size.

B. Hours of Operation. The Computer Gaming and Internet Access Business shall not be open to customers, patrons or any member of the public between the hours of 12:00 a.m. and 8:00 a.m. on Friday, Saturday and Sunday or between the hours of 11:00 p.m. and 8:00 a.m. Monday through Thursday.

C. Interior Waiting Area. An interior waiting area with not less than eight (8) seats shall be provided for customers waiting to use a computer. The number of seats shall be increased by one (1) for every five (5) additional computers beyond twenty-five (25) computers in the business. No outside waiting or seating area is permitted.

D. No Smoking or Consumption of Alcoholic Beverages. No person shall be permitted to smoke or consume alcoholic beverages on the inside of the

premises. The sale of cigarettes and alcohol on the premises is prohibited. No intoxicated or disorderly person shall be allowed to remain on the premises.

E. Staffing. Employees shall be at least 18 years of age. There shall be a minimum of two (2) employees staffing the Computer Gaming and Internet Access Business during all working hours with at least one manager or supervisor. The ratio of employees to computers and/or other electronic devices that access the internet shall be 2:15. During each employee's working hours, the employee shall wear a badge identifying the business and the employee's full name. Security personnel indicated in Section I below shall not be included in this minimum staffing number

F. Occupancy. Occupancy shall not exceed that required under the Uniform Building Code and Uniform Fire Code. The maximum occupancy load shall be posted at the main entrance.

G. Surveillance System.

1. The Chief of Police may require a Computer Gaming and Internet Access Business operator to install a digital camera/video surveillance system on the premises in the event there are or have been repeated calls for police services relating to the premises including, but not limited to, assaults, public intoxication, vandalism, gang activity, weapons offenses, disturbances of the peace and juvenile crimes including truancy.

2. In the event of such a determination, the establishment shall maintain and operate a camera/video surveillance system during all business hours. The system shall cover the entire interior of the premises and all entrances to and exits from the establishment. Tapes/disks shall be kept a minimum of fourteen (14) calendar days, or as required by the Chief of Police. The owner shall permit a representative of the Police Department's office to inspect the tapes/disks during business hours.

3. A sign shall be posted inside and at the entrances to the establishment indicating that the premises are under camera/video surveillance.

H. Window Coverings. Window areas shall not be covered, tinted or made opaque in any way, or obscured in any way by landscaping, floor displays, equipment or the like, excepting during daylight hours when partial blinds or other equivalent window coverings may be used as long as the interior remains visible from the public right of way.

I. Security Guards.

1. The Chief of Police may require a specific Computer Gaming and Internet Access Business operator to provide a security guard(s) on the premises

in the event there are repeated calls for police services relating to the premises including, but not limited to, assaults, gang activity, weapons offenses, disturbances of the peace and juvenile crimes including truancy.

2. The security guard shall be uniformed and be employed by a Private Patrol Operator that is currently licensed with the California Department of Consumer Affairs. The name of the Patrol Operator with state license number and the guard registration numbers shall be provided to the Community Development Department. Any changes to the Patrol Operator shall be approved by the Police Chief at least two working days prior to Patrol Operator taking over security at the business.

3. The security guard shall also patrol the exterior of the business and any parking lot areas.

4. The Chief of Police may require more than one security guard if there are more than fifteen (15) computers or similar devices or continued repeated calls for service indicate that one security guard is not adequate.

J. No Adult Entertainment Business or Adult Boutique. Any access to adult entertainment oriented web sites, as defined in section 9-5.203 of this code, is prohibited unless specifically permitted under sections 9-5.3808 or 9-5.3808.1 of this code.

K. No Other Amusement Devices. No pool tables or other amusement devices not directly related to the internet and similar computer devices shall be permitted in the business.

L. No Tournaments. No gaming tournaments for cash prizes deemed to be gambling under the provisions of State Law shall be permitted.

M. Interior Signs. User rates and other fees must be conspicuously posted on the premises.

N. No Illegal Gambling. Under no circumstances shall electronic game machines, which include computers and other amusement devices, be used for illegal gaming or gambling. The applicant shall be responsible for ensuring customers do not use any electronic game machine for illegal gaming or gambling.

O. No Litter. The applicant shall provide adequate trash receptacles both inside and outside of the building. The applicant shall keep the outside of the business, including the parking lot, free of litter, trash and debris.

P. No Private Booths. Any booth or individual computer use area within the business shall be visible from a continuous and accessible main aisle

in a public portion of the Computer Gaming and Internet Access Business, and shall not be obscured by any door, curtain, wall, two-way mirror or other device which would prohibit a person from seeing the entire interior of the booth/individual viewing area from the main aisle. Further, no one shall maintain any booth/individual viewing area in any configuration unless the entire interior wherein the computer that is being used is visible from one main aisle. No doors are permitted on a booth/individual viewing area. No partially or fully enclosed booth/individual viewing areas or partially or fully concealed booth/individual viewing areas shall be maintained.

Q. Alarm System. The Chief of Police may require a specific Computer Gaming and Internet Access Business operator to install an alarm system that distinguishes between a burglary and a robbery. The system shall monitor twenty-four hours per day. All public entrance and exit doors to the business shall have electronic monitoring system that produce a sound when a person transverses the doorway. If required by the Chief of Police, the system shall be electronically connected with the Police Department if activated.

R. Number of Computers. The number of computers or similar devices in a Computer Gaming and Internet Access Business shall not exceed thirty square feet of floor area per computer of the floor area that is dedicated to the placement of computers for rent or charge.

§ 5-11.70 Abatement of nuisance.

Any Computer Gaming and Internet Access Business operated, conducted or maintained contrary to the provisions of this chapter shall be and hereby is declared to be unlawful and a public nuisance, and the City may, in addition to or in lieu of any other remedy, commence an action or proceeding for the abatement, removal or enjoyment thereof, and may take such other steps and may apply to such court or courts as may have jurisdiction to grant such relief to abate or remove such establishment and restrain and enjoin any person from operating, conducting or maintaining a Computer Gaming and Internet Access Business contrary to the provisions of this chapter.

§ 5-11.90 Penalty.

It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person violating, permitting or causing the violation of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as set forth in chapter 1-2.01 of this code, or any successor provision thereto. Each person shall be deemed guilty of a separate offense for each and every day, or any portion thereof, during which any violation of any provision of this chapter is committed, continued or permitted by such person and shall be deemed punishable therefore as provided in this section.

§ 5-11.90 License fees.

The City Council shall, by resolution, set a fee for application for a Computer Gaming and Internet Access Business license. Until such fee is set, the application fee shall be the minimum fee currently established for the application extension fee in the City's Master Fee Schedule."

SECTION 3. Compliance for Existing Business; Time. It is the desire and intent of the City Council that any and all existing and legal Computer Gaming and Internet Access Businesses come into compliance with the terms of this Ordinance as rapidly as possible and that all applications, review and decisions be processed on an expedited basis. Within fourteen (14) calendar days of the effective date of this ordinance, every existing Computer Gaming and Internet Access Business shall file a statement with the Community Development Director evidencing its compliance with all provisions of this chapter and providing all information as provided in § 5-11.40. The review and determination of the Community Development Director shall be provided within fourteen (14) days of the filing of the application. In the event that the license requires the installation of improvements at the business (e.g., lighting, surveillance, etc) all such improvements shall be installed per a schedule agreed to by the Community Development Director; however, not to exceed twenty-one (21) days following the determination of the Community Development Director on the license application.

SECTION 4. CEQA. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 16061 (b) (3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date. This Ordinance is hereby declared an urgency measure pursuant to the terms of California Government Code section 36937 (b) and shall be effective immediately upon adoption by a four-fifths (4/5th) vote of the City Council.

SECTION 7. Publication; Certification. The City Clerk shall certify to the adoption of this Ordinance and cause same to be published in accordance with State law.

* * * * *

I HEREBY CERTIFY that the foregoing Ordinance was introduced and adopted as an urgency ordinance pursuant to the terms of California Government Code Section 36937 (b) at a regular meeting of the City Council of the City of City of Antioch on the 28th day of February, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

James D. Davis, Mayor of the City of Antioch

ATTEST:

Denise Skaggs, City Clerk of the City of Antioch

ATTACHMENT "C"

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH AMENDING TITLE 5 OF THE ANTIOCH MUNICIPAL CODE BY ADDING A NEW CHAPTER 11 PERTAINING TO THE LICENSING PROCEDURES AND REGULATIONS FOR COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

The City Council of the City of Antioch does ordain as follows:

SECTION 1. The City Council finds as follows:

A. The City Council of the City of Antioch is concerned with the increasing reports of violent criminal behavior and related detrimental neighborhood effects associated with Computer Gaming and Internet Access Businesses.

B. The City of Antioch, as well as neighboring cities, 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 and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the 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 include the representational incidents below as findings as follows:

1. On April 13, 2010, there was a call for service from T's Internet Café at 1836 A Street because of a fight over someone owing someone money and on July 23, 2010 a call for service regarding another fight.
2. At T's Internet Café at 1653 A Street on September 11, 2010, there was a call for service regarding possible assault, drug violations and carjacking. On November 18, 2010, a male robbed money from the business with a sawed-off shot gun and shot at one of the workers. On February 2, 2011, there was a call for service regarding drug selling. On July 21, 2011, there was a report of a car theft and then a fight broke out.
3. At the Internet Room at 2962 Delta Fair Boulevard, on January 28, 2012, there was a report of a stolen vehicle.
4. At T's Internet Café at 1908 A Street on August 20, 2011, someone was throwing things at the business and threatening to harm the employees.
5. While at Computer Gaming and Internet Access Businesses in Antioch, individuals have been arrested for robbery, narcotics violations, carjacking and other crimes, as well as on outstanding warrants. While some of

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these crimes may have occurred elsewhere, it does show a propensity for individuals who engage in criminal activity to patronize Computer Gaming and Internet Access Businesses.

6. At 2962 Delta Fair Boulevard, calls for service have increased at that location and at neighboring businesses as much as 450% since the Internet Room started operating.
7. At 1836 A Street, before T's Internet Café opened there were 157 calls for service from that location and neighboring businesses over a 7-month period from February 1, 2009 through August 30, 2009. While T's Internet Café was operating at 1836 A Street, calls for service increased to 240 (a 52% increase) over a 7-month period from February 1, 2010 through August 30, 2010. When T's Internet Café closed at that location, calls for service from that location and neighboring businesses went back down to 158 calls for service over the 7-month period from February 1, 2011 through August 30, 2011, almost identical to the rates before T's Internet Café opened.

C. Computer Gaming and Internet Access Businesses often have local school students and minors as their target market, and thereby may encourage the assembly of significant numbers of minors without supervision by parents or guardians. Further, given concerns about attendance at the Antioch Unified School District such congregation of students should not be allowed during regular school hours.

D. The City Council of the City of Antioch finds that the activities of Computer Gaming and Internet Access Businesses have become frequently associated with detrimental impacts to the surrounding area.

E. The Antioch Municipal Code does not currently provide adequate standards and regulations concerning the review, approval and operation of Computer Gaming and Internet Access Businesses. Section 9-5.3816 pertaining to Mechanical or Electronic Games is at least 30 years old and does not specifically address regulations pertinent to Computer Gaming and Internet Access Businesses.

F. The City Council further finds that this Ordinance constitutes a matter of City-wide importance and is not directed towards nor targeted at any particular parcel of property, any particular business or any proposed occupant.

SECTION 2. Title 5 of the Antioch Municipal Code is hereby amended by the addition of a new Chapter 11, to read as follows:

"Chapter 11"

COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

Sections:

<u>5-11.01</u>	Purpose.
<u>5-11.02</u>	Definitions.
<u>5-11.10</u>	Computer Gaming and Internet Access Business - License required.
<u>5-11.11</u>	Term of license.
<u>5-11.12</u>	Renewal of license.
<u>5-11.20</u>	License application and issuance.
<u>5-11.30</u>	Transfer of license.
<u>5-11.40</u>	Alterations to Computer Gaming and Internet Access Business.
<u>5-11.50</u>	License revocation.
<u>5-11.60</u>	Operational standards and regulations.
<u>5-11.70</u>	Abatement of nuisance.
<u>5-11.80</u>	Penalty.
<u>5-11.90</u>	License fees.

§ 5-11.01 Purpose.

It is the purpose and intent of this chapter to regulate Computer Gaming and Internet Access Businesses to promote the protection of the public from the dangers of fire and hazards to health, to ensure the full protection of minors, and for the general preservation of the peace and welfare of the community. It is the intent of the City to establish minimally intrusive protocols to provide reasonable accountability for computer gaming and internet access and use at Computer Gaming and Internet Access Businesses. The City finds such accountability to be reasonably necessary to minimize the risk of use of the computer and/or internet by persons at Computer Gaming and Internet Access Businesses for criminal purposes and to increase the opportunities for the safe apprehension of such persons patronizing Computer Gaming and Internet Businesses for criminal purposes, while recognizing rights of individuals to use the internet and Computer Gaming and Internet Access Businesses for legitimate purposes.

§ 5-11.02 Definitions.

A. "Computer Gaming and Internet Access Business" shall mean an establishment that provides more than four (4) computers or other electronic devices for access to the world wide web, internet, e-mail, video games or computer software programs which operate alone or are networked (via LAN, WAN or otherwise) or which function as a client/server program, and which seeks compensation, in any form, from users. Computer Gaming and Internet Access

Business is synonymous with a personal computer ("PC") café, internet café, cyber café, sweepstakes gaming facilities, business center, internet sales business and internet center, but does not include a Public Use or Internet Learning Center as defined herein.

B. "Public Use or Internet Learning Business" shall mean an establishment that provides computer access which is operated by the City of Antioch, 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 in any form other than school tuition.

§ 5-11.10 Computer Gaming and Internet Access Businesses - License required.

It is unlawful for any person to engage in, conduct or carry on, in or upon any premises or real property located within the City, the activities of an Computer Gaming and Internet Access Business, unless such person has been granted a valid license pursuant to the provisions of this chapter. A separate license shall be required for each location within the City where a Computer Gaming and Internet Access Business is to be established. Public Use or Internet Learning Business shall be exempt from the license requirements herein.

§ 5-11.11 Term of license.

The term of a Computer Gaming and Internet Access Business license, unless sooner suspended or revoked, shall be one year.

§ 5-11.12 Renewal of license.

A Computer Gaming and Internet Access Business license, issued pursuant to the provisions of this chapter, that has not been suspended or revoked, may be renewed, upon payment of the renewal application fee, for a period not to exceed one year upon written application to the community development director made at least sixty (60) days prior to the expiration date of the current valid license. This application for renewal of a license shall contain all of the information required by Section § 5-11.120 of this chapter and shall be processed in accordance with the provisions of this chapter.

§ 5-11.20 License application and issuance.

A. Any person desiring to obtain a license or to renew an existing license to operate a Computer Gaming and Internet Access Business shall file a written application with the Community Development Director. The application shall be signed under the penalty of perjury. Prior to submitting the application, a nonrefundable fee, in an amount established by resolution of the City Council,

shall be paid to the City to defray the cost of the investigation and issuance required by this chapter. The license issuance or renewal fee required under this chapter shall be in addition to any other license or fee required under this code.

B. Neither the filing of an application for a license or renewal thereof nor payment of an application or renewal fee shall authorize the operation of a Computer Gaming and Internet Access Business until such license has been granted or renewed.

C. Each applicant for a Computer Gaming and Internet Access Business license or renewal thereof shall furnish the following information:

1. The present or proposed address where the business is to be conducted;
2. The full and true name under which the business will be conducted;
3. The full and true name and any other names used by the applicant and owner of the business, if the owner is not the applicant;
4. The applicant and owner's present residential and business addresses and telephone numbers;
5. Each residential and business address of the applicant and the owner for the five-year period immediately preceding the date of filing the application and the inclusive dates of each address;
6. The California driver's license or identification number of the applicant and owner;
7. A precise description of the activities and/or services to be provided;
8. A detailed site and floor plan of the proposed business, depicting the building and unit proposed and including interior dimensions and off-street parking spaces required by the city's zoning code;
9. A detailed description of the food and beverage service, if any, that will be offered to patrons;
10. The dates and hours during which the Computer Gaming and Internet Access Business is desired to be conducted and a list of the fees to be charged patrons;

11. The name(s) of the person(s) responsible for the operation, management, and supervision of the Computer Gaming and Internet Access Business;

12. A statement as to whether the applicant, owner, or any person to be responsible for the operation, management, and supervision of the Computer Gaming and Internet Access Business has, within the past five (5) years, had any permit or license issued in conjunction with a Computer Gaming and Internet Access Business in any jurisdiction, and whether during that period the license was suspended or revoked. If so, then the application shall provide the name of the issuing agency and an explanation of the suspension or revocation;

13. Signature of the property owner indicating approval of the submission of the license application; and

14. Such other information as the Community Development Director may require to discover the truth of the matters required to be set forth in the application.

D. The applicant shall present proof to the Community Development Director that the required application or application renewal fee has been paid, and shall present the application containing the information and supporting documentation required by subsection C of this section. A copy of the application shall be distributed to the City's Planning and Building Divisions, the Police Department and the Fire District for review.

E. When any change occurs regarding the written information required by subsection C of this section to be included in the application, the applicant or license holder, as the case may be, shall give written notification of such change to the Community Development Director within five (5) business days of such change.

F. The Community Development Director shall have a reasonable time, not to exceed thirty (30) days to investigate the facts set forth in the application and to receive comments from the City's Planning and Building Departments, the Police Department and the Fire District. The Community Development Director shall, within sixty (60) days after the date of the filing of the application, grant the license or renewal thereof only if it is found that all of the following requirements have been met:

1. The required fees have been paid;

2. The application and all information contained therein conform in all respects to the provisions of this chapter;

3. The applicant has not knowingly made a material misrepresentation of fact in the application;

4. The proposed Computer Gaming and Internet Access Business would comply with this chapter and all other applicable city, county and state laws including, but not limited to, health, zoning, fire and safety requirements and standards, and that, as proposed, the Computer Gaming and Internet Access Business would not tend to generate criminal activities, present unnecessary criminal opportunities, or tend to cause violations of curfews by minors due to failure to comply with Federal or State law or the Municipal Code including but not limited to Operational Standards set forth below ;

5. The applicant is at least eighteen (18) years of age;

6. The Computer Gaming and Internet Access Business site and floor plan have been reviewed by the City's Planning and Building Departments and the Police Department and Fire District, which have approved the same as well as all fire and panic safety equipment required to be installed; all requirements of the Americans with Disabilities Act have been satisfied; and that the maximum occupancy has been established, will be posted and will not likely be exceeded based on the floor plan; and,

7. The Community Development Director has not received evidence that the applicant has, within the previous five (5) years, had any license or entitlement to operate a Computer Gaming and Internet Access Business revoked due to the applicant's commission of a crime or violation of the operational standards or conditions of approval applicable to a Computer Gaming and Internet Access Business; provided, however, a Computer Gaming and Internet Access Business license may be granted subject to additional conditions designed to preclude a recurrence of the events or activities causing the prior license revocation.

G. If the Community Development Director does not find that all of the requirements of subsection F of this section have been met, the application shall be denied.

1. In the event that an application for a license or renewal thereof is denied, written notice of the denial shall be given to the applicant within sixty (60) days after the date of the filing of the application specifying the ground(s) of the denial and a description of the hearing rights provided by Section § 5-11.20(G)(2), below. Notice of denial of the application may be personally served or served by first-class postage prepaid and addressed to the applicant at the address set forth in the application. Mailed notice shall be deemed received three (3) days after mailing.

2. The decision of the Community Development Director may be appealed by filing a written notice requesting a hearing within ten (10) calendar days of the decision of the Community Development Director. The appeal may be heard by a Hearing Officer (for purposes of this section, the term Hearing Officer shall mean the City Manager or a Hearing Officer appointed by the City Manager) or by the Board of Administrative Appeals, pursuant to Chapter 4 of Title 1 of the Municipal Code.

a. The hearing shall be conducted within forty-five (45) days of the request.

b. The hearing shall be conducted under such rules of procedure as are appropriate to quasi-judicial proceedings, provided that the applicant and the City shall be entitled to present relevant evidence, testify under oath, and call witnesses who shall testify under oath. The Hearing Officer/Board of Administrative Appeals shall not be bound by the statutory rules of evidence in the hearing. The applicant shall have the burden of proof that the Community Development Director's determination was wrong. The hearing shall be recorded so that a transcript of the hearing can be prepared by either party.

c. At the conclusion of the hearing, the Hearing Officer/Board of Administrative Appeals shall decide whether the grounds for denial, revocation or non-renewal exist. Within ten (10) days after the conclusion of the hearing, the Hearing Officer/Board of Administrative Appeals shall file with the City Clerk, together with the recording of the hearing, a written decision supported by written findings based on the evidence submitted and a statement of the order. A copy of the decision shall be forwarded by certified mail, postage prepaid, to the applicant by the City Clerk. The decision of the Hearing Officer/Board of Administrative Appeals shall become effective three (3) days after its mailing to the applicant unless timely appealed as provided in the following Section.

H. The decision of the Hearing Officer or Board of Administrative Appeals shall be final unless appealed to the City Council by the filing of a written appeal with the City Clerk by the City Manager or member of the Council within ten (10) calendar days of mailing of the decision. All such appeals shall be filed with the City Clerk and shall be public records. The City Council shall, at a duly noticed meeting within forty-five (45) days from the date the written appeal was filed, independently review the entire record, including the recording or transcript of the hearing and any oral or written arguments which may be offered to the City Council by the appellant. At the conclusion of the review, a majority of the City Council members present may decide to sustain the decision, modify the decision, or order the decision stricken and issue such order as the City Council finds is supported by the entire record. The lack of a majority to take action means that the decision of the Hearing Officer or Board of Administrative Appeals remains in effect. The action of the City Council shall be final and

conclusive, shall be rendered in writing within ten days, and shall be immediately mailed or delivered to the applicant.

I. Notwithstanding any provisions in this chapter regarding the occurrence of any action within a specified period of time, the applicant may request additional time beyond that provided or may request a continuance regarding any decision or consideration by the City of the pending appeal. Extensions of time sought by applicants shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on applications.

J. The time for a court challenge to a decision under this section is governed by California Code of Civil Procedure § 1094.8 and notice of the City's decision and its findings shall include citation to California Code of Civil Procedure § 1094.8.

§ 5-11.30 Transfer of license.

Unless prior application is made, thereafter approved, and a license issued thereon, upon the sale or transfer of any interest in a Computer Gaming and Internet Access Business, the license shall immediately become null and void. A new application must be made and a new fee paid by any person desiring to own or operate the Computer Gaming and Internet Access Business. Any application involving the sale or transfer of any interest in an existing Computer Gaming and Internet Access Business, as well as any license which may thereafter be granted, shall be subject to the provisions of this chapter.

§ 5-11.40 Alterations to Computer Gaming and Internet Access Businesses.

A. A holder of a valid Computer Gaming and Internet Access Business license shall notify the Community Development Director, in writing, of any proposed change in the business location, floor plan or business name at least thirty (30) days prior to such change.

B. Nothing in this section shall excuse the owner of a Computer Gaming and Internet Access Business from obtaining all other approvals necessary to change a location, floor plan or business name, including but not limited to building permits.

§ 5-11.50 License revocation.

A. If the City finds that any person holding an Computer Gaming and Internet Access Business license has violated or allowed the violation of any of the provisions of this chapter or has conducted business in a manner that could

have been grounds for license denial, the license may be revoked following notice and a hearing.

B. No revocation shall become effective until the license holder has been notified in writing of the right to a hearing pursuant to the provisions of section § 5-11.20(G) of this chapter. Notice of the pending revocation and right to appeal shall be given to the license holder either by personal delivery or registered mail, addressed to the license holder at the address set forth in the license application. Mailed notice shall be deemed received three (3) days after mailing.

C. If a request for hearing is filed within ten (10) calendar days from the notice provided in B above, the City shall conduct an appeal hearing as provided in section § 5-11.20(G) H, I and J, above. The revocation shall be stayed pending the decision, unless, in the determination of the City Manager, immediate suspension pending the hearing is necessary due to an immediate threat to the public health, safety or welfare. Otherwise, the revocation shall become effective upon expiration of the appeal period.

§ 5-11.60 Operational standards and regulations.

A. Prohibitions regarding Minors.

1. Minors (under 18 years of age), unless legally emancipated, shall not be permitted to enter or remain in a Computer Gaming and Internet Access Business during any time that he or she is required to be in attendance at school unless accompanied by a parent or legal guardian.

2. Minors (under 18 years of age), unless legally emancipated, shall not be permitted to enter or remain in a Computer Gaming and Internet Access Business during the hours of the Juvenile Protection Curfew of 11:01 p.m. through 5:00 a.m. seven nights a week, pursuant to Article 2 of Chapter 10 of Title 5 of the Antioch Municipal Code.

3. Signs shall be placed at the entrance of the business and inside the business setting forth these restrictions in lettering of at least two (2) inches in size.

B. Hours of Operation. The Computer Gaming and Internet Access Business shall not be open to customers, patrons or any member of the public between the hours of 12:00 a.m. and 8:00 a.m. on Friday, Saturday and Sunday or between the hours of 11:00 p.m. and 8:00 a.m. Monday through Thursday.

C. Interior Waiting Area. An interior waiting area with not less than eight (8) seats shall be provided for customers waiting to use a computer. The number of seats shall be increased by one (1) for every five (5) additional

computers beyond twenty-five (25) computers in the business. No outside waiting or seating area is permitted.

D. No Smoking or Consumption of Alcoholic Beverages. No person shall be permitted to smoke or consume alcoholic beverages on the inside of the premises. The sale of cigarettes and alcohol on the premises is prohibited. No intoxicated or disorderly person shall be allowed to remain on the premises.

E. Staffing. Employees shall be at least 18 years of age. There shall be a minimum of two (2) employees staffing the Computer Gaming and Internet Access Business during all working hours with at least one manager or supervisor. The ratio of employees to computers and/or other electronic devices that access the internet shall be 2:15. During each employee's working hours, the employee shall wear a badge identifying the business and the employee's full name. Security personnel indicated in Section below shall not be included in this minimum staffing number

F. Occupancy. Occupancy shall not exceed that required under the Uniform Building Code and Uniform Fire Code. The maximum occupancy load shall be posted at the main entrance.

G. Surveillance System.

1. The Chief of Police may require a Computer Gaming and Internet Access Business operator to install a digital camera/video surveillance system on the premises in the event there are or have been repeated calls for police services relating to the premises including, but not limited to, assaults, public intoxication, vandalism, gang activity, weapons offenses, disturbances of the peace and juvenile crimes including truancy.

2. In the event of such a determination, the establishment shall maintain and operate a camera/video surveillance system during all business hours. The system shall cover the entire interior of the premises and all entrances to and exits from the establishment. Tapes/disks shall be kept a minimum of fourteen (14) calendar days, or as required by the Chief of Police. The owner shall permit a representative of the Police Department's office to inspect the tapes/disks during business hours.

3. A sign shall be posted inside and at the entrances to the establishment indicating that the premises are under camera/video surveillance.

H. Window Coverings. Window areas shall not be covered, tinted or made opaque in any way, or obscured in any way by landscaping, floor displays, equipment or the like, excepting during daylight hours when partial blinds or other equivalent window coverings may be used as long as the interior remains visible from the public right of way.

I. Security Guards.

1. The Chief of Police may require a specific Computer Gaming and Internet Access Business operator to provide a security guard(s) on the premises in the event there are repeated calls for police services relating to the premises including, but not limited to, assaults, gang activity, weapons offenses, disturbances of the peace and juvenile crimes including truancy.

2. The security guard shall be uniformed and be employed by a Private Patrol Operator that is currently licensed with the California Department of Consumer Affairs. The name of the Patrol Operator with state license number and the guard registration numbers shall be provided to the Community Development Department. Any changes to the Patrol Operator shall be approved by the Police Chief at least two working days prior to Patrol Operator taking over security at the business.

3. The security guard shall also patrol the exterior of the business and any parking lot areas.

4. The Chief of Police may require more than one security guard if there are more than fifteen (15) computers or similar devices or continued repeated calls for service indicate that one security guard is not adequate.

J. No Adult Entertainment Business or Adult Boutique. Any access to adult entertainment oriented web sites, as defined in section 9-5.203 of this code, is prohibited unless specifically permitted under sections 9-5.3808 or 9-5.3808.1 of this code.

K. No Other Amusement Devices. No pool tables or other amusement devices not directly related to the internet and similar computer devices shall be permitted in the business.

L. No Tournaments. No gaming tournaments for cash prizes deemed to be gambling under the provisions of State Law shall be permitted.

M. Interior Signs. User rates and other fees must be conspicuously posted on the premises.

N. No Illegal Gambling. Under no circumstances shall electronic game machines, which include computers and other amusement devices, be used for illegal gaming or gambling. The applicant shall be responsible for ensuring customers do not use any electronic game machine for illegal gaming or gambling.

O. No Litter. The applicant shall provide adequate trash receptacles both inside and outside of the building. The applicant shall keep the outside of the business, including the parking lot, free of litter, trash and debris.

P. No Private Booths. Any booth or individual computer use area within the business shall be visible from a continuous and accessible main aisle in a public portion of the Computer Gaming and Internet Access Business, and shall not be obscured by any door, curtain, wall, two-way mirror or other device which would prohibit a person from seeing the entire interior of the booth/individual viewing area from the main aisle. Further, no one shall maintain any booth/individual viewing area in any configuration unless the entire interior wherein the computer that is being used is visible from one main aisle. No doors are permitted on a booth/individual viewing area. No partially or fully enclosed booth/individual viewing areas or partially or fully concealed booth/individual viewing areas shall be maintained.

Q. Alarm System. The Chief of Police may require a specific Computer Gaming and Internet Access Business operator to install an alarm system that distinguishes between a burglary and a robbery. The system shall monitor twenty-four hours per day. All public entrance and exit doors to the business shall have electronic monitoring system that produce a sound when a person transverses the doorway. If required by the Chief of Police, the system shall be electronically connected with the police department if activated.

R. Number of Computers. The number of computers or similar devices in a Computer Gaming and Internet Access Business shall not exceed thirty square feet of floor area per computer of the floor area that is dedicated to the placement of computers for rent or charge.

§ 5-11.70 Abatement of nuisance.

Any Computer Gaming and Internet Access Business operated, conducted or maintained contrary to the provisions of this chapter shall be and hereby is declared to be unlawful and a public nuisance, and the City may, in addition to or in lieu of any other remedy, commence an action or proceeding for the abatement, removal or enjoyment thereof, and may take such other steps and may apply to such court or courts as may have jurisdiction to grant such relief to abate or remove such establishment and restrain and enjoin any person from operating, conducting or maintaining a Computer Gaming and Internet Access Business contrary to the provisions of this chapter.

§ 5-11.90 Penalty.

It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person violating, permitting or causing the violation of this chapter shall be deemed guilty of a

misdemeanor and upon conviction thereof shall be punished as set forth in chapter 1-2.01 of this code, or any successor provision thereto. Each person shall be deemed guilty of a separate offense for each and every day, or any portion thereof, during which any violation of any provision of this chapter is committed, continued or permitted by such person and shall be deemed punishable therefore as provided in this section.

§ 5-11.90 License fees.

The City Council shall, by resolution, set a fee for application for a Computer Gaming and Internet Access Business license. Until such fee is set, the application fee shall be the minimum fee currently established for the application extension fee in the City's Master Fee Schedule."

SECTION 3. Compliance for Existing Business; Time. It is the desire and intent of the City Council that any and all existing and legal Computer Gaming and Internet Access Businesses come into compliance with the terms of this Ordinance as rapidly as possible and that all applications, review and decisions be processed on an expedited basis. Within fourteen (14) calendar days of the effective date of this ordinance, every existing Computer Gaming and Internet Access Business shall file a statement with the Community Development Director evidencing its compliance with all provisions of this chapter and providing all information as provided in § 5-11.40. The review and determination of the Community Development Director shall be provided within fourteen (14) days of the filing of the application. In the event that the license requires the installation of improvements at the business (e.g., lighting, surveillance, etc) all such improvements shall be installed per a schedule agreed by the Community Development Director; however, not to exceed twenty-one (21) days following the determination of the Community Development Director on the license application.

SECTION 4. CEQA. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 16061 (b) (3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date. This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code Section.

SECTION 7. Publication; Certification. The City Clerk shall certify to the adoption of this Ordinance and cause same to be published in accordance with State law.

* * * * *

I **HEREBY CERTIFY** that the foregoing Ordinance was introduced on 28th day of February, 2012 and adopted at a regular meeting of the City Council of the City of Antioch on _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

James D. Davis, Mayor of the City of Antioch

ATTEST:

Denise Skaggs, City Clerk of the City of Antioch

ATTACHMENT "D"

RESOLUTION NO. 2012/**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH ADOPTING A RESOLUTION OF INTENT TO INITIATE AN AMENDMENT TO CHAPTER 5 OF TITLE 9 OF THE ANTIOCH MUNICIPAL CODE TO ADDRESS COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

WHEREAS, Computer Gaming and Internet Access Business" shall mean an establishment that provides more than four (4) computers or other electronic devices for access to the world wide web, internet, e-mail, video games or computer software programs which operate alone or are networked (via LAN, WAN or otherwise) or which function as a client/server program, and which seeks compensation, in any form, from users; "Computer Gaming and Internet Access Business" is synonymous with a personal computer ("PC") café, internet café, cyber café, sweepstakes gaming facilities, business center, internet sales business and internet center, but does not include a Public Use or Internet Learning Center, which is defined as an establishment that provides computer access which is operated by the City of Antioch, 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 in any form other than school tuition; and

WHEREAS, the City has received and anticipates additional requests for the construction, establishment and operation of Computer Gaming and Internet Access Businesses within the City; and

WHEREAS, the City of Antioch, as well as neighboring cities, 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 and property damage and loitering; and

WHEREAS, there have been complaints about prostitution associated with these uses and it is known that other cities have experienced significant gang-related activities occurring at these Computer Gaming and Internet Access Businesses; and

WHEREAS, the City Council has determined that the provisions of the City Municipal Code that may regulate the construction, operation and establishment of Computer Gaming and Internet Access Businesses in the City are inadequate and need review, study, and revision to fully take into account the impacts related to the location and manner of construction, establishment and operation of Computer Gaming and Internet Access Businesses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community;

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Antioch adopts this resolution of intention to initiate an amendment to Chapter 5 of Title 9 of the Antioch Municipal Code to address land use issues with Computer Gaming and Internet Access Businesses

C71 AB3 B47
D1

RESOLUTION NO. 2012/**

February 28, 2012

Page 2

* * * * *

I HEREBY CERTIFY that the foregoing resolution was duly passed and adopted by the City Council of the City of Antioch, California, at a regular meeting thereof held on the 28th day of February 2012, by the following vote:

AYES:

NOES:

ABSENT:

DENISE SKAGGS, City Clerk

C72 ALY BH
D

ATTACHMENT "E"

CITY OF ANTIOCH BUSINESS LICENSE APPLICATION



DUE BY:
BUSINESS NO: 005779
CLASS CODE:

INSTRUCTIONS

Hold License Cer-1 for Pick up
give to [redacted]

1. MAILING NAME & ADDRESS IPG Inc. [redacted] Spring Hill, FL 34606		2. BUSINESS NAME IPG Inc. dba Rapid Business Solutions	
3. BUSINESS ADDRESS 1892 A Street		4. BUSINESS CITY, ST, ZIP Antioch, CA 94509	
5. PHONE 914-498-3629	6a. CELL PHONE 914-[redacted]	6b. FAX 815-349-2829	6c. E-MAIL ADDRESS internetpromotiongroup@gmail.com
7. BUSINESS DESCRIPTION Offer consumers print, copy, fax services, and internet access			
8. FED ID# [redacted]	9. STATE ID# [redacted]	10. SELLER'S PERMIT# [redacted]	11. HOME OCCUPATION# [redacted]
12. OWNER TYPE (Sole Proprietorship, Partnership, CORP, Trust) [redacted]		13. CERTIFICATION NO. [redacted]	14. NUMBER OF EMPLOYEES [redacted]
15. OWNER#1 NAME James Hayes		16. OWNER#2 NAME Gino Ciaschetti	
17. OWNER#1 ADDRESS (NO PO BOXES, STATE REQUIREMENT) [redacted]		18. OWNER#2 ADDRESS (NO PO BOXES, STATE REQUIREMENT) [redacted]	
19. OWNER#1 CITY, ST, ZIP Dunedin, FLORIDA 34697		20. OWNER#2 CITY, ST, ZIP Humble, TX 77396	
21. OWNER#1 HOME PHONE 914-[redacted]		22. OWNER#2 HOME PHONE 713-[redacted]	
23. OWNER#1 SSN [redacted]	24. OWNER#1 DL [redacted]	25. OWNER#2 SSN [redacted]	26. OWNER#2 DL [redacted]
27. CONTACT NAME Jimmy Hayes or Gino Ciaschetti		28. CONTACT PHONE 914-[redacted] or 713-[redacted]	
29. LICENSE TYPE (Office use only)		29A. INTERNET ADDRESS internetpromotiongroup@gmail.com	
30A. GROSS RECEIPTS	30B. NUMBER OF CARD TABLES	30C. NUMBER OF VEHICLES	
31. LICENSE FEE [redacted]	32.	33. APPLICATION FEE [redacted]	
34. TOTAL AMOUNT DUE (combine lines 31, 32 & 33) [redacted]		35. DATE BUSINESS TERMINATED (IF OUT OF BUSINESS)	
OFFICE USE ONLY			
Effective Date: Purchase Date: FEB 16 2011		Expir. Date: Receipt No: 406542	
Planning Dept: [signature]		Bldg Dept: [signature]	
Zoning: C-2		Health Dept:	
The undersigned, being authorized to make this Application, hereby declares to the best of his knowledge and belief that this is a true, correct, and complete Application made pursuant to the Antioch Municipal Code.			
Sign Here [signature] Signature		Date 2-14-2011 Date	

C73 [signature] E

**CITY OF ANTIOCH
BUSINESS LICENSE RENEWAL**



DEBY
BUSINESS NO. 3001773
CLASS CODE E

INSTRUCTIONS			
1. MAILING NAME & ADDRESS T's Internet Cafe [Redacted] Antioch, CA 94531		2. BUSINESS NAME T's Internet Cafe	
3. BUSINESS ADDRESS 1653 AS		4. BUSINESS CITY, ST, ZIP Antioch, CA 94509	
5. PHONE 925 622-0801	6. FEM. AGENCY PHON 925 [Redacted]	63. FAX	64. E-MAIL ADDRESS Aeventorenember @comcast.net
7. BUSINESS DESCRIPTION Internet Cafe			
8. FEED ID#	9. STATE ID#	10. SELLER'S PERMIT#	11. HOME OCCUPATION
12. OWNER #1 TYPE (Sole Proprietorship, Partnership, CORP, Trust)		13. CERTIFICATION NO.	14. NUMBER OF EMPLOYEES
15. OWNER #1 NAME Patricia Simpson		16. OWNER #2 NAME	
17. OWNER #1 ADDRESS (NO PO BOXES, STATE REQUIREMENT)		18. OWNER #2 ADDRESS (NO PO BOXES, STATE REQUIREMENT)	
19. OWNER #1 CITY, ST, ZIP Antioch, CA 94531		20. OWNER #2 CITY, ST, ZIP	
21. OWNER #1 HOME PHONE 925 [Redacted]		22. OWNER #2 HOME PHONE	
23. OWNER #1 SSN		25. OWNER #2 SSN	26. OWNER #2 DL
27. CONTACT NAME Patricia Simpson		28. CONTACT PHONE 925 [Redacted]	
29. LICENSE TYPE (Office use only)		29A. INTERNET ADDRESS	
30. GROSS RECEIPTS \$ [Redacted]	30B. NUMBER OF CARD TABLES	30C. NUMBER OF VEHICLES	
31. LICENSE FEE	32. RENTAL	33. APPLICATION FEE	
34. TOTAL AMOUNT DUE (combine lines 31, 32 & 33) [Redacted]		35. DATE BUSINESS TERMINATED (IF OUT OF BUSINESS)	
OFFICE USE ONLY		Planning Dept. [Signature] Zoning [Signature] Health Dept. [Signature]	
Effective Date	Expir. Date 4-30-11	[Signature] Cert. of Occ.	
Purchase Date	Receipt No. 472134	[Signature]	
The undersigned, being authorized to make this Application, hereby declares to the best of his knowledge and belief that this is a true, correct, and complete Application made pursuant to the Antioch Municipal Code. Sign Here: [Signature] Signature Date: 4-6-11			

C74 ADD E

**CITY OF ANTIOCH
BUSINESS LICENSE
DELINQUENCY NOTICE**



DUE BY: 05/30/2010
BUSINESS NO 3004773
CLASS CODE: 0 - 0

INSTRUCTIONS

3rd Notice

Please review the complete form and make corrections to this side. Complete lines 30, 31, 32, 33 and 34.
Use schedule on reverse side to calculate fees.

Your license fee is delinquent, add a 10% penalty if paid after due date

1. MAILING NAME & ADDRESS T'S INTERNET CAFE [REDACTED] ANTIOCH, CA 94531-6357 [REDACTED]		2. BUSINESS NAME T'S INTERNET CAFE	
		3. BUSINESS ADDRESS 1836 A ST	
		4. BUSINESS CITY, ST, ZIP ANTIOCH, CA 94509-2602	
5. PHONE (925)522-0801	6a. EMERGENCY PHONE 925-[REDACTED]	6b. FAX	6c. E-MAIL ADDRESS:
7. BUSINESS DESCRIPTION INTERNET SALES			
8. FED ID#	9. STATE ID#	10. SELLER'S PERMIT #	11. HOME OCCUPATION #
12. OWNER TYPE (Sole Proprietorship, Partnership, CORP, Trust) [REDACTED]		13. CERTIFICATION NO.	14. NUMBER OF EMPLOYEES
15. OWNER #1 NAME Tatiana Cooper Simmons		16. OWNER #2 NAME	
17. OWNER #1 ADDRESS (NO PO BOXES, STATE REQUIREMENT) [REDACTED]		18. OWNER #2 ADDRESS (NO POBOXES, STATE REQUIREMENT)	
19. OWNER #1 CITY, ST, ZIP Antioch CA 94531		20. OWNER #2 CITY, ST, ZIP	
21. OWNER #1 HOME PHONE Kevin Amalia		22. OWNER #2 HOME PHONE	
23. OWNER #1 SSN [REDACTED]	24. OWNER #1 DL [REDACTED]	25. OWNER #2 SSN	26. OWNER #2 DL
27. CONTACT NAME Tatiana Cooper Simmons		28. CONTACT PHONE	
29. LICENSE TYPE (Office use only)	29A INTERNET ADDRESS		
30A. GROSS RECEIPTS	30B. NUMBER OF CARD TABLES 2	30C. NUMBER OF VEHICLES	
31. LICENSE FEE [REDACTED]	32. PENALTY [REDACTED]	33. APPLICATION FEE [REDACTED]	
34. TOTAL AMOUNT DUE (combine lines 33, 34 & 35) [REDACTED]		35. DATE BUSINESS TERMINATED (IF OUT OF BUSINESS)	
OFFICIAL USE ONLY			
Effective Date: 05/01/2010		Expir. Date: 04/30/2011	
Purchase Date: JUN 23 2010		Receipt No: 348181	
Planning Dept.		Bldg Dept.	
Zoning:		Health Dept:	
<p>The undersigned, being authorized to make this Application, hereby declares to the best of his knowledge and belief that this is a true, correct, and complete Application made pursuant to the Antioch Municipal Code</p> <p>Sign Here: <u>[Signature]</u> Date: <u>6-21-10</u></p>			

C75 AB7 B4 E

CITY OF ANTIOCH
BUSINESS LICENSE APPLICATION



DUE BY:
 BUSINESS NO. **3006114**
 CLASS CODE: **11**

INSTRUCTIONS

1. MAILING NAME & ADDRESS Cotton the web 2333A Buchanan Antioch CA 94509		2. BUSINESS NAME Cotton the web	
3. BUSINESS ADDRESS 2333A Buchanan		4. BUSINESS CITY, ST, ZIP Antioch CA 94509	
5. PHONE 925 201 8332	6. ALT PHONE 925 [REDACTED]	8a. CELL PHONE 925 [REDACTED]	8b. FAX NUMBER
6c. EMAIL ADDRESS Aevent@remembercontact.net		7. BUSINESS DESCRIPTION Fax copy Print internet	
8. FED ID#	9. STATE ID#	10. SELLER'S PERMIT#	11. HOME OCCUPATION#
12. OWNER TYPE (Sole Proprietorship, Partnership, CORP, Trust)		13. CERTIFICATION NO.	14. NUMBER OF EMPLOYEES
15. OWNER#1 NAME Patricia Simmons LLC		16. OWNER#2 NAME	
17. OWNER#1 ADDRESS (NO PO BOXES, STATE REQUIREMENT)		18. OWNER#2 ADDRESS (NO PO BOXES, STATE REQUIREMENT)	
19. OWNER#1 CITY, ST, ZIP Antioch CA 94531		20. OWNER#2 CITY, ST, ZIP	
21. OWNER#1 HOME PHONE 925 [REDACTED]		22. OWNER#2 HOME PHONE	
23. OWNER#1 SSN	24. OWNER#1 DL	25. OWNER#2 SSN	26. OWNER#2 DL
27. CONTACT NAME Patricia Simmons		28. CONTACT PHONE	
29. LICENSE TYPE (Office use only)	29A. INTERNET ADDRESS		
30A. GROSS RECEIPTS	30B. NUMBER OF CARD TABLES	30C. NUMBER OF VEHICLES	30D. STICKER FEE (\$5/VEHICLE)
31. LICENSE FEE	32. PENALTY	33. APPLICATION FEE	
34. TOTAL AMOUNT DUE (combine lines 31, 32 & 33)		35. DATE BUSINESS TERMINATED (IF OUT OF BUSINESS)	
OFFICE USE ONLY Effective Date: SEP 29 2011 Expir. Date: 450689 Purchase Date: SEP 29 2011 Receipt No. 450689		Planning Dept. MB Bldg Dept. MB Zoning C3 Health Dept.	

The undersigned, being authorized to make this Application, hereby declares to the best of his knowledge and belief that this is a true, correct, and complete Application made pursuant to the Antioch Municipal Code.

Sign
Here

Patricia Simmons

Signature

Date

C76 A66 E

ATTACHMENT "F"

ADDRESS	BUSINESS	Before Internet Café		Internet Café		%Change
		2/16/10 - 2/15/11	2/16/11 - 2/15/12	2/16/11 - 2/15/12	2/16/11 - 2/15/12	
Delta Fair BL		Totals	109	259		137.61%
2954	CA Check Cashing	52		124		138.46%
2958	Super Wine	44		77		75.00%
2962	Internet Room	0				nc
2970	Gold Palace	0		3		
2974	UPS Store	7		15		114.29%
2980	The OTS group	0		7		
2982	Geeta's Herbal Spa & Salon	3		6		100.00%
2996		1		0		
3000	Better Homes Realty	2		11		450.00%

Sample types of Calls	Before Internet Café		Internet Café		%Change
	2/16/10 - 2/15/11	2/16/11 - 2/15/12	2/16/11 - 2/15/12	2/16/11 - 2/15/12	
CA Check Cashing					
DISPO CLASS					200.00%
MSDS	7		21		128.57%
SUSC	7		16		171.43%
ATMC	7		19		
DRUN	0		3		
FINF	0		11		
LOIT	0		5		
Super Wine					
DISPO CLASS					55.56%
ATMC	9		14		
AUTT	0		2		200.00%
MSDS	7		21		300.00%
SUSC	3		12		

C 77 ~~ALG~~ ~~FI~~

ADDRESS	BUSINESS	Before Internet Café		Internet Café	
		9/1/10 - 2/15/11	9/1/11 - 2/15/12	%Change	
BUCHANAN RD	Totals	7	19	171.43%	
2327	OKAWA	2	2	0.00%	
2329	Brooks & Books	0	1		
2331 #A	Serenity Salon & Spa	0	2		
2331 #B	Black Diamond Print	0	3		
2333 #A	COT on the Web	0			
2333 #B	Dominos Pizza	5	5	0.00%	

C80 A72 ^{B57} F

ATTACHMENT "G"

CALLS FOR SERVICE
2962 DELTA FAIR BL
2/16/11 - 2/15/12

PRINTED:2/16/2012

EVENT#	RCV_TIME	CLASS	DISPO	CASE#	SYNOPSIS
11068917	7/26/11 0:46	MSIN	MSIN		NEW INTERNET CAFE - NAME AND LOCATION NOTED FOR ADDITION TO CAD.
11097719	10/16/11 20:29	911U	911U		NVC/VOIP LINE
11109110	11/21/11 12:46	MEDPD	FIDA		FIRE ENRT FOR A MALE LAYING ON THE GROUND, BARELY CONSCIOUS
11109512	11/22/11 18:18	27SUB	WRNO	11010014	OV NEW CASE FOR WARRANT LEWIS, JAMES
11116985	12/17/11 0:40	FINF	FINF		MALE FELL OUTSIDE IS BLEEDING FROM SIDE OF HIS FACE
12001418	1/5/12 15:37		CANC		
12002550	1/9/12 2:00	96	WRNO	12000286	
12007174	1/24/12 2:06		VCOO		
12007425	1/24/12 22:00	415V	DISC		VERB WITH SUBJ IFO LOC
12008291	1/27/12 19:49	415UG	MSDS		GROUP IFO REFUSING TO LEAVE.. RP IS OTS SECURITY
12008631	1/28/12 22:11	10851	CIVI		2007 GRY DODGE MAGNUM XXXXXX (LOC VIA DMV) RP SAID HE JUST MET SOME GUY AND HE ALLOWED HIM TO DRIVE HIS VEH TO THIS LOC SO RP COULD USE THE RESTROOM BEF THEY WENT OVER THE HILL TO "DO SOME BUSN" WHEN RP CAME OUT, UNK MALE THAT HE JUST MET WAS GONE WITH RPS VEH..... OCC SOMETIME DURING THE NIGHT 07 GRY DODGE MAGNUM LIC XXXXXX
12008717	1/29/12 8:39	10851	CIVI		
12009234	1/30/12 22:56	1059	XPAT		
12009256	1/31/12 1:30	96	VCOO	12001054	
12011363	2/6/12 22:29	VCOO	VCOO		
12011680	2/8/12 0:51		ATMC		

TOTAL # EVENTS 16

TOTAL # CASES 3

{EVENT_MAIN.ADDR_ST} = "DELTA FAIR BL" and
{EVENT_MAIN.ADDR_NUM} = "2962" and
{EVENT_MAIN.RCV_TIME} in DateTime (2011, 02, 16, 00, 00, 00) to DateTime (2012, 02, 15, 23, 59, 59)

h:\Crystal Reports\CFS Reports\InternetCafes\CFS-Syn-2962DFB.rpt

Report is based on unaudited CAD/RMS data at time of report generation.
Report for analysis purposes only - not for distribution - Law Enforcement Use Only

C81 A73 155
61
Page 1 of 1

CALLS FOR SERVICE

1908 A ST

8/20/11 - 12/31/11

PRINTED:2/16/2012

EVENT#	RCV TIME	CLASS	DISPO	CASE#	SYNOPSIS
11077745	8/20/11 22:26	415UG	MSDS		HMA LSW RED HAT RED SHIRT IFO THROWING THINGS AT THE BUSN AND YELLING THAT HE IS GOING TO COME BACK AND HURT THE EMPS... PER RP THE BUSN JUST MOVED AND THEY ARE NOW AT 1908 A ST .. [REDACTED] CAME IN AS 1653 A ST .. WAS ADV TO CONTACT PHONE COMPANY TO CORRECT .. PLS HAVE OFCR CONFIRM ADDRESS WHEN 97
11078136	8/22/11 7:58		ACCN	11006858	
11086692	9/15/11 0:54	417	SUSC		OCCRD AT 19TH/ D ST
11089401	9/22/11 22:25	PTOW	PTOW		5 AGO ... MALE POINTED THE GUN AT RP AND COCKED IT
11090260	9/25/11 2:03	647F	DRUN	11007953	91 CHEV VAN WHI CALIC #4 [REDACTED] LEFT ON PREMISE W/O PERMISSION
11091081	9/27/11 18:19	95	NARC	11008041	IN SMOKING AREA IN THE BACK OF THE BLDG.. 1051 WF BLN HAIR LSW BLK SHIRT AND BLU JEANS REFUSING TO LEAVE.... ACTING VERY AGGRESSIVE
11094268	10/6/11 22:42	96	AUTR	11008369	
11094358	10/7/11 6:42	SUSP	SUPP		RP SAID POLICE WERE LOOKING FOR A MALE RE A 10851 VEH...RP SAID THE MALE IS BACK, WM YELLOW HAT, THIN BUILD....MALE RAN OFF WB ON W 20TH....NFI
11096757	10/14/11 1:32	94	WRNO	11008608	TRO ON W 20TH
11096763	10/14/11 1:54	96	MSNF	11008609	SEP INC FOR THE 96
11097174	10/15/11 5:09	SUSP	SUPP		[REDACTED] IS IFO T'S INTERNET IN MULTIPLE COLOR ZIP UP HOODIE, BLK PANTS, WHI SHOES. SUBJ SHOULD HAVE PC ON A 288 CASE
11098790	10/20/11 1:41	FINF	FINF		F/A ENRT FOR CUSTOMER FEELING ILL, SWELLING IN LEGS AND HANDS, SUFFERS FROM LUPIS, CONSCIOUS AND BREATHING
11098824	10/20/11 4:58	FINF	FINF		MALE 24YS POSS ASTHMA ATTACK, AWAKE
11098851	10/20/11 8:11		WRNO	11008857	
11100420	10/24/11 21:56		WRNO	11009027	
11100726	10/25/11 23:27	94	FIED		
11101053	10/27/11 2:40	SUSV	SUSC		RP REC'D INFO THAT HIS GIRLF [REDACTED] 37 YO LEFT IN A 10851 WHI HOND ACC WITH 3 BM'S AND ARE PARKED AT THE ABOVE BUSN - NFI
11101413	10/28/11 3:18	415V	DISC		TO THE REAR OF BUSN, 6 MALES ARGUING. RP CLAIMS SOMEONE HAS A GUN BUT WHEN QUESTIONED FURTHER MALE SAID HE DOESN'T KNOW AND HUNG UP
11101754	10/28/11 23:06	FINF	FINF		ANOTHER CALL OF ODOR OF NATURAL GAS..CONFIRE 49
11103379	11/2/11 19:06	415UG	SUSC		BELLIGERNT FEMALE ON 19TH SIDE OF STORE.. ASKED TO LEAVE SO SHES UPSET
11105196	11/8/11 20:34	94	SUSC		WFA WRG BABY BLUE TANK TOP
11105283	11/9/11 8:36	94	WRNO	11009540	BEH THE ABOVE
11106500	11/13/11 2:01	96	VCOO		X21, [REDACTED] HAT DK PLAID SWTER

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EVENT#	RCV TIME	CLASS	SPO	CASE#	SYNOPSIS
11109312	11/22/11 5:01	415UG	SRVC		BMA 20'S REFUSING TO LEAVE AFTER FALLING ASLEEP AT THE STATION AND RUNNING OUT OF MONEY/ TIME ON HIS ACCOUNT.. STILL SITTING AT A COMPUTER WRG BLK HOODED SWEATSHIRT
11110006	11/24/11 12:21	96	AUTR	11010069	
11110550	11/26/11 11:12	96	SUSC		PLOT
11111845	11/30/11 21:06	1059	HOOO		RP SAYS PATRONS FROM INTERNET CAFE ARE SMOKING HS BY THE DUMPSTER IN THE BACK PLOT.. RIGHT NOW MALE AND 2 FEMALES
11111949	12/1/11 8:54	94	WRNO		
11112557	12/2/11 22:01	UNK	SUSC		IN BACK PARKING LOT RP GOT A CALL FROM A SEC GUARD WHO IS 97 IN BACK PARKING LOT... SAID HE HAD SOMEONE IN CUFFS THEN THE PHONE DROPPED AND LINE WENT DEAD. RP IS 49 BUT REQUESTING PD ALSO
11113240	12/5/11 2:26	96	SUSC		
11116649	12/16/11 4:32		XPAT		
11118279	12/21/11 12:18		SUSC		
11119257	12/24/11 14:16		MSNF		
11120678	12/29/11 18:35	415	DRUN	11011304	

TOTAL # EVENTS 34

TOTAL # CASES 11

{EVENT_MAIN.ADDR_ST} = "A ST" and
 {EVENT_MAIN.ADDR_NUM} = "1908" and
 {EVENT_MAIN.RCV_TIME} in DateTime (2011, 08, 20, 00, 00, 00) to DateTime (2011, 12, 31, 23, 59, 59)

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CALLS FOR SERVICE
1653 A ST
9/1/10 - 8/31/11

PRINTED:2/16/2012

EVENT#	RCV TIME	CLASS	DISPO	CASE#	SYNOPSIS
10089393	9/11/10 0:52	415F	ASLS		MALE AND FEMALE ON THE PHONE - BOTH SOUND INTOX OR ON H&S - SAYS PARKER, JOHN IS ON PAROLE AND GAVE THE FEMALE RP'S HUSB A LUMP ON HIS HEAD - AND NOW HE IS TRYING TO TAKE HIS VEH
10096584	9/30/10 22:35		NARC	10008553	
10096629	10/1/10 0:47	94	SUSC		
10103792	10/22/10 1:55		WRNO	10009178	
10110505	11/12/10 0:15	94	WRNO	10009842	
10111087	11/13/10 20:29	94	SUSC		
10112776	11/18/10 21:15	211A	ROBB	10010053	MALE W/BLK MASK, BLK HOODED SWEATSHIRT, BLK JEANS, JUST ROBBED MONEY FROM REGISTER, WAS ARMED W/SAW OFF SHOT GUN SHOT IT AT A CO WORKER, NO ONE HIT IPOD STOLEN AND RP WANTS APD TO CK THEIR CAMERAS FOR THE RESP....OK TO SEND OFC PER C22 RP FOUND HER BLU PONT TRANSPORT VAN AT THE ABOVE LOCATION - RP SAYS HER DAUGHTER TOOK IT AND SHE IS STILL THERE - NOW A MALE IS THERE TRYING TO TAKE VEH FROM THE RP - VEH HAS DIABLO DEALER PAPER PLATES VIN: [REDACTED]
10115832	11/28/10 19:36	488	THOF		
10116206	11/29/10 23:22	CIVI	CIVI		
10116816	12/1/10 20:52	94	SUSC		
10116863	12/1/10 23:25	95	VCOO		
10118970	12/8/10 23:48	PROM	PCOO		3 TO 4 SHOTS HEARD, NOTHING SEEN - SECURITY HAS INFO
10125571	12/30/10 19:54	96	VCOO		
11002393	1/8/11 21:01	488	THOF		THEFT OF CELL PH BY UNK RESP E # GIVEN ON 3
11008727	1/28/11 20:56	94	MSDS		
11008803	1/29/11 0:39	95	NARC	11000809	BLK HOND NP
11010169	2/2/11 11:26	HSOO	HSOO		[REDACTED] WORKS AT LOC AND HIS GIRLFRIEND [REDACTED] ARE BUYING AND SELLING DRUGS AT LOC....SHE SAYS HE SOMETIMES "CHEEKS" HIS DRUGS....UNK IF THEY ARE THERE NOW OR NOT...RP SAYS [REDACTED] HAS TRACK MARKS ALL OVER HIS ARMS BUT WEARS LONG SLEEVED SHIRTS TO COVER THEM UP
11010329	2/2/11 21:45	94	SUSC		
11010370	2/3/11 1:06	94	VCOO		
11013060	2/10/11 23:00	96	VCOO		
11015349	2/18/11 0:51	95	VCOO		
11015870	2/19/11 20:48		SUPP		
11015889	2/19/11 22:23	95	VCOO		

<u>EVENT#</u>	<u>RCV TIME</u>	<u>CLASS</u>	<u>SPO</u>	<u>CASE#</u>	<u>SYNOPSIS</u>
11016438	2/21/11 20:07	415F	MSDS		VERY LOUD VERBAL 2 HFS #1 WEARING PINK SHIRT GRY SWEATPANTS...
11016818	2/23/11 0:47	1059	XPAT		
11017471	2/25/11 1:47	95	NARC	11001604	
11020498	3/5/11 23:26	96	SUSC		
11023162	3/13/11 23:21	95	VCOO		
11024113	3/16/11 22:42	94	MSDS		
11025168	3/20/11 3:18	215	CARJ	11002337	10 AGO OCC NEAR AT 20TH/C RP JUST WALKED HERE TO CALL JAMIE UNK LAST NAME AND HER FRIEND HIT RP WITH A PIPE AND BBQ AN THEN TOOK RPS SIL FORD F350 KING CAB, UNK LIC REGISTERD TO [REDACTED] (RP NOT SURE OF SPELLING) MEDICAL REFUSED ALSO TOOK CELL [REDACTED]
11026661	3/25/11 1:59	FIRE	FDIC		VEH ON FIRE CUSTOMER INSIDE THE BUSN - NO ONE IN THE VEH / UNK WHAT HAPPENED.. XFERRED TO FIRE - ENR
11029305	4/1/11 23:32	94	SUPP		
11029757	4/3/11 2:34	95	VCOO		
11029765	4/3/11 3:00	95	VCOO		
11034055	4/16/11 2:20	95	VCOO		
11036122	4/21/11 21:46	96	SRVC		
11036157	4/21/11 23:31	96	PARK		
11036883	4/24/11 0:54	415	MALM		2 SUBJS CHASING EACH OTHER IN THE PARKING LOT, 1 IN A BLK NISS AND 1 IN A GREEN HONDA, PR ADV THE GREEN HONDA HIT A WHI CAD!
11038848	4/29/11 23:58		PARK		
11038890	4/30/11 1:59	94	SUSC		
11041791	5/8/11 1:28		WRAN	11003794	
11043128	5/12/11 1:11	95	VCOO		
11043224	5/12/11 10:02	94	WRNO	11003932	
11043239	5/12/11 10:53	94	SUSC		
11043876	5/13/11 23:23	95	VCOO		
11044017	5/14/11 10:32	94	SUSC		
11045926	5/20/11 3:02	1059	NARC	11004182	
11048426	5/27/11 14:11	94	SUSC		
11049360	5/30/11 9:38	SUSV	SUSC		MALE DRIVING THRU THE PL SEVERAL TIMES IN A BLK DURANGO...LS PARKED TRO OF RITE AIDE DRIVER WM C4
11050187	6/1/11 22:40	96	PARK		

EVENT#	RCV TIME	CLASS	SPO	CASE#	SYNOPSIS
11050220	6/2/11 0:36	PARK	PARK		
11050899	6/3/11 20:30	PARK	PARK		
11062140	7/5/11 22:53	27SUB	SUSC		RECD INFO THAT PAROLEE AT LARGE IS AT THIS LOC...RESP IS [REDACTED] JUNK DOB.....RP HAS NFI. SUBJ IS NOT HIS PAROLEE AND HE HAS NFI.....NO BAIL CDC IN WPS W/4
11063231	7/9/11 0:40	94	SUSC		
11063642	7/10/11 2:41	314	EXPO		WF BLN HAIR ABOUT 24YO 504-505... STRIPPED DOWN NAKED IFO .. WAS WEARING A BLU MINI SKIRT.... FEM ARRIVED WITH A BM BLK HAT WHI SHIRT BLU SHORTS SAGGING BELOW HIS BUTTOCKS.. BOTH SUBJS HEAVILY INTOXICATED
11064952	7/14/11 1:57	10851R	AUTR	11005755	C5 ON UNOCCUPIED 10851
11065264	7/14/11 22:07	94	MSDS		94 ON 4
11065295	7/14/11 23:57	96	SUSC		
11067206	7/21/11 0:25	415	CARJ	11005954	SUBJ TRIED TO REPORT A GUY NAMED [REDACTED] JUST TOOK HIS VEH, BLK 2000 TOYT CAMRY LICTHEN 415 BROKE OUT OVER THE PHONE
11070675	7/31/11 10:26	95	SUPP		
11070676	7/31/11 10:32		AUTT	11006251	
11070678	7/31/11 10:38		AUTR		
11071782	8/3/11 20:09	HSOO	HSOO		ABOUT 6 SUBJS HANGING OUT IFO THE LOC, APPEAR TO BE USING HS
11071927	8/4/11 10:10	96	SUSC		
11072239	8/5/11 3:08	96	VCOO		
11073120	8/7/11 13:25	94	WRNO	11006430	WTH 1
11074887	8/12/11 18:11	94	SUSC		

TOTAL # EVENTS 67

TOTAL # CASES 14

{EVENT_MAIN.ADDR_NUM} = "1653" and
 {EVENT_MAIN.ADDR_ST} = "A ST" and
 {EVENT_MAIN.RCV_TIME} in DateTime (2010, 09, 01, 00, 00, 00) to DateTime (2011, 08, 31, 00, 00, 00)

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CALLS FOR SERVICE
1836 A ST
2/1/10 - 8/30/10

PRINTED:2/16/2012

<u>EVENT#</u>	<u>RCV TIME</u>	<u>CLASS</u>	<u>DISPO</u>	<u>CASE#</u>	<u>SYNOP</u>
10016711	2/19/10 15:10	5150	AIDX		PURSE MISSING FROM THE BINGO HALL NEAR THIS LOC RP HAS NO MAILING ADDRESS OR HOME SAYS SHE IS HOMELESS AND OUT OF OR ALMOST OUT OF HER MEDS FOR BIPOLAR,SUICIDAL TENDENCIES... PURSE WAS BRO MED SIZE WITH RPS TEETH,MEDS AND CADBURY EGGS INSIDE
10019077	2/26/10 19:47	94	SUSC		W/2
10021601	3/6/10 0:29	94	WRNO	10002054	
10030328	3/31/10 9:46	CAT	CATC		
10032897	4/8/10 0:37	94	WRNO	10003164	INT CAFE
10033045	4/8/10 13:49	415L	MSDS		WM TRANSIENT IFO THE BUSN ASKING FOR MONEY, NOT BOTHERING ANYONE BUT RP WOULD LIKE HIM MOVED ALONG WEARING OLD GRN ARMY JKT
10034163	4/11/10 17:32	SUSP	SUSC		BMA APPROX 20 LSW BEANIE WHI/BLU/RED JACKET KEEPS COMING INTO BUSN ACTING SUSP LS WALKING TWDS A ST
10034675	4/13/10 11:49	415V	SUSC		UNCOOPERATIVE RP SAYING SOMEONE IS TRYING TO FIGHT HIM OVER MONEY HE OWES RESP IS WMA 18-19 YO LONG BLN HAIR BLK SHIRT BLU JEANS ARRIVED ON FOOT
10045265	5/12/10 23:37	96	SUSC		
10046344	5/15/10 18:29	488	THOF		RPS CELL PHONE STOLEN FROM A MALE ...RP THINKS HES ON THE VIDEO
10047837	5/19/10 23:03	96	SUSC		
10048541	5/21/10 23:31	10851R	AUTR	10004654	UNOCC'D 10851
10050612	5/27/10 20:36	95	VCOO		GRAY CELICA NO PLATES
10050627	5/27/10 21:26	95	VCOO		
10053703	6/4/10 20:35	95	AUTS	10005105	
10056437	6/11/10 23:50	SUPP	SUPP		RP ADV SUSP IN JOES LIQUORS INCIDENT YESTERDAY IS A BM, THIN WEARING GLASSES, 99 CENT ONLY BAGS IN HIS HANDS..SUBJ WALKING TWDS INTERNET CAFE...OFC KIDD WAS LOOKING FOR THIS SUBJ PER THE RP
10059069	6/19/10 1:21	94	ASLS		
10061397	6/24/10 23:04		NARC	10005669	
10061417	6/25/10 0:35	94	ATMC		
10064092	7/2/10 1:14	96	SUSC		
10066477	7/7/10 22:05	95	VCOO		
10071603	7/22/10 22:52	94	HOO	10006488	
10071827	7/23/10 16:24	415D	ASLS	10006501	INSIDE BUSINESS MALE AND FEMALE YELLING AT EACH OTHER..NOW PHYSICAL ..CAN HEAR THEM YELLING...BMA 27 YRS...506 180 LBS LONG SLEEVE GRY SHIRT.....BFA 30 YRS...BLK SHIRT...NO WEAPONS SEEN...NO INJURIES

<u>EVENT#</u>	<u>RCV TIME</u>	<u>CLASS</u>	<u>DISC</u>	<u>CASE#</u>	<u>SYNOP</u>
10072022	7/24/10 1:21	96	VCOO		
10073649	7/28/10 22:01	96	SUSC		
10073978	7/29/10 21:25	94	PCOO		
10083767	8/26/10 22:12	94	VCOO		

TOTAL # EVENTS 27

TOTAL # CASES 7

{EVENT_MAIN.RCV_TIME} in DateTime (2010, 02, 01, 00, 00, 00) to DateTime (2010, 08, 30, 00, 00, 00) and
 {EVENT_MAIN.ADDR_NUM} = "1836" and
 {EVENT_MAIN.ADDR_ST} = "A ST"

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CALLS FOR SERVICE
2333 BUCHANAN RD #A
9/1/11 - 2/15/12

PRINTED:2/16/2012

<u>EVENT#</u>	<u>RCV TIME</u>	<u>CLASS</u>	<u>DISPO</u>	<u>CASE#</u>	<u>SYNOPSIS</u>
11085380	9/11/11 10:52	33A	ALAF		BUSN CAUGHT ON THE WEB POA FRONT DOOR/ FRONT MOTION 7787004
12003100	1/10/12 20:36	95	NARC	12000344	C4
12005356	1/18/12 1:58	PARK	VCOO		
12008958	1/30/12 4:44	96	LOIT		
12009252	1/31/12 1:18	96	SUSC		
12011679	2/8/12 0:35		VCOO		

TOTAL # EVENTS 6

TOTAL # CASES 1

{EVENT_MAIN.ADDR_NUM} = "2333" and
{EVENT_MAIN.RCV_TIME} in DateTime (2011, 09, 01, 00, 00, 00) to DateTime (2012, 02, 15, 23, 59, 59) and
{EVENT_MAIN.ADDR_APT} = "A" and
{EVENT_MAIN.ADDR_ST} = "BUCHANAN RD"

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GC

ATTACHMENT "H"

SWEEPSTAKES GAMES RULES

1. Game Rules are pursuant to California Business and Professions Code Sections, 17539.5, 17539.15 (amended September 30, 2008), and 17539.55.
 2. Lucky Symbols™ Sweepstakes game chances CAN NOT BE PURCHASED OR SOLD.
 3. THERE IS NO PURCHASE OR PAYMENT NECESSARY TO PLAY LUCKY SYMBOLS™ SWEEPSTAKES.
 4. Any person over the age of eighteen (18) may request a free sweepstakes game chance. No solicitation is required or implied with this free offer with regard to free sweepstake chances awarded in connection to the purchase of Internet Time Services. All game chances have the same "game chance" of winning a sweepstakes prize. Any person upon accepting a free sweepstakes game chance acknowledges and accepts the terms and conditions set forth in these Game Rules.
 5. One free sweepstakes game chance per customer per business day is permitted inclusive of all participating Lucky Symbols™ Sweepstakes Game locations throughout the State of California. Legal name, current address, date of birth and phone number must be provided in writing to receive a free sweepstakes game chance. All personal information gathered will be kept confidential and will not be sold or used in any manner or condition other than to positively identify and keep record of all persons granted a free sweepstakes game chance.
 6. All sweepstakes game prizes are redeemed and awarded on the same business. No exceptions considered or accepted. All unclaimed sweepstakes game prizes are considered forfeited by the player.
 7. Sweepstakes Game Chances have no cash value and therefore cannot be sold or redeemed for cash or anything of value.
 8. Sweepstakes Game Chances are obtained solely by the purchase of Internet Time Access to a live Browser website interlink site (s) on demand by the user. Internet Time Access is the only recognized tangible commodity sold and/or purchased.
 9. Sweepstake Game Chances are offered for the purpose of promoting increased sales of Internet Time Services Access.
 10. The following classes of persons are not eligible to participate in the free sweepstakes game chances: present or former employees or agents of any Internet Time Access location engaged in the sale of Internet Time Services and offers Sweepstakes Game Chances to promote increased sales of Internet Time Services Access to the general public.
 11. All played and winning and redeemed Sweepstakes Game Chance receipts remain to be the property of the game operator.
 12. Sweepstakes Game Chance participants agree to release and hold harmless the game sponsor, its officers, members, employees, attorneys, affiliated organizations and agents, as well as the owners of any participating locations, and said owners' directors, officers, members, employees, attorneys, affiliated organizations and agents from any and all claims, demands, liabilities, costs, expenses, penalties, damages (including incidental, consequential and punitive damages), injuries, death, losses of any kind, including, without limitation, reasonable attorney's fees, arising from or in connection with or that may result from their acceptance or use of a prize, their participation in the Sweepstakes Game Chances. Game participants agree not to dispute or contest the Sweepstakes Game Chances winning or losing outcomes. Participants accept responsibility for all federal, state and local taxes on any Sweepstakes Game prizes awarded to the winners.
- GAME PRIZES AND ODDS OF WINNING:**
1. The number of prizes awarded and the total value of all prize awarded to win depends on the total number of Sweepstakes Game Chances played. The more game chances played increases the player's odds of winning a prize. Some game prize's ratio of win will make some prizes a more frequent winning prize. All prizes are eligible to be a winning prize for any player. All prizes are awarded as a cash prize. Face value of each game prize are represented by the actual cash prize award amount assigned to that specific and separate game prize award. Example: A \$20.00 game prize can be redeemed for a twenty dollar (\$20.00) cash prize.
- All game prizes must be redeemed on the same business day and must be redeemed at the same Sweepstakes Game operator location. No exceptions considered or accepted.
- C 90 AG2 B6Z H

ATTACHMENT "I"

9-5.3816 MECHANICAL OR ELECTRONIC GAMES.

These are subject to the following regulations:

(A) Any proprietor owning or operating a business lawfully in existence on August 26, 1982, shall be deemed to have been issued a permit pursuant to this article, provided such proprietor, within 30 calendar days after said date, submits on a form prescribed by the City Manager a record of information on such existing business. No filing fee or permit fee shall be payable therefor. The provisions of this section shall apply to subsequent proprietors at the same location.

(B) Machines may be replaced without a change in such permit. In the event machines are added after August 26, 1982, to total more than three machines for the establishment, a use permit will be required under the provisions of this article.

(C) It shall be unlawful for any proprietor to install, operate, or maintain to be operated any mechanical or electronic game without first having obtained a use permit. The permit shall be conspicuously posted at the location of the games in the premises and shall not be removed during the period for which the license was issued. In cases where the mechanical or electronic games occupy more than 50% of the premises' customer floor space, or account for 50% or more of the premises' gross revenue, or where 10 or more such games are proposed, the use permit shall be referred to the Council for final approval pursuant to the provisions of this article. The use permit shall state the number of games, and the use of additional games shall require a new or modified use permit.

(D) No operator shall install or allow any mechanical or electronic game to be installed in any proprietor's place of business which game requires a permit as provided for in this article unless such proprietor has been issued such permit.

(E) Applicants for use permits shall undergo a background check by the Police Department. The permit may be denied if the applicant has been convicted of a crime which has relevance to the operation of the premises.

(F) No such use permit shall apply to any premises other than the location originally approved. Upon change of ownership, the new owner shall receive clearance from the Police Department; however, no other use permit proceedings shall be required for such transfer if the new owner received police clearance.

(G) The permit provided for in this article may be revoked or suspended as provided for in this chapter. In addition, the violation of any provision of this article shall be grounds for revocation or suspension.

(H) The following shall be considered as standard use permit conditions which can be used as the basis for use permit revocation or suspension:

(1) There shall be adult supervision during the hours of operation.

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(2) There shall be no minors consuming alcohol on the premises.

(3) There shall be no use, sale, exchange, or presence of drugs or other illegal substances on the premises.

(4) Patrons shall not become a nuisance to the properties within the immediate vicinity.

(I) It shall be unlawful for any proprietor of a mechanical or electronic game to cause, permit, or allow such game to be located, operated, or main-tained to be operated within 1,000 feet of the nearest street entrance to or exit from any public playground or public or private school of elementary or high school grades, such distance to be measured from such entrance or exit in the most direct line or route on, along, or across such street or streets adjacent to such public playground or public or private school of elementary or high school grade. The restrictions established by this section shall not apply to businesses lawfully in existence and operating on August 26, 1982.

(J) It shall be unlawful for any*proprietor or employee to allow any minor under 18 years of age to play or use any such games during the academic year for public schools in the city, except during school holidays and on Saturdays and Sundays, and between the hours of 7:00 a.m. and 10:00 p.m. on all days preceding school days and between 7:00 a.m. and 11:00 p.m. on all other days.

(K) This article shall not apply to the following:

(1) Any operation involving three or fewer mechanical or electronic games, except where such games provide the main or primary source of income for the proprietor thereof;

(2) The operation or maintenance of such games within recreational enterprises, such as bowling alleys or poolrooms, where a use permit has already been obtained; and

(3) Premises or operations licensed by the Department of Alcoholic Beverage Control of the State for on-sale consumption of alcoholic beverages, excepting therefrom any such premises or operations which lawfully permit minors, such as bona fide public eating places.

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ATTACHMENT "J"



January 5, 2012

Will Beaubien
Beaubien Investment Group
One Market Street
Spear Tower, Suite 3600
San Francisco, CA 94105

Patricia Cooper-Simmons
T's Internet Café
3127 Sunflower Drive
Antioch, CA 94531

Re: T's Internet Café
522 West 2nd Street, Antioch (APN 066-051-006)

Dear Mr. Beaubien and Ms. Cooper-Simmons:

The City of Antioch understands that the business operating as T's Internet Café falls under the regulations contained in Section 9-5.3816 of the Antioch Municipal Code relating to Mechanical and Electronic Games, attached in its entirety. Subsection (I), pasted below, specifically regulates locations of said businesses. The building at 522 West 2nd Street, Antioch (APN 066-051-006) is located with 1,000 feet of a public school. Therefore, a Use Permit for Mechanical and Electronic gaming cannot be accepted and the use cannot be approved.

- (I) It shall be unlawful for any proprietor of a mechanical or electronic game to cause, permit, or allow such game to be located, operated, or maintained to be operated within 1,000 feet of the nearest street entrance to or exit from any public playground or public or private school of elementary or high school grades, such distance to be measured from such entrance or exit in the most direct line or route on, along, or across such street or streets adjacent to such public playground or public or private school of elementary or high school grade. The restrictions established by this section shall not apply to businesses lawfully in existence and operating on August 26, 1982.

Staff has observed contractors working at the above address without a Building Permit. A Stop Work Notice was given today. A Building Permit will not be issued for T's Internet Café as the use is not permitted.

I can be reached at 779.7038 or twehrmeister@ci.antioch.ca.us should you have questions.

Sincerely,

Tina Wehrmeister
Community Development Director

Community Development Department

P.O. Box 5007 • 200 H Street • Antioch, CA 94531-5007 • Tel: 925-779-7035 • Fax: 925-779-7034 • www.ci.antioch.ca.us

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**NOTICE OF VIOLATION OF THE ANTIOCH MUNICIPAL CODE
MECHANICAL OR ELECTRONIC GAMES**

January 10, 2012

Patricia Simons
Cot on the Web
2333 Buchanan Road, #A
Antioch, CA 94509

Patricia Simons
3127 Sunflower Drive
Antioch, CA 94531

Parcel No. 076-432-014
Address: 2333 Buchanan Road, #A, Antioch, CA

The City of Antioch understands that the business operating as Cot on the Web falls under the regulations contained in Section 9-5.3816 of the Antioch Municipal Code relating to Mechanical and Electronic Games, attached in its entirety. Section 9-5.3816(C) states:

It shall be unlawful for any proprietor to install, operate, or maintain to be operated any mechanical or electronic game without first having obtained a use permit.

The City does not have record of your business obtaining a Use Permit. You are required to submit a Use Permit application by January 30, 2012. An application is attached for your convenience.

The City is providing this one-time opportunity to voluntarily abate the above violation(s) and public nuisance without the need for the City to issue Administrative Citations, which carry fines that range from \$100 to \$1,000 for every day the violation(s) are permitted to remain and/or take other action to compel your compliance.

Thank you in advance for your cooperation in abating these violation(s). If you have any questions, you may contact me at (925) 779-7038 or twehrmeister@ci.antioch.ca.us.

Sincerely,

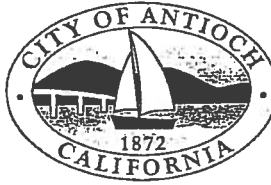
Tina Wehrmeister
Community Development Director

cc: June Patricia Smoot
Jeffery & Carolyn McClung

Community Development Department

P.O. Box 5007 • 200 H Street • Antioch, CA 94531-5007 • Tel: 925-779-7035 • Fax: 925-779-7034 • www.ci.antioch.ca.us

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NOTICE OF VIOLATION OF THE ANTIOCH MUNICIPAL CODE
MECHANICAL OR ELECTRONIC GAMES

James Hayes
Rapid Business Solutions
2962 Delta Fair Blvd
Antioch, CA 94509

January 18, 2012

Parcel No. 076-440-031
Address: 2962 Delta Fair Blvd., Antioch, CA

The City of Antioch understands that the business operating as Rapid Business Solutions falls under the regulations contained in Section 9-5.3816 of the Antioch Municipal Code relating to Mechanical and Electronic Games, attached in its entirety. Section 9-5.3816(C) states:

It shall be unlawful for any proprietor to install, operate, or maintain to be operated any mechanical or electronic game without first having obtained a use permit.

The City does not have record of your business obtaining a Use Permit. You are required to submit a Use Permit application by January 30, 2012. An application is attached for your convenience.

The City is providing this one-time opportunity to voluntarily abate the above violation(s) and public nuisance without the need for the City to issue Administrative Citations, which carry fines that range from \$100 to \$1,000 for every day the violation(s) are permitted to remain and/or take other action to compel your compliance.

Thank you in advance for your cooperation in abating these violation(s). If you have any questions, you may contact me at (925) 779-7038 or twehrmeister@ci.antioch.ca.us.

Sincerely,

Tina Wehrmeister
Community Development Director

cc: Chiu Family LLC

Community Development Department

P.O. Box 5007 • 200 H Street • Antioch, CA 94531-5007 • Tel: 925-779-7035 • Fax: 925-779-7034 • www.ci.antioch.ca.us

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J.

ATTACHMENT "K"



GagenMcCoy

William E. Gagen, Jr.
Gregory L. McCoy
Patrick J. McMahon
Charles A. Koss
Michael J. Markowitz
Richard C. Raines
Barbara Duval Jewell
Robert M. Fanucci
Allan C. Moore
Stephen T. Buehl
Amanda Bevins
Martin Lysons
Lauren E. Dodge
Sarah S. Nix
Ross Pytlik
Brian P. Mulry
Amanda Beck

Of Counsel
Linn K. Coombs

The Law Offices of
**Gagen, McCoy, McMahon, Koss
Markowitz & Raines**
A Professional Corporation

Danville Office
279 Front Street
P.O. Box 218
Danville, California 94526-0218
Telephone: (925) 837-0585
Fax: (925) 838-5985

Napa Valley Office
The Offices At Southbridge
1030 Main Street, Suite 212
St. Helena, California 94574
Telephone: (707) 963-0909
Fax: (707) 963-5527

Please Reply To:
Danville

February 6, 2012



By Email and Hand-Delivery
February 6, 2012
Board of Administrative Appeals
City of Antioch
Chair Frederick Rouse
c/o City Clerk
200 "H" Street
Antioch, CA 94509

Re: City Notice of Violation dated January 18, 2012
Rapid Business Solutions/2962 Delta Fair Boulevard, Antioch (APN 076-440-031)
Administrative Appeal

Dear Chair Rouse, Board members, and City Clerk:

Our office represents James Hayes, owner and operator of Rapid Business Solutions, located at 2962 Delta Fair Boulevard in Antioch (the Internet café), with regard to the City of Antioch's Notice of Violation dated January 18, 2012.

The City's Notice of Violation states that the business (Internet café) operating as Rapid Business Solutions falls within the City's Municipal Code at §9-5.3816, relating to "Mechanical and Electronic Games." The Notice of Violation states that the Internet café is therefore required to submit a Use Permit application by January 30, 2012.¹

¹ By email exchange, City staff extended the response date to February 6, 2012. Our office further held an informal meeting with Staff on February 2, 2012, and confirmed our Appeal or other response would be filed on/before February 6, 2012.

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Please consider this letter a Notice of Appeal of the administrative decision to take the proposed action. (We are filing this Notice of Appeal in anticipation of the City moving forward to take action as outlined in the City's Notice of Violation. If the City does not take such action, and/or if the City will work with us as outlined below, we will withdraw the Notice of Appeal.)

Mr. Hayes wants to work with the City and to continue to be a good neighbor to all adjacent businesses and the greater Antioch community. We understand and appreciate the City's desire to ensure that all businesses comply with the City's ordinances and do not create a nuisance, an increase in vandalism, or any similar land use impacts. We want to cooperate with the City on any such issue as it relates to the Internet café, including increased security, etc., and we will commit to working with the City.

Having stated the above, we hereby appeal the City's potential action (to require a Use Permit or to issue Administrative Citations), based on several grounds, including the following.

1. Applicability of §9-5.3816

The City's Municipal Code at §9-5.3816 is entitled "Mechanical or Electronic Games." Section (C) states as follows:

It shall be unlawful for any proprietor to install, operate or maintain any mechanical or electronic game without first having obtained a use permit . .

The City's Municipal Code defines "Mechanical or Electronic Games" in its Definitions section, at §9-5.203, as follows:

Any machine, apparatus, contrivance, appliance, or device which may be operated or played upon the placing or depositing therein of any coin, check, slug, ball, or any other article or device, or by paying therefore either in advance of or after use, involving in its use either skill or chance, including, but not limited to, a tape machine, pinball machine, bowling game machine, shuffleboard machine, marble game machine, horse racing machine, basketball game machine, baseball game machine, football game machine, electronic video game, or any other similar machine or device.

We note that §9-5.3816 as referenced above relates back to businesses operating as of August 26, 1982. At that time, there was no such thing as "Internet cafes" as they are known today. As set forth below, Internet cafes, Cybercafes and related businesses provide access to the Internet, which is recognized as an activity afforded special protection under the First Amendment.

We do not believe the City's §9-5.3816 was intended to apply to the Internet, and we do not believe the business activities and facilities (including the computers and related facilities) of Mr. Hayes' Internet café fall within the definition of §9-5.203.

2. City Requirement for a Use Permit

The City's Notice of Violation indicates it intends to require that the subject ongoing business (the Internet café) obtain a Use Permit. The City's Municipal Code at §9-5.2703 (B)(1) requires certain findings for the issuance of a Use Permit, including:

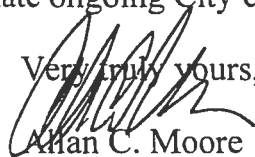
"That the granting of such [Use Permit] will not be detrimental to the public health or welfare ..."

California Appellate cases and authorities state that the discretion of local agencies to require an applicant to obtain a Use Permit is severely limited when First Amendment rights are implicated. This is particularly the case for businesses which provide access to the Internet.

In *Vo v. City of Garden Grove* (115 Cal. App. 4th 425 (2004)), the City of Garden Grove adopted an emergency interim ordinance and a moratorium against new CyberCafes. The ordinance required existing Cybercafes to apply for a Use Permit by a certain date. *The Court held such Use Permit requirement to be invalid.* In its decision, the Court noted that the City's Use Permit ordinance gave the City broad discretion to deny the Use Permit if the use impacts the "public health, safety or general welfare" (*the same criteria in the City of Antioch's ordinance*). The Court found that Garden Grove's Use Permit process gave the City too much discretion to restrict First Amendment rights.

For these and related reasons, we respectfully believe that the City should not impose a Use Permit requirement on Mr. Hayes' existing Internet cafe business. However, as noted above, we do want to work with the City with regard to reasonable steps we can agree on to address legitimate ongoing City concerns.

Very truly yours,



Allan C. Moore

cc: Tina Wehrmeister
Director of Community Development Department

Lynn Tracy Nerland
City Attorney

James Hayes

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GAGEN, McCOY, McMAHON, KOSS, MARKOWITZ & RAINES
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
279 FRONT STREET
DANVILLE, CA 94526
PHONE (925) 837-0585



90-2267-1211

2/6/2012

1035

PAY Fifty & No/100 Dollars

50.0

TO THE
ORDER
OF

City of Antioch

GAGEN, McCOY, McMAHON, KOSS, MARKOWITZ & RAINES
TWO SIGNATURES REQUIRED OVER \$1,000.00 DOLLARS

AUTHORIZED SIGNATURE

⑈ 103546⑈ ⑆ 121122676⑆ 153453447705⑈

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1/23/11

I am appealing letter sent to Cot On The Web 2223a Buchanan rd Antioch CA 94509. It states that I need to get an arcade permit for the sale of internet time I am not a arcade in any way and do not sell anything but internet time.

Any questions

Patricia Simmons

925-209-8332

3127 Sunflower
Antioch CA 94531

Aeventtoremember@Comcast.net

CITY OF ANTIOCH
925-779-7055

RECH: 00477860 1/24/2012 12:13 PM
OPER: FV3 TERM: 003
REF#:

TRAN: 132.0000 Other Sv Chg Copies
APPEAL FOR COT ON THE WEB
Other Service Chars 50.00CR

TENDERED: 50.00 CASH
APPLIED: 50.00-

CHANGE: 0.00



ORIGINAL

RECEIVED

JAN 24 2012

CITY OF ANTIOCH
CITY CLERK

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1-12-12

To: The city of Antioch

I Am Appealing letter Received 1-5-12
by Tina Wehmeister stating my sales of
Internet Time/Phone Cards ARE Electronic
Games. T's internet cafe Does Not Sell
Any kind of Game At All. I Do Not
Feel A Electronic Game Permit is Needed
for T's internet cafe

RECEIVED

JAN 12 2012

CITY OF ANTIOCH
CITY CLERK

Thank
you

Patricia Simmons

T's internet cafe

925-209-8332

CITY OF ANTIOCH
925-779-7055

RECH: 00475867 1/12/2012 10:29 AM
OPER: FV3 TERM: 003
REF#:

TRAN: 132.0000 Other Sv Chg-Copies
PATRICIA SIMMONS
Other Service Chrg 50.000

TENDERED: 60.00 CASH
APPLIED: 50.00-

CHANGE: 10.00

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ATTACHMENT "C"

ORDINANCE NO. 2056-C-S

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH EXTENDING AN INTERIM URGENCY ZONING ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 PROHIBITING THE ISSUANCE OF PERMITS, LICENSES OR APPROVALS FOR CONSTRUCTION, ESTABLISHMENT OR OPERATION OF COMPUTER GAMING AND INTERNET ACCESS BUSINESSES WITHIN THE CITY ON AN INTERIM BASIS PENDING CONSIDERATION OF AMENDMENTS TO TITLE 9 OF THE ANTIOCH MUNICIPAL CODE

The City Council of the City of Antioch does ordain as follows:

SECTION 1. Interim Urgency Zoning Ordinance. This ordinance is adopted pursuant to the authority of Section 65858 of the Government Code of the State of California, the Antioch City Municipal Code and applicable laws.

SECTION 2. Findings. The Antioch City Council hereby finds, determines and declares as follows:

A. The City of Antioch holds the right to make and enforce all laws and regulations not in conflict with the general laws, and the City holds all rights and powers established by state law.

B. The City has received and anticipates additional requests for the construction, establishment and operation of Computer Gaming and Internet Access Businesses (as defined herein) within the City. However, the provisions of the City Municipal Code that may regulate the construction, 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 fully take into account the impacts related to the location and manner of construction, establishment and operation of Computer Gaming and Internet Access Businesses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community.

C. Computer Gaming and Internet Access Businesses often have local school students and minors as their target market, and thereby may encourage the assembly of significant numbers of minors without supervision by parents or guardians. Further, given concerns about attendance at the Antioch Unified School District such congregation of students should not be allowed during regular school hours.

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 may be considered 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 area and businesses, such as observed

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lines of individuals waiting to access these businesses. Some Computer Gaming and Internet Access Businesses may stage late-night gaming sessions, which may encourage violation of the City's curfew ordinance or create and promote other late-night noise and related impacts on the surrounding community. 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. 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.

E. The City Council of the City of Antioch is also concerned with the increased calls for service, increasing reports of violent criminal behavior and related detrimental neighborhood effects associated with Computer Gaming and Internet Access Businesses.

F. The City of Antioch, as well as neighboring cities, has 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 and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the 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 include the representational incidents below as findings as follows and as further described in attachments to the staff report:

1. On April 13, 2010, there was a call for service from T's Internet Café at 1836 A Street because of a fight over someone owing someone money and on July 23, 2010 a call for service regarding another fight.
2. At T's Internet Café at 1653 A Street on September 11, 2010, there was a call for service regarding possible assault, drug violations and carjacking. On November 18, 2010, a male robbed money from the business with a sawed-off shot gun and shot at one of the workers. On February 2, 2011, there was a call for service regarding drug selling. On July 21, 2011, there was a report of a car theft and then a fight broke out.
3. At the Internet Room at 2962 Delta Fair Boulevard, on January 28, 2012, there was a report of a stolen vehicle.
4. At T's Internet Café at 1908 A Street on August 20, 2011, someone was throwing things at the business and threatening to harm the employees.
5. While at Computer Gaming and Internet Access Businesses in Antioch, individuals have been arrested for robbery, narcotics violations, carjacking and other crimes, as well as on outstanding warrants. While some of

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these crimes may have occurred elsewhere, it does show a propensity for individuals who engage in criminal activity to patronize Computer Gaming and Internet Access Businesses.

6. At 2962 Delta Fair Boulevard, calls for service at that location and at neighboring businesses have increased from 109 to 259 over a twelve month period since the Internet Room started operating.
7. At 1836 A Street, before T's Internet Café opened there were 157 calls for service from that location and neighboring businesses over a 7-month period from February 1, 2009 through August 30, 2009. While T's Internet Café was operating at 1836 A Street, calls for service increased to 240 over a 7-month period from February 1, 2010 through August 30, 2010. When T's Internet Café closed at that location, calls for service from that location and neighboring businesses went back down to 158 calls for service over the 7-month period from February 1, 2011 through August 30, 2011, almost identical to the rates before T's Internet Café opened.

G. Without the enactment of this Ordinance, multiple applicants could quickly receive entitlements which 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 is in need of updating to protect the public against health, safety, and welfare dangers caused by Computer Gaming and Internet Access Businesses. In particular, although the City Council adopted Urgency Ordinance No. 2053 on February 28, 2012 and Ordinance No. 2054-C-S on March 13, 2012 adding Chapter 11 of Title of the Antioch Municipal Code regarding licensing procedures and certain operational regulations, the current provisions do not fully take into account the impacts related to the location, concentration and manner of construction, establishment and operation of Computer Gaming and Internet Access Businesses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community that could be addressed with a zoning ordinance.

The City requires additional time to prepare, evaluate and adopt reasonable regulations, including land use regulations through a zoning ordinance, regarding the construction, placement and operation of Computer Gaming and Internet Access Businesses so that such regulations are applied in a nondiscriminatory manner.

H. In order to prevent the frustration of these studies and the implementation of new regulations, the public interest, health, safety, and welfare require immediate enactment of this Ordinance. The absence of this Ordinance would impair the orderly and effective implementation of contemplated Municipal Code amendments, and any further authorization of these uses within the City during the period of the interim zoning regulations may be in conflict with or may frustrate the contemplated updates and revisions of the Municipal Code.

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I. Based on the foregoing, the City finds that there is a current and immediate threat to the public health, safety, or welfare and that this Ordinance is necessary in order to protect the City from the potential effects and impacts of Computer Gaming and Internet Access Businesses in the City, potential increases in crime, impacts on parking availability in the business areas of the City, the aesthetic impacts to the City, and other similar or related effects on property values and the quality of life in the City's neighborhoods.

J. The City Council further finds that this interim zoning regulation is a matter of local and City-wide importance and is not directed towards any particular business that currently seeks to construct or operate a Computer Gaming and Internet Access Business.

K. The City Council finds that this Ordinance is authorized by the City's police powers. The City Council further finds that the length of the interim zoning regulations imposed by this Ordinance will not in any way deprive any person of rights granted by State or federal laws, because the interim zoning regulation is short in duration and essential to protect the public health, safety and welfare.

L. City staff has provided a staff report indicating that additional time is needed to study these complicated issues and noticed a public hearing for April 10, 2012 for the City Council's consideration of an extension of the temporary moratorium.

SECTION 3. Interim Regulations. The following provisions are hereby adopted as interim zoning standards pertaining to the review or approval of any entitlements or the issuance of any permits or licenses pursuant to the Antioch Municipal Code for Computer Gaming and Internet Access Businesses. The approval of any entitlements or the issuance of any permit or license in the City in conflict with these provisions is expressly prohibited:

- A. **Restricted Activities.** In accordance with the authority granted the City of Antioch under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, the moratorium adopted by the City Council on February 28, 2012 is extended for 10 months and 15 days from the 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 a Computer Gaming and Internet Access Business in the City of Antioch. Additionally, Computer Gaming and Internet Access Business are hereby expressly prohibited in all areas and zoning districts of the City. The two existing Computer Gaming and Internet Access Businesses may continue to operate at their current locations: Internet Room at 2962 Delta Fair Boulevard and Cot on the Web at 2333 Buchanan Road. No expansion of the number of computer terminals is allowed. Expansion of tenant floor space is permitted in order

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to allow compliance with the licensing procedures and regulations in Title 5, Chapter 11 of the Antioch Municipal Code.

B. Definitions. In addition to the definitions contained in the City's Municipal Code, the following words and phrases shall, for the purposes of this Ordinance, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with the current provisions of the Municipal Code, the following definitions shall prevail:

1. "Computer Gaming and Internet Access Business" shall mean an establishment that provides more than four (4) computers or other electronic devices for access to the world wide web, internet, e-mail, video games or computer software programs which operate alone or are networked (via LAN, WAN or otherwise) or which function as a client/server program, and which seeks compensation, in any form, from users. Computer Gaming and Internet Access Business is synonymous with a personal computer ("PC") café, internet café, cyber café, sweepstakes gaming facilities, business center, internet sales business and internet center, but does not include a Public Use or Internet Learning Center as defined herein.

2. "Public Use or Internet Learning Center" shall mean an establishment that provides computer access which is operated by the City of Antioch, 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 in any form other than school tuition.

SECTION 4. CEQA. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 16061 (b) (3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

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SECTION 6. Effective Date. This interim ordinance shall take effect immediately upon its adoption and shall continue in effect for 10 months and 15 days from the date of its adoption by not less than a four-fifths vote of the Antioch City Council, unless superseded by a subsequent ordinance of the City Council.

SECTION 7. Report of Council. Ten days prior to the expiration of this Ordinance, or any extension thereof, this Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this ordinance, or any extension thereof.

SECTION 8. Declaration of Urgency. This ordinance is hereby declared to be an urgency measure necessary for the immediate protection of the public health, safety and welfare. This Council hereby finds that there is a current and immediate threat to the public health, safety and welfare. The reasons for this urgency are declared and set forth in Section 2 of this Ordinance and are incorporated herein by reference.

SECTION 9. Publication; Certification. The City Clerk shall certify to the adoption of this Ordinance and cause same to be published in accordance with State law.

* * * * *

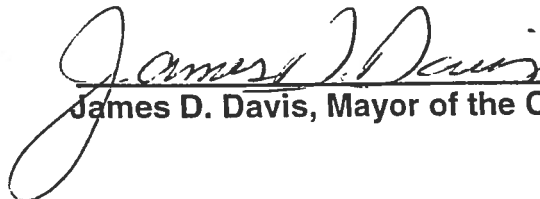
I HEREBY CERTIFY that the foregoing Ordinance was introduced and adopted as an urgency ordinance pursuant to the terms of California Government Code Section 65858 at a regular meeting of the City Council of the City of Antioch on the 10th day of April, 2012, by the following vote:

AYES: Council Members Kalinowski, Harper, Rocha, Agopian and Mayor Davis

NOES: None

ABSENT: None

ABSTAIN: None

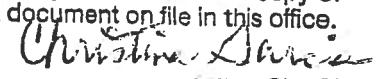

James D. Davis, Mayor of the City of Antioch

ATTEST:


Denise Skaggs, City Clerk of the City of Antioch

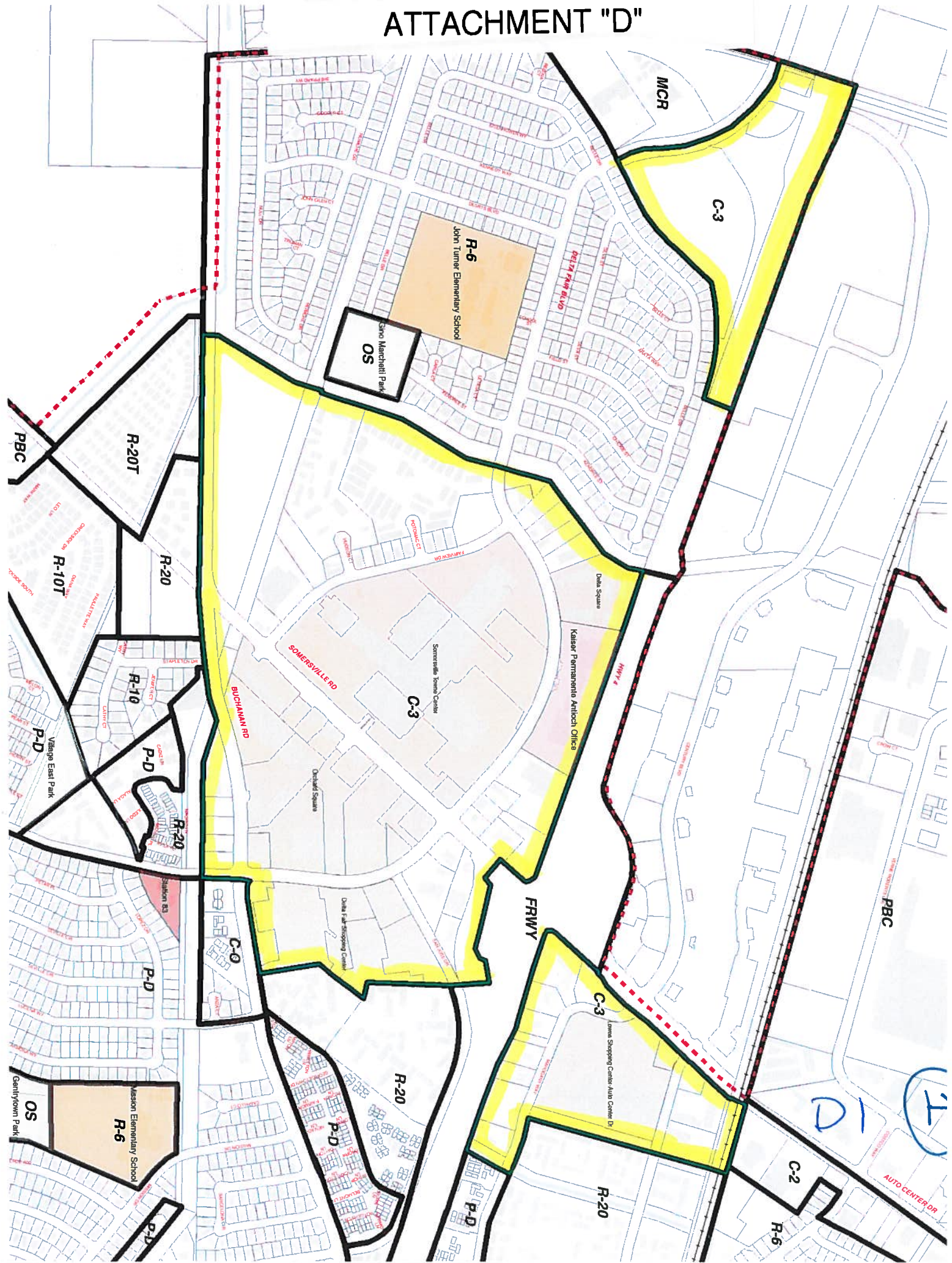
I certify that this is a true copy of
a document on file in this office.

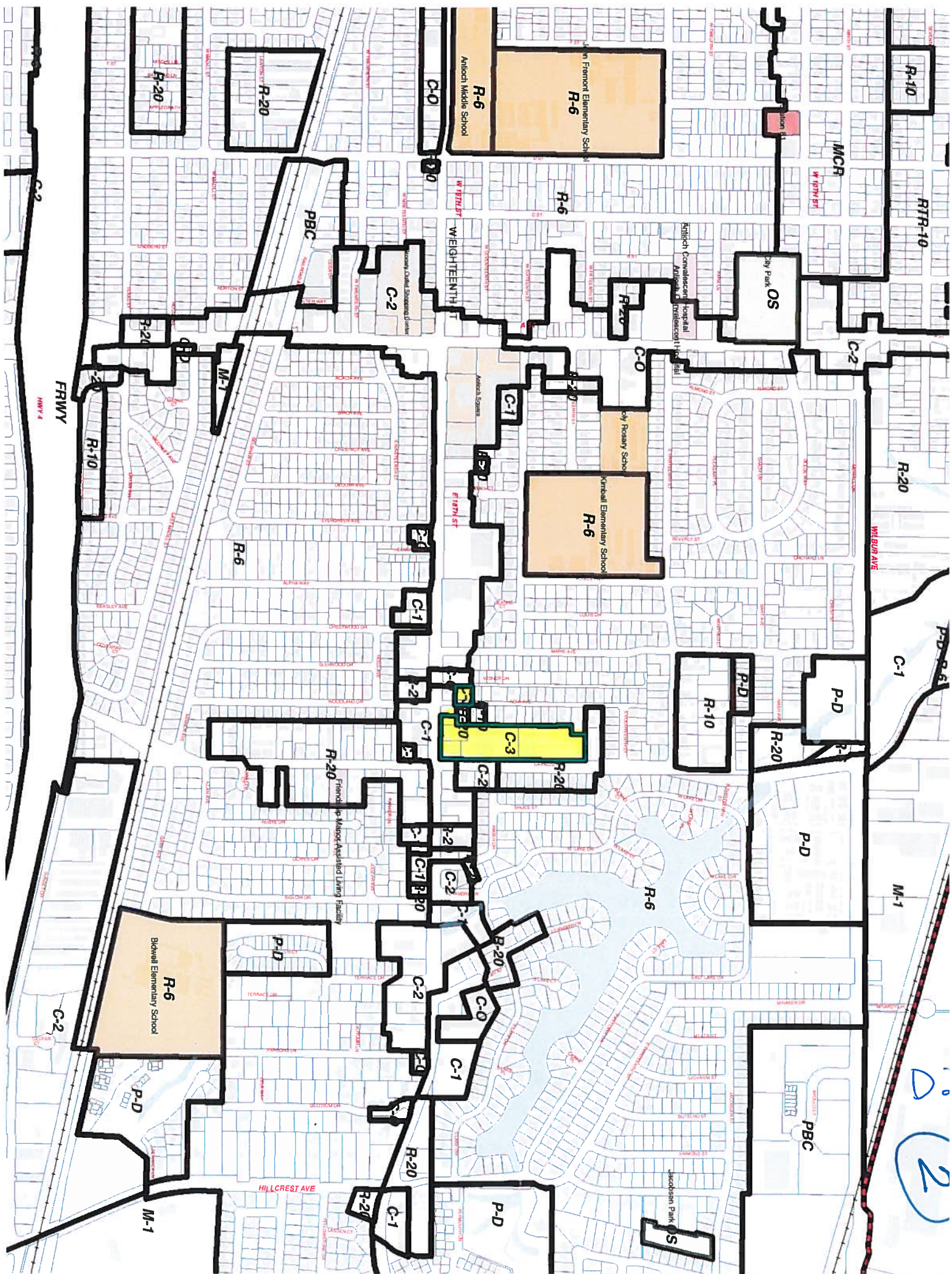
SEAL


Christine Garcia
City Clerk
City of Antioch, California

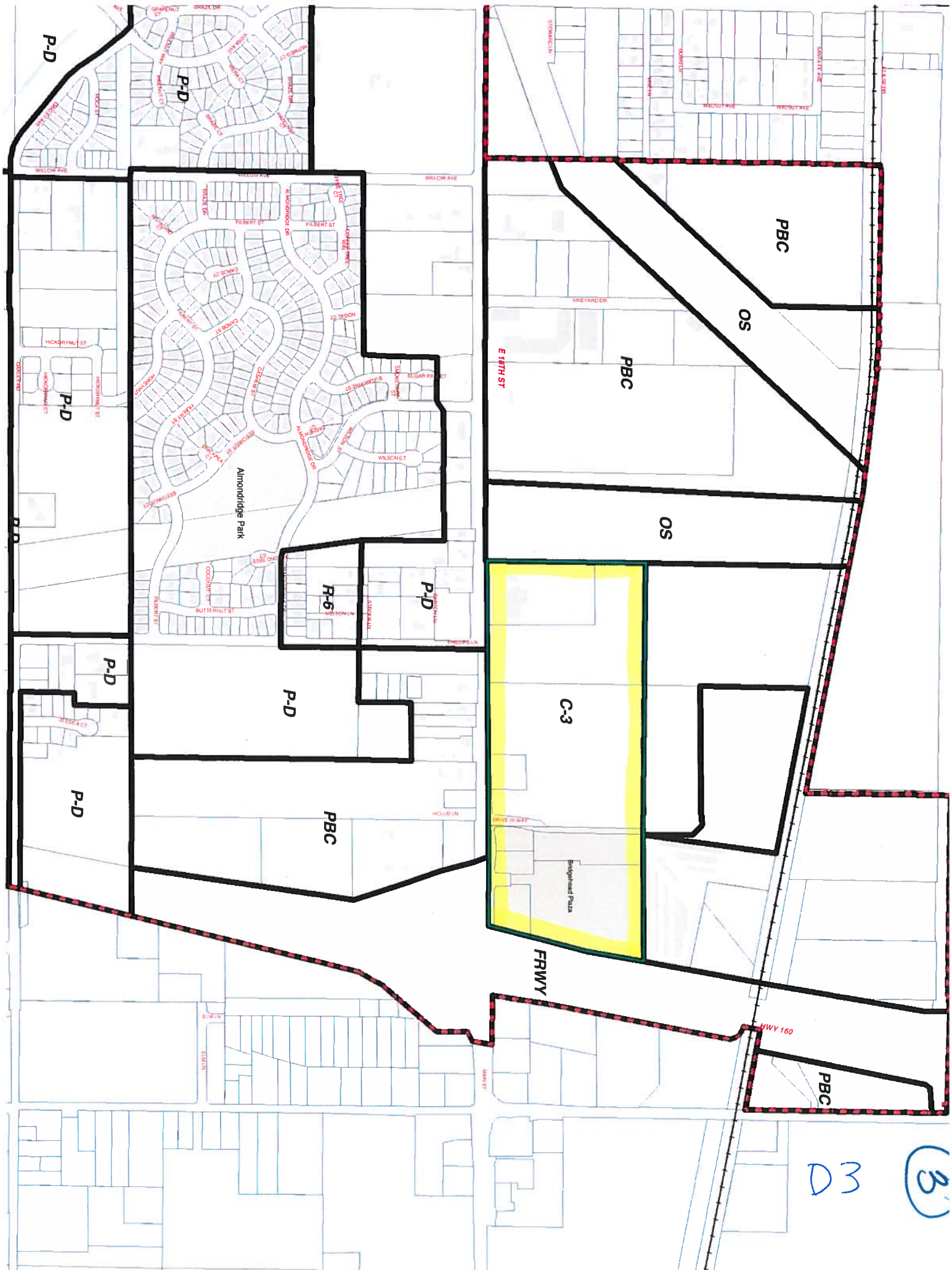
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ATTACHMENT "D"






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**STAFF REPORT TO THE PLANNING COMMISSION
FOR CONSIDERATION AT THE MEETING OF FEBRUARY 4, 2015**

Prepared by: Tina Wehrmeister, Community Development Director 
Date: January 27, 2015
Subject: Ordinance Establishing Zoning Regulations for Bingo Operations

RECOMMENDATION

It is recommended that the Planning Commission approve the attached resolution recommending that the City Council adopt the ordinance (Exhibit 1 to the proposed resolution that is Attachment A) establishing zoning regulations for Bingo Operations within the City of Antioch.

BACKGROUND

On July 22, 2014, the City Council adopted an urgency ordinance establishing a temporary moratorium on the issuance of permits, licenses, or approvals for construction, establishment or operation of new bingo halls or bingo operations, or the expansion of current bingo operations. The City Council extended the moratorium on August 26, 2014 (Attachment B). The staff report for the August 26, 2014 City Council meeting is attached (Attachment C), which also includes the staff report and attachments for the July 22, 2014 City Council meeting.

The staff reports and ordinances provide more details regarding the issues that led to the moratorium and need to establish zoning regulations to address public safety, health and welfare issues raised by bingo operations. Although small bingo games have occurred on a periodic basis for many years, these games were clearly of a small-scale, ancillary to other uses such as churches or the Veterans' Hall, and not generating complaints. However, the City began receiving applications for the establishment of sole use, possibly 24/7 bingo hall operations that raised more of the specter of large-scale gambling operations not unlike those recently addressed by the City with computer gaming at so-called "internet café's". These proposed bingo uses may not be complying with the "letter" or even the "intent" of State Penal Code provisions allowing only nonprofits to operate bingo games with the proceeds only being used for charitable purposes. Therefore, it became clear that the City's existing ordinance regarding regulations on bingo games needed to be updated to track the California Penal Code restrictions on bingo operations and to address these larger, sole-use, possibly 24/7 bingo hall operations.

Accordingly, staff is proposing two ordinances to address bingo operations: 1) a zoning ordinance before the Planning Commission that focuses on the location of bingo games

and the requirement that the use be ancillary to a nonprofit use; and 2) a “police power” ordinance that will be presented to the City Council and focus on hours of operation, nonprofit nature of the operator, amount of prizes, minors, etc., along with the proposed zoning ordinance.

PROPOSED ZONING ORDINANCE

The challenge with drafting a zoning ordinance for bingo operations is the desire not to penalize the small-scale, clearly ancillary bingo games that have been occurring at churches (i.e. religious assemblies), schools, the senior center and Veterans’ Halls without complaint as successful fundraising endeavors for legitimate nonprofits. This is true even when some religious assemblies and schools are located within residential neighborhoods. Requiring those uses to now obtain a use permit is burdensome for those nonprofits, and for City staff with its currently limited resources.

Thus, the proposed ordinance (Exhibit 1 to the proposed resolution that is Attachment A):

- generally allows bingo games in non-residential zoning districts, but only if the use is 1) located ancillary to a validly located nonprofit; 2) on property that the nonprofit owns or leases; and 3) the use complies with State laws, the Antioch Municipal Code, and the Building Code; and
- prohibits bingo games in residential zoning districts unless the use is: 1) located ancillary to validly located nonprofit religious assemblies or schools that are allowed in certain locations in a residential district pursuant to Antioch Municipal Code section 9-5.3832; 2) on property that the religious assembly or school owns or leases; and 3) the use complies with State laws, the Antioch Municipal Code, and the Building Code.

ATTACHMENTS

- A. Proposed Resolution with Proposed Zoning Ordinance attached as Exhibit 1
- B. Ordinance No. 2093-C-S adopted on August 26, 2014 extending an interim urgency zoning ordinance regarding bingo halls or operations
- C. Staff report for the City Council meeting on August 26, 2014, which includes the staff report for the City Council meeting on July 22, 2014

ATTACHMENT "A"

RESOLUTION NO. 2015-**

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR BINGO OPERATIONS

WHEREAS, the Planning Commission of the City of Antioch did receive an application from the **City of Antioch** requesting approval of an amendment to the Zoning Ordinance of the Antioch Municipal Code to establish regulations for Bingo Halls and Operations (Z-15-01) following the City Council's adoption of an interim urgency zoning ordinance prohibiting the issuance of permits, licenses or approvals for construction, establishment or operation of any new bingo halls or bingo operations, or the expansion of current bingo operations, which was extended by the City Council on August 26, 2014 pursuant to Ordinance No. 2093-C-S; and,

WHEREAS, pursuant to CEQA Statutes Section 15061(b)(3), the proposed amendments to the Antioch Municipal Code are exempt from CEQA because it can be seen with certainty to have no possibility of a significant effect on the environment; and,

WHEREAS, the Planning Commission duly gave notice of public hearing as required by law; and,

WHEREAS, on February 4, 2015, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission, after reviewing the staff report and considering testimony offered, does hereby recommend that the City Council **ADOPT** the attached ordinance (Exhibit 1) establishing zoning regulations for bingo operations (Z-15-01).

* * * * *

I HEREBY CERTIFY the foregoing resolution was duly adopted by the Planning Commission of the City of Antioch, County of Contra Costa, State of California, at a regular meeting of said Planning Commission held on February 4, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tina Wehrmeister, Secretary to the
Planning Commission

EXHIBIT 1

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH ESTABLISHING ZONING REGULATIONS FOR BINGO OPERATIONS

SECTION 1. Findings. The Antioch City Council hereby finds, determines and declares as follows:

A. The City of Antioch holds the right to make and enforce all laws and regulations not in conflict with general laws, and the City holds all rights and powers established by state law.

B. On July 22, 2014, pursuant to Ordinance No. 2091-C-S, the City Council adopted an interim urgency zoning ordinance prohibiting the issuance of permits, licenses or approvals for construction, establishment or operation of any new bingo halls or bingo operations, or the expansion of current bingo operations, which was extended by the City Council on August 26, 2014 pursuant to Ordinance No. 2093-C-S, pursuant to findings regarding a current and immediate threat to the public health, safety and welfare from the effects and impacts of bingo games and particularly proposed stand-alone, continually operating bingo halls that were not proposed to be ancillary to existing religious assembly or other nonprofit uses that could lead to an increase in crime (including robbery, illegal drug use and sales, burglary, assaults, loan sharking and prostitution); increase in juvenile truancy; decreased parking availability due to the extended time that patrons of these uses stay at the location; and other similar effects on property values and the quality of life in Antioch. The findings in Ordinance No. 2091-C-S and Ordinance No. 2093-C-S are incorporated into this ordinance.

C. The Planning Commission conducted a duly noticed public hearing on February 4, 2015 at which time a resolution was approved to initiate and recommend to the City Council that this ordinance be adopted. The City Council held a duly noticed public hearing on February 10, 2015, at which all interested persons were allowed to address the Council regarding adoption of this ordinance.

D. The City Council finds that the public necessity requires the proposed zoning ordinance amendments to allow bingo games only in non-residential zones and only in residential zones at religious assemblies and schools pursuant to Antioch Municipal Code section 9-5.3844.

E. This proposed ordinance is not detrimental to properties within Antioch and in conformance with the Antioch General Plan.

SECTION 2. Section 9-5.3844 is added to the Antioch Municipal Code:

§ 9-5.3844 BINGO OPERATIONS

- A. Bingo games may generally be conducted in any non-residential zone if the requirements of subsection (C) below are met.
- B. Bingo games may not be conducted in a residential zone in the city, except in religious assemblies and schools within residentially zoned districts under the authority of section 9-5.3832 of this code and if the requirements in subsection (C) below are met.
- C. Bingo games or operations must meet the following criteria to be allowed:
- (1) the bingo use is ancillary to a validly-existing nonprofit religious assembly or other nonprofit organization;
 - (2) is located on property that the nonprofit religious assembly or nonprofit organization owns or leases, or on property whose use is donated to the nonprofit organization and the property is used by the organization for an office or for the performance of the purposes for which the organization is organized and the nonprofit use is otherwise in conformance with this zoning code;
 - (3) the building in which the bingo games will be conducted is in full compliance with the state building code, as set forth in section 8-1.01 of this code; and
 - (4) the bingo operations conform with state law and Chapter 15 of Title 5 of the Antioch Municipal Code, as they may be amended.

SECTION 3. CEQA.

This Ordinance is subject to the CEQA exemption contained in CEQA Guideline section 15061 (b) (3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 4. Publication; Effective Date.

This Ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption by the City Council at a second reading and shall be posted and published in accordance with the California Government Code.

SECTION 5. Severability.

Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was introduced at a regular meeting of the City Council of the City of Antioch held on the ____ day of ____ and passed and introduced at a regular meeting thereof, held on the ____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "B"

ORDINANCE NO. 2093-C-S

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH EXTENDING AN INTERIM URGENCY ZONING ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 PROHIBITING THE ISSUANCE OF PERMITS, LICENSES OR APPROVALS FOR CONSTRUCTION, ESTABLISHMENT OR OPERATION OF NEW BINGO HALLS OR OPERATIONS, OR THE EXPANSION OF CURRENT BINGO OPERATIONS, WITHIN THE CITY ON AN INTERIM BASIS PENDING CONSIDERATION OF AMENDMENTS TO TITLE 5, CHAPTER 15 AND TITLE 9 OF THE ANTIOCH MUNICIPAL CODE FOR A PERIOD OF 10 MONTHS AND 15 DAYS AND DECLARING THE URGENCY THEREOF

The City Council of the City of Antioch does ordain as follows:

SECTION 1. Interim Urgency Zoning Ordinance. This ordinance is adopted pursuant to the authority of Section 65858 of the Government Code of the State of California, the Antioch City Municipal Code and applicable laws.

SECTION 2. Findings. The Antioch City Council hereby finds, determines and declares as follows:

A. The City of Antioch may make and enforce all laws and regulations not in conflict with the general laws, and the City holds all rights and powers established by state law.

B. On July 22, 2014, pursuant to Government Code sections 65858, the City Council adopted Ordinance No. 2091-C-S ("Interim Ordinance") to establish a 45-day moratorium on the issuance of any new permit, license or other approvals for new or expanded bingo games or operations within the City.

C. The City has received and anticipates additional requests for the construction, establishment and operation of bingo halls and/or bingo operations within the City. However, the provisions of the City Municipal Code that may regulate the construction, operation, and establishment of bingo halls and/or bingo operations in the City are inadequate and need review, study, and revision. The current provisions also fail to fully take into account the impacts related to the location and manner of construction, establishment and operation of bingo halls and/or bingo operations, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community.

D. The City of Antioch is aware that other cities, including Pleasant Hill, Concord and Fairfield, have experienced land use impacts and/or criminal activity associated with bingo halls and/or bingo operations, including incidents involving assaults, theft, prostitution, loan-sharking and drug dealing. These impacts are set forth in more detail in the staff report and attachments provided to the City Council at the July 22, 2014 and August 26, 2014 meetings (<http://www.ci.antioch.ca.us/CityGov/agendas/default.asp>). These impacts have particularly occurred at facilities that appear only to exist for the purpose of running continual bingo

games, as distinguished from occasional bingo games operated as an ancillary or occasional use at an established non-profit location.

E. The City is not aware of any currently operating bingo halls in Antioch at facilities that exist only for the purpose of running continual bingo games, as distinguished from occasional bingo games currently operating as an ancillary use at a few established non-profit locations in the City. The City Council of the City of Antioch is concerned with the potential increased calls for police services, increasing reports of assaults, theft, loan sharking behavior, prostitution and drug dealing and related detrimental neighborhood effects associated with bingo halls and/or expanded bingo operations, particularly at facilities that appear only to exist for the purpose of running continual bingo games. The potential for increased calls for police service is of particular concern given the current staffing of the Antioch Police Department and challenges in responding to existing criminal activity in the community. (see Police Department presentations at the City Council meetings on July 22, 2014 and April 22, 2014 at <http://www.ci.antioch.ca.us/CityGov/agendas/default.asp>)

F. Under California Constitution and Penal Code, bingo games are illegal lotteries unless conducted in strict conformance with the detailed requirements in the Penal Code. In addition, there would be further State requirements if a city is going to allow remote caller bingo.

G. While the City's Municipal Code does nominally address bingo operations in the City, that section of the Code has not been revised or updated in nearly 35 years, despite revisions to the State Penal Code regarding bingo games during this period.

H. During the past several years, the City has faced similar land use impacts and criminal activity at computer gaming and internet access businesses, leading the City to adopt a moratorium and eventually regular ordinances to address those issues (see the attached and incorporated staff reports, resolutions and ordinances at <http://www.ci.antioch.ca.us/CityGov/agendas/CityCouncil/2012/agendas/022812/022812.pdf> ; <http://www.ci.antioch.ca.us/CityGov/agendas/CityCouncil/2013/agendas/012213/012213.pdf> ; <http://www.ci.antioch.ca.us/CityGov/agendas/CityCouncil/2013/agendas/111213/111213.pdf>). In addition, the City has also been required to address issues regarding card rooms and illegal activity occurring at those establishments (see the attached and incorporated staff report, resolution and newspaper article regarding Kelly's Card Room in Antioch at <http://www.ci.antioch.ca.us/CityGov/agendas/CityCouncil/2013/agendas/111213/111213.pdf>; http://www.justice.gov/usao/can/news/2014/2014_04_25_keslinke.charged.press.html). These computer gaming and internet access businesses, card rooms and continual or expanded bingo operations all raise some similar issues regarding gambling and the criminal and secondary land use impacts of gambling.

I. Since the adoption of the interim urgency ordinance prohibiting new bingo halls or bingo operations or the expansion of current bingo operations on July 22, 2014, additional questions have been raised about the knowledge and ability of current applicants to comply with the requirements in the California Penal Code regarding nonprofits conducting bingo operations as detailed in the staff report for the City Council meeting on August 26, 2014, which provide further justification for the need to update the City's Municipal Code regarding

bingo operations to ensure that future bingo use applications are consistent with both State and City laws and land use requirements.

J. Without the enactment of this Ordinance to extend the interim urgency ordinance prohibiting new bingo halls or bingo operations or the expansion of current bingo operations multiple applicants could quickly receive entitlements which would allow additional bingo halls and/or bingo operations that pose a threat to the public health, safety, and welfare. The City Council hereby determines that the Municipal Code is in need of updating to protect the public against health, safety, and welfare dangers caused by bingo halls and/or bingo operations. The City requires additional time to prepare, evaluate and adopt reasonable regulations regarding the construction, placement and operation of bingo halls and/or bingo operations so that such regulations are applied in a nondiscriminatory manner.

K. In order to prevent the frustration of these studies and the implementation of new regulations, the public interest, health, safety, and welfare require immediate enactment of this Ordinance to extend the interim urgency ordinance. The absence of this Ordinance would impair the orderly and effective implementation of contemplated Municipal Code amendments, and any further authorization of these uses within the City during the period of the interim zoning regulations may be in conflict with or may frustrate the contemplated updates and revisions of the Municipal Code.

L. Based on the foregoing, the City finds that there is a current and immediate threat to the public health, safety, or welfare and that this Ordinance is necessary in order to protect the City from the potential effects and impacts of bingo halls and/or bingo operations in the City, potential increases in crime, impacts on parking availability in the business areas of the City, the aesthetic impacts to the City, and other similar or related effects on property values and the quality of life in the City's neighborhoods.

M. The City Council further finds that this interim zoning regulation is a matter of local and City-wide importance and is not directed towards any particular business that currently seeks to construct or operate bingo halls and/or bingo operations.

N. The City Council finds that this Ordinance is authorized by the City's police powers. The City Council further finds that the length of the interim zoning regulations imposed by this Ordinance will not in any way deprive any person of rights granted by state or federal laws, because the interim zoning regulation is short in duration and essential to protect the public health, safety and welfare.

SECTION 3. Extension of Temporary Moratorium.

A. In accordance with the authority granted the City under Government Code section 65858, and pursuant to the findings stated herein, the City Council hereby (1) finds that there exists a current and immediate threat to the public health, safety, and welfare requiring this change in the City's permitting provisions for bingo halls and/or bingo operations, (2) further finds that this ordinance is necessary for the immediate preservation of the public peace,

health and safety, and (3) hereby declares and imposes a temporary moratorium for the immediate preservation of the public health, safety and welfare as set forth below.

B. The City orders as follows: For a period of ten (10) months and fifteen (15) days from and after the date of adoption of this Ordinance, no permits (including use permits, conditional use permits, special or temporary permits) or other applicable use entitlement (including variances, building permits, certificates of occupancy or business licenses) may be issued for the establishment or operation of new bingo halls and/or bingo operations within the City, except as otherwise provided for herein. In addition, no existing bingo halls and/or bingo operations may be relocated or expanded, whether by means of additional space, construction of new facility, reconfiguration of existing facility, additional equipment, or additional days or hours of operation.

C. The moratorium set forth above shall not apply to the renewal of any existing business license for bingo halls and/or bingo operations or existing bingo halls and/or bingo operations permit issued under Title 5, Chapter 15 of the Antioch Municipal Code provided the renewal seeks to maintain the business in the existing location with no expansion in use or facilities, whether by means of additional space, construction of new facility, reconfiguration of existing facility, additional equipment, or additional days or hours of operation.

SECTION 4. CEQA. This ordinance is not subject to CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, because it has no potential for resulting in a physical change to the environment, directly or indirectly; rather it prevents changes in the environment pending the completion of the contemplated municipal code review.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date. This interim ordinance shall take effect immediately upon its adoption and shall continue in effect for 10 months and 15 days from the date of its adoption by not less than a four-fifths vote of the Antioch City Council, and shall thereafter be of no further force and effect, unless, after notice pursuant to Government Code Section 65090 and public hearing, the Antioch City Council extends this Ordinance, and the interim zoning regulations adopted thereby, pursuant to Government Code Section 65858.

SECTION 7. Report of Council. Ten days prior to the expiration of this Ordinance, or any extension thereof, this Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this ordinance, or any extension thereof.

SECTION 8. Declaration of Urgency. This ordinance is hereby declared to be an urgency measure necessary for the immediate protection of the public health, safety and welfare. This Council hereby finds that there is a current and immediate threat to the public health, safety and welfare. The reasons for this urgency are declared and set forth in Section 2 of this Ordinance and are incorporated herein by reference.

SECTION 9. Publication; Certification. The City Clerk shall certify to the adoption of this Ordinance and cause same to be published in accordance with State law.

* * * * *

I HEREBY CERTIFY that the foregoing Ordinance was introduced and adopted as an urgency ordinance pursuant to the terms of California Government Code Section 65858 at a regular meeting of the City Council of the City of Antioch on the 26th day of August, 2014, by the following vote:

AYES: Council Members Wilson, Rocha, Tiscareno and Mayor Harper

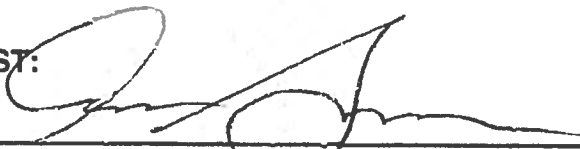
NOES: None

ABSENT: None

ABSTAIN: None



Wade Harper, Mayor of the City of Antioch

ATTEST: 

Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "C"

STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE MEETING OF AUGUST 26, 2014

Prepared by: Mindy Gentry, Senior Planner *MA*
Reviewed by: Tina Wehrmeister, Community Development Director *TW*
Date: August 21, 2014
Subject: **Bingo Halls and Bingo Operations Extension of an Urgency Zoning Ordinance**

RECOMMENDATION

It is recommended that the City Council:

Approve a motion to adopt the attached urgency zoning ordinance extending a temporary moratorium prohibiting the issuance of permits, licenses or approvals for construction, establishment or operation of any new bingo halls or bingo operations, or the expansion of current bingo operations, within the City of Antioch on an interim basis pending consideration of amendments to Title 5, Chapter 15 and Title 9 of the Antioch Municipal Code for a period of 10 months and 15 days and declaring the urgency thereof (four-fifths (4/5th) vote required) (Attachment "A");

BACKGROUND INFORMATION

Pursuant to Government Code section 65858, the City Council adopted Ordinance No. 2091-C-S ("Interim Ordinance") on July 22, 2014 to establish a temporary moratorium on the issuance of any permits, licenses or other approvals for the construction, establishment or operation of bingo halls and/or bingo operations, or the expansion of current bingo operations within the City. The staff report for that City Council meeting is included as Attachment "B" and provides more details regarding the issue and the urgent need for a temporary moratorium to address public safety, health, and welfare issues raised by these bingo halls and bingo operations.

The Interim Ordinance, by law, is effective for only 45 days and is therefore set to expire on September 5, 2014. Government Code section 65858 authorizes the City to extend the moratorium by adopting another urgency ordinance, which would be effective for an additional 10 months and 15 days ("Extension Ordinance") (Attachment "A").

Following the adoption of the Interim Ordinance, staff has begun to review potential amendments to the Antioch Municipal Code ("AMC") with respect to the regulation of bingo games and operations in the City, including potential zoning issues. As part of this review, staff has been gathering and reviewing ordinances from other jurisdictions that regulate bingo games and operations, as well as following up on information presented to the City Council at the July 22, 2014 meeting, including data and other findings from the cities of Pleasant Hill, Concord and Fairfield. Staff needs additional time to study the extent to which new regulations may be desirable and the scope of such regulations with respect to the establishment and operation of bingo halls and/or bingo operations within the City. Staff is continuing to review the City's options, and intends to provide recommendations in the near future.

This ordinance may include an amendment to the Zoning Code, Title 9, Chapter 5 of the Municipal Code, and will therefore require review and recommendation by the Planning Commission at a duly noticed public hearing and review and adoption by the City Council at duly noticed public hearings, pursuant to Government Code section 65854.

Staff has not completed its research and drafting of said regulations. Additional time is required to prepare draft regulations and to consult with interested parties and for public hearings. Also, due to staffing levels in the Community Development Department, Police Department and City Attorney's Office, the complexity of the issues to be studied and the ongoing public safety, health and welfare issues raised by bingo halls and bingo operations, it is recommended that the moratorium be extended for 10 months and 15 days. Any further extension would require an additional noticed public hearing. Proper noticing procedures were followed in advance of this item being placed on the agenda.

It is prudent to extend the moratorium for the statutorily-allowed period because the City cannot predict the precise length of time necessary to complete public hearings. However, adoption of the new ordinance and repeal of this moratorium may take place sooner.

CURRENT BINGO APPLICATIONS

Also, since the adoption of the 45 day urgency ordinance, staff has researched the organization "It Takes a Village", whose representatives voiced opposition to the moratorium. "It Takes a Village" also has an active application with the Community Development Department requesting a use permit to operate a bingo hall. Staff has found "It Takes a Village" does not appear to be currently registered as a nonprofit organization, which is required by the State Penal Code to operate a bingo game. Further, the written synopsis and the public testimony provided by Mr. Al Davis at the July 22nd Council hearing, suggests that "It Takes a Village" staff would be paid to operate the proposed bingo facility (see the video of the City Council meeting at: <http://www.ci.antioch.ca.us/CityGov/CouncilMeetings/072214/>). This is also contrary to the State Penal Code, which does not allow any person to receive pay or a profit, wage, or salary from any bingo game except for security personnel.

These inconsistencies with State law illustrate the need to update the City's Municipal Code regarding bingo operations, which has not been revised or updated in nearly 35 years. Clearly, not all applicants are familiar with State requirements. Extending the moratorium to allow sufficient time to update Code regulations and application requirements will ensure that future bingo use requests are consistent with both State and City laws and land use requirements.

Since the July 22, 2014 hearing, staff has not received any further communications from either applicant: "It Takes a Village" or Ms. Tricia Simmons. However, staff received a letter opposing any further bingo operations within the City (Attachment "C").

City Staff, including the Police Department, is concerned with the potential increased calls for police services, increasing reports of assaults, thefts, prostitution, loan-sharking and drug dealing and related detrimental neighborhood effects associated with bingo hall and/or expanded bingo operations, particularly at facilities that appear to exist only for the purpose of running continual bingo games. The potential for increased calls for police service is of particular concern given the current staffing of the Antioch Police Department and challenges in responding to existing criminal activity in the community.

ENVIRONMENTAL

The moratorium extension contemplated herein is not subject to CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in a physical change to the environment, directly or indirectly; rather it prevents changes in the environment pending the completion of the contemplated municipal code review).

FISCAL IMPACT

There is no direct fiscal impact with the adoption of the proposed Interim Urgency Zoning Ordinance. The organizations that can legally operate bingo halls and/or bingo operations are non-profits and are exempt from the business license tax. There will be staff time expended to draft a regular ordinance and to prepare a zoning amendment, if appropriate.

OPTIONS

1. If the Council chooses not to adopt the Interim Urgency Zoning Ordinance by 4/5 vote, then additional bingo halls and/or bingo operations could open with the approval of a use permit in any zoning district without the benefit of the City further studying the impacts of these businesses and appropriate land use regulations or police regulatory requirements, when the moratorium expires on September 5, 2014.

ATTACHMENTS

- A. Interim Urgency Zoning Ordinance prohibiting the issuance of permits, licenses or approvals for construction, establishment or operation of any new bingo halls or operations, or the expansion of current bingo operations, within the City of Antioch on an interim basis pending consideration of amendments to Title 5, Chapter 15 and Title 9 of the Antioch Municipal Code for a period of 10 months and 15 days and declaring the urgency thereof
- B. Staff Report and Minutes from the July 22, 2014 City Council Hearing
- C. Letter of Opposition to Bingo Operations Dated August 7, 2014 from Francine McMahon of East County Hot Shots

ATTACHMENT "A"

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH EXTENDING AN INTERIM URGENCY ZONING ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 PROHIBITING THE ISSUANCE OF PERMITS, LICENSES OR APPROVALS FOR CONSTRUCTION, ESTABLISHMENT OR OPERATION OF NEW BINGO HALLS OR OPERATIONS, OR THE EXPANSION OF CURRENT BINGO OPERATIONS, WITHIN THE CITY ON AN INTERIM BASIS PENDING CONSIDERATION OF AMENDMENTS TO TITLE 5, CHAPTER 15 AND TITLE 9 OF THE ANTIOCH MUNICIPAL CODE FOR A PERIOD OF 10 MONTHS AND 15 DAYS AND DECLARING THE URGENCY THEREOF

The City Council of the City of Antioch does ordain as follows:

SECTION 1. Interim Urgency Zoning Ordinance. This ordinance is adopted pursuant to the authority of Section 65858 of the Government Code of the State of California, the Antioch City Municipal Code and applicable laws.

SECTION 2. Findings. The Antioch City Council hereby finds, determines and declares as follows:

A. The City of Antioch may make and enforce all laws and regulations not in conflict with the general laws, and the City holds all rights and powers established by state law.

B. On July 22, 2014, pursuant to Government Code sections 65858, the City Council adopted Ordinance No. 2091-C-S ("Interim Ordinance") to establish a 45-day moratorium on the issuance of any new permit, license or other approvals for new or expanded bingo games or operations within the City.

C. The City has received and anticipates additional requests for the construction, establishment and operation of bingo halls and/or bingo operations within the City. However, the provisions of the City Municipal Code that may regulate the construction, operation, and establishment of bingo halls and/or bingo operations in the City are inadequate and need review, study, and revision. The current provisions also fail to fully take into account the impacts related to the location and manner of construction, establishment and operation of bingo halls and/or bingo operations, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community.

D. The City of Antioch is aware that other cities, including Pleasant Hill, Concord and Fairfield, have experienced land use impacts and/or criminal activity associated with bingo halls and/or bingo operations, including incidents involving assaults, theft, prostitution, loan-sharking and drug dealing. These impacts are set forth in more detail in the staff report and attachments provided to the City Council at the July 22, 2014 and August 26, 2014 meetings (<http://www.ci.antioch.ca.us/CityGov/agendas/default.asp>). These impacts have particularly occurred at facilities that appear only to exist for the purpose of running continual bingo

games, as distinguished from occasional bingo games operated as an ancillary or occasional use at an established non-profit location.

E. The City is not aware of any currently operating bingo halls in Antioch at facilities that exist only for the purpose of running continual bingo games, as distinguished from occasional bingo games currently operating as an ancillary use at a few established non-profit locations in the City. The City Council of the City of Antioch is concerned with the potential increased calls for police services, increasing reports of assaults, theft, loan sharking behavior, prostitution and drug dealing and related detrimental neighborhood effects associated with bingo halls and/or expanded bingo operations, particularly at facilities that appear only to exist for the purpose of running continual bingo games. The potential for increased calls for police service is of particular concern given the current staffing of the Antioch Police Department and challenges in responding to existing criminal activity in the community. (see Police Department presentations at the City Council meetings on July 22, 2014 and April 22, 2014 at <http://www.ci.antioch.ca.us/CityGov/agendas/default.asp>)

F. Under California Constitution and Penal Code, bingo games are illegal lotteries unless conducted in strict conformance with the detailed requirements in the Penal Code. In addition, there would be further State requirements if a city is going to allow remote caller bingo.

G. While the City's Municipal Code does nominally address bingo operations in the City, that section of the Code has not been revised or updated in nearly 35 years, despite revisions to the State Penal Code regarding bingo games during this period.

H. During the past several years, the City has faced similar land use impacts and criminal activity at computer gaming and internet access businesses, leading the City to adopt a moratorium and eventually regular ordinances to address those issues (see the attached and incorporated staff reports, resolutions and ordinances at <http://www.ci.antioch.ca.us/CityGov/agendas/CityCouncil/2012/agendas/022812/022812.pdf> ; <http://www.ci.antioch.ca.us/CityGov/agendas/CityCouncil/2013/agendas/012213/012213.pdf> ; <http://www.ci.antioch.ca.us/CityGov/agendas/CityCouncil/2013/agendas/111213/111213.pdf>). In addition, the City has also been required to address issues regarding card rooms and illegal activity occurring at those establishments (see the attached and incorporated staff report, resolution and newspaper article regarding Kelly's Card Room in Antioch at <http://www.ci.antioch.ca.us/CityGov/agendas/CityCouncil/2013/agendas/111213/111213.pdf>; http://www.justice.gov/usao/can/news/2014/2014_04_25_kslinke.charged.press.html). These computer gaming and internet access businesses, card rooms and continual or expanded bingo operations all raise some similar issues regarding gambling and the criminal and secondary land use impacts of gambling.

I. Since the adoption of the interim urgency ordinance prohibiting new bingo halls or bingo operations or the expansion of current bingo operations on July 22, 2014, additional questions have been raised about the knowledge and ability of current applicants to comply with the requirements in the California Penal Code regarding nonprofits conducting bingo operations as detailed in the staff report for the City Council meeting on August 26, 2014, which provide further justification for the need to update the City's Municipal Code regarding

bingo operations to ensure that future bingo use applications are consistent with both State and City laws and land use requirements.

J. Without the enactment of this Ordinance to extend the interim urgency ordinance prohibiting new bingo halls or bingo operations or the expansion of current bingo operations multiple applicants could quickly receive entitlements which would allow additional bingo halls and/or bingo operations that pose a threat to the public health, safety, and welfare. The City Council hereby determines that the Municipal Code is in need of updating to protect the public against health, safety, and welfare dangers caused by bingo halls and/or bingo operations. The City requires additional time to prepare, evaluate and adopt reasonable regulations regarding the construction, placement and operation of bingo halls and/or bingo operations so that such regulations are applied in a nondiscriminatory manner.

K. In order to prevent the frustration of these studies and the implementation of new regulations, the public interest, health, safety, and welfare require immediate enactment of this Ordinance to extend the interim urgency ordinance. The absence of this Ordinance would impair the orderly and effective implementation of contemplated Municipal Code amendments, and any further authorization of these uses within the City during the period of the interim zoning regulations may be in conflict with or may frustrate the contemplated updates and revisions of the Municipal Code.

L. Based on the foregoing, the City finds that there is a current and immediate threat to the public health, safety, or welfare and that this Ordinance is necessary in order to protect the City from the potential effects and impacts of bingo halls and/or bingo operations in the City, potential increases in crime, impacts on parking availability in the business areas of the City, the aesthetic impacts to the City, and other similar or related effects on property values and the quality of life in the City's neighborhoods.

M. The City Council further finds that this interim zoning regulation is a matter of local and City-wide importance and is not directed towards any particular business that currently seeks to construct or operate bingo halls and/or bingo operations.

N. The City Council finds that this Ordinance is authorized by the City's police powers. The City Council further finds that the length of the interim zoning regulations imposed by this Ordinance will not in any way deprive any person of rights granted by state or federal laws, because the interim zoning regulation is short in duration and essential to protect the public health, safety and welfare.

SECTION 3. Extension of Temporary Moratorium.

A. In accordance with the authority granted the City under Government Code section 65858, and pursuant to the findings stated herein, the City Council hereby (1) finds that there exists a current and immediate threat to the public health, safety, and welfare requiring this change in the City's permitting provisions for bingo halls and/or bingo operations, (2) further finds that this ordinance is necessary for the immediate preservation of the public peace,

health and safety, and (3) hereby declares and imposes a temporary moratorium for the immediate preservation of the public health, safety and welfare as set forth below.

B. The City orders as follows: For a period of ten (10) months and fifteen (15) days from and after the date of adoption of this Ordinance, no permits (including use permits, conditional use permits, special or temporary permits) or other applicable use entitlement (including variances, building permits, certificates of occupancy or business licenses) may be issued for the establishment or operation of new bingo halls and/or bingo operations within the City, except as otherwise provided for herein. In addition, no existing bingo halls and/or bingo operations may be relocated or expanded, whether by means of additional space, construction of new facility, reconfiguration of existing facility, additional equipment, or additional days or hours of operation.

C. The moratorium set forth above shall not apply to the renewal of any existing business license for bingo halls and/or bingo operations or existing bingo halls and/or bingo operations permit issued under Title 5, Chapter 15 of the Antioch Municipal Code provided the renewal seeks to maintain the business in the existing location with no expansion in use or facilities, whether by means of additional space, construction of new facility, reconfiguration of existing facility, additional equipment, or additional days or hours of operation.

SECTION 4. CEQA. This ordinance is not subject to CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, because it has no potential for resulting in a physical change to the environment, directly or indirectly; rather it prevents changes in the environment pending the completion of the contemplated municipal code review.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date. This interim ordinance shall take effect immediately upon its adoption and shall continue in effect for 10 months and 15 days from the date of its adoption by not less than a four-fifths vote of the Antioch City Council, and shall thereafter be of no further force and effect, unless, after notice pursuant to Government Code Section 65090 and public hearing, the Antioch City Council extends this Ordinance, and the interim zoning regulations adopted thereby, pursuant to Government Code Section 65858.

SECTION 7. Report of Council. Ten days prior to the expiration of this Ordinance, or any extension thereof, this Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this ordinance, or any extension thereof.

SECTION 8. Declaration of Urgency. This ordinance is hereby declared to be an urgency measure necessary for the immediate protection of the public health, safety and welfare. This Council hereby finds that there is a current and immediate threat to the public health, safety and welfare. The reasons for this urgency are declared and set forth in Section 2 of this Ordinance and are incorporated herein by reference.

SECTION 9. Publication; Certification. The City Clerk shall certify to the adoption of this Ordinance and cause same to be published in accordance with State law.

* * * * *

I HEREBY CERTIFY that the foregoing Ordinance was introduced and adopted as an urgency ordinance pursuant to the terms of California Government Code Section 65858 at a regular meeting of the City Council of the City of Antioch on the 26th day of August, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "B"

STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE MEETING OF JULY 22, 2014

Prepared by: Mindy Gentry, Senior Planner *MA*
Reviewed by: Tina Wehrmeister, Community Development Director *TW*
Date: July 7, 2014
Subject: Bingo Halls and Bingo Operations Urgency Zoning Ordinance

RECOMMENDATION

It is recommended that the City Council:

Approve a motion to adopt the attached interim urgency zoning ordinance prohibiting the issuance of permits, licenses or approvals for construction, establishment or operation of any new bingo halls or bingo operations, or the expansion of current bingo operations, within the City of Antioch on an interim basis pending consideration of amendments to Title 5, Chapter 15 and Title 9 of the Antioch Municipal Code for a period of forty-five days and declaring the urgency thereof (four-fifths (4/5th) vote required) (Attachment "A");

BACKGROUND INFORMATION

Bingo Hall Games Use Permit Application Requests

Over the past several years, the City has received inquiries regarding the establishment of sole use, continuing bingo halls; however none of these inquiries materialized into land use applications. From a land use perspective, it was determined that the bingo hall/operations use be classified as a public assembly use requiring a use permit in all zoning designations. In the last few months, the City has received two use permit applications to operate bingo halls at the following locations:

- 2317 Buchanan Road (Attachment "B"). The application is proposed in a 2,700 square foot retail space with a zoning designation of Regional Commercial (C-3). The proposed hours of operation are seven days a week from 12:00 PM to 12:00 AM. The floor plan is broken up into four small rooms with tables for those participating in the bingo game as well as a separate room for the call blower. The application was submitted by Ms. Tricia Simmons (former owner of internet access business – Cot on the Web and T's Internet Cafe) in conjunction with Patriotic Heart (Hire Patriots), a nonprofit organization benefiting United States veterans; however staff is in the process of verifying Ms. Simmons's connection to Patriotic Heart as well as their non-profit status, as that is a threshold issue for any bingo operation to operate in conformance with the State Penal Code's limited exceptions for legal bingo games that do not constitute illegal gambling.
- 201 East Eighteenth Street (Attachment "C"). This application proposes bingo games to be conducted within approximately half of a building that was formerly a grocery store with a zoning designation of Neighborhood/Community Commercial (C-2). The maximum capacity of the facility would be 324 players all within the bingo area. There is

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an area for purchasing bingo cards and pull tabs as well as a room for security and money storage. The application proposes the hours of operation to be four days week, Wednesday to Sunday, from 4:30 PM to 10:00 PM. The application was submitted by Mr. Al Davis in conjunction with It Takes a Village, a nonprofit organization formed for the express purpose of operating and managing bingo halls.

These two applications are dramatically different than the existing bingo uses in the City, which are typically conducted as an ancillary and occasional use and with little complaints from the community. For example, the Veterans of Foreign Wars operate bingo games which are limited to Tuesday nights at their Fulton Shipyard Road location beginning at 6:45 PM. The Antioch Senior Center has bingo games, which are operated by the Antioch Senior Citizen's Club and are conducted by volunteers on Monday and Thursday afternoons from 1:00 PM to 3:00 PM as a fundraiser. Staff's suggested moratorium is not focused at these long-standing, occasional and ancillary bingo games.

California Penal Code

The Antioch Municipal Code authorizes bingo games to be conducted within the City pursuant the California Penal Code Section 326.5 (Attachment "D"). However, the AMC does not provide any regulations beyond those stated in the State requirements (Attachment "E"). The City's Municipal Code also does not address Penal Code Section 326.3 (Remote Caller Bingo), which was added to State law in 2008. The City's bingo ordinance was adopted in 1980 and does not strictly comply with the provisions of the Penal Code as the ordinance only references Section 326.5 of the Penal Code and does not address remote caller bingo. Further, staff has concerns to the public health, safety, and welfare in regards to bingo games occurring without regulation or City oversight to verify the operation is compliant with the State Penal Code, which is discussed below.

Traditional Bingo (Penal Code Section 326.5) versus Remote Caller Bingo (Penal Code Section 326.3)

Traditional Bingo: Under state law, cities may adopt an ordinance to allow bingo games as long as two basic rules are met:

- 1) The games may only be conducted by certain categories of tax-exempt organizations (e.g. labor organizations, fraternal orders, chamber of commerce, religious corporations, veteran's organizations).
- 2) The receipts from the games may be used only for charitable purposes.

In addition to the two basic rules, there are other notable regulations and restrictions:

- It is a misdemeanor for any person to receive or pay a profit, wage, or salary from any bingo game with the exception that security personnel employed by the organization conducting the bingo game may be paid from the revenues of the bingo games.
- Authorized organizations may only conduct games "on property owned or leased by" the organization, or on property "whose use is donated to the organization" and which property is used by the organization for office space or for the purposes for which the organization was organized.

- A bingo game "shall be operated and staffed only by members" of the non-profit, and those members may not "receive a profit, wage, or salary from any bingo game," except that the non-profit may employ outside security personnel.
- No one other than the non-profit organization authorized to conduct the bingo games may "hold a financial interest in the conduct of a bingo game."

Remote Caller Bingo: A remote caller bingo game is a game of bingo in which the numbers or symbols on randomly drawn plastic balls are announced by a natural person present at the site at which the live game is conducted. However, the organization conducting the bingo game uses audio and video technology to link any of its in-state facilities for the purpose of transmitting the remote calling of a live bingo game from a single location to multiple locations.

If a city or county wants to authorize remote caller bingo games in its jurisdiction, a valid ordinance would include the following requirements:

- The games may only be conducted by certain categories of tax-exempt organizations (e.g. labor organizations, fraternal orders, chamber of commerce, religious corporations, veteran's organizations).
- Organizations conducting the game must be incorporated or in existence for three or more years.
- Organizations conducting the game must be licensed under Penal Code Section 326.5(l). The City may impose a license fee on organizations authorized to conduct bingo games. The fee, whether for initial license or renewal, may not exceed \$50.00 annually. If an application is denied, one-half of any license fee paid must be refunded to the organization. Additional fees for law enforcement and public safety costs incurred by the City that are directly related to bingo activities may be imposed and will be collected monthly. However, the fee may not exceed actual costs incurred.
- Receipts of the game must be used for charitable purposes only. The organization conducting the game must determine the disbursement of the net receipts of the game.
- The operation of bingo may not be the primary purpose for which the organization is organized.

The Penal Code does provide cities with a model ordinance that may be used to allow remote caller bingo in compliance with the Penal Code. According to the California Gambling Control Commission, a local ordinance must explicitly allow remote caller bingo games to be played or conducted in the city. The City's Municipal Code does not explicitly allow remote caller bingo and further study of the issue is warranted during the interim moratorium period.

Urgency Ordinance

To adopt a regular ordinance, a first reading of the ordinance is held and then a second reading to adopt the ordinance at a regular meeting of the City Council. A regular ordinance is effective 30 days after adoption. An urgency ordinance is adopted at one meeting and takes effect immediately following a 4/5 vote of the City Council finding that there is a need for the immediate preservation of the public peace, health and safety.

Interim Ordinances/Moratoriums

An interim zoning ordinance is often called a moratorium and takes effect immediately to prohibit a use. Pursuant to Government Code Section 65858, the City may establish a moratorium prohibiting any use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council, Planning Commission or the Planning Department is considering in order to protect and preserve the public safety, health and welfare. A moratorium lasts only 45 days, but 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 for extension of the moratorium. Interim ordinances require a 4/5 vote of the City Council.

ENVIRONMENTAL

The moratorium is not subject to CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, because it has no potential for resulting in a physical change to the environment, directly or indirectly; rather it prevents changes in the environment pending the completion of the contemplated municipal code review.

DISCUSSION

The City's current rules and regulations pertaining to bingo halls and/or bingo operations are in need of an update and modernization in order to comply with State law. Given that the City has not amended its bingo ordinance since 1980 (nearly 35 years) and the fact that the City has received two applications for new bingo hall operations using new technologies and proposing continued daily uses, the City has established a need to study the impacts of new bingo halls and/or bingo operations as well as the expansion of existing bingo halls and/or bingo operations.

The establishment and/or proliferation of bingo halls and/or bingo operations in the City may have negative public health, safety, and welfare impacts. Bingo halls and/or operations are within a similar vein as internet access businesses and online gaming as it is a form of gambling and are considered illegal lotteries unless conducted in strict conformance with the detailed requirements in the California Penal Code; therefore requiring local jurisdictional control.

In the recent past, the City has had to address criminal activities with other gambling uses such as internet access businesses and card rooms; therefore staff feels that the City should be proactive with these potential issues that may occur at bingo halls and/or bingo operations, particularly given the limited resources of the Police Department. The Police Department recommends adopting the moratorium to allow time to better study the uses and consider appropriate regulations, as opposed to waiting for problems to occur that will tax an already under-staffed Police Department.

Further, other cities such as Pleasant Hill, Concord, and Fairfield, have had incidents involving prostitution, loan-sharking, assaults, theft, and drug dealing, particularly at facilities that appear only to exist for the purpose of running bingo games. A copy of a memo prepared by the Pleasant Hill Police Department is attached (Attachment "F"). Given the criminal activity associated with other gambling uses within the City of Antioch and the issues experienced by other communities, the Police Department is concerned with the public safety, health, and welfare by having an increased demand in services on an already thinly stretched department.

As proposed, the interim urgency ordinance would establish a temporary moratorium on the granting of new permits, licenses, or any other entitlements pertaining to bingo halls and/or operations as well as the expansion of existing bingo halls and/or bingo operations, allowing the City time to study the potential effects of new laws or regulations governing bingo halls and/or bingo operations. Staff is not recommending that the current, occasional bingo games that have been run traditionally on a limited and ancillary basis be closed, but just that they not expand during this moratorium period.

Staff anticipates, but is not limited to, studying the following during the moratorium:

- Determining whether new bingo halls and/or bingo operations (traditional and remote caller) should be permitted anywhere in the City, and if they are allowed, which zoning districts would be appropriate.
- Determining whether bingo halls and/or bingo operations should be conditionally permitted uses, zoning administrator permitted uses, or permitted uses.
- Deciding whether bingo halls and/or bingo operations should be located a minimum distance from other bingo halls and/or bingo operations or other sensitive uses.
- Parking and security requirements for bingo halls and/or bingo operations.
- Determining the costs of the annual licensing fee and potentially any other costs the City may incur pertaining to law enforcement and public safety that are directly related to bingo halls and/or bingo operations.
- Determining whether, in addition to land use regulations, a police licensing process should be established similar to card rooms and computer gaming businesses, which is an approach that other cities have taken.

Urgency Findings

The City presently has two requests received, and anticipates additional requests, for the establishment and operation of bingo halls and/or bingo operations within the City. However, the provisions in the Municipal Code that regulates bingo halls and/or bingo operations in the City are inadequate and need review, study, and revision. The provisions fail to take into consideration the impacts related to the location and manner of the operation of bingo halls and/or bingo operations, and the related public health, safety, and welfare concerns, including, but not limited to the impacts they may have on parking, surrounding uses, and the community.

Given the City's historic criminal activities and land use impacts associated with gambling at internet access businesses and card rooms, and other jurisdictions having land use and/or criminal activity associated with bingo halls and/or bingo operations, the City has concerns with a potential increase in calls for police services and increased criminal activities such as theft, assault, prostitution, loan sharking, and drug dealing. Further study is required to address these potential issues and to create rules and regulations that are fitting for the needs of the City of Antioch to minimize impacts to the public health, safety, and welfare.

Operation of additional bingo halls and/or bingo operations will increase these negative impacts while the use is being studied. Due to the threat posed to the public health, safety, and welfare the City requires additional time to prepare, evaluate, and adopt reasonable regulations regarding the operation of bingo halls and/or bingo operations.

FISCAL IMPACT

There is no direct fiscal impact with the adoption of the proposed Interim Urgency Zoning Ordinance. The organizations that are involved with bingo halls and/or bingo operations are non-profits therefore are exempt from the business license tax. There will be staff time expended to draft a regular ordinance and to prepare a zoning amendment, if appropriate.

OPTIONS

1. If the Council chooses not to adopt the Interim Urgency Zoning Ordinance by 4/5 vote, then additional bingo halls and/or bingo operations could open with the approval of a use permit in any zoning district without the benefit of the City further studying the impacts of these businesses and appropriate land use regulations or police regulatory requirements.

ATTACHMENTS

- A. Interim Urgency Zoning Ordinance prohibiting the issuance of permits, licenses or approvals for construction, establishment or operation of any new bingo halls or operations, or the expansion of current bingo operations, within the City of Antioch on an interim basis pending consideration of amendments to Title 5, Chapter 15 and Title 9 of the Antioch Municipal Code for a period of forty-five days and declaring the urgency thereof
- B. Proposed Bingo Hall Application at 2317 Buchanan Road
- C. Proposed Bingo Hall Application at 201 East Eighteenth Street
- D. Antioch Municipal Code Section 5-15.01
- E. California State Penal Code Section 326.3 – 326.5
- F. Memo of the Pleasant Hill Police Department dated October 3, 2012 regarding issues with Bingo Halls
- G. Newspaper Article on Internet Access Businesses and Gambling

an area for purchasing bingo cards and pull tabs as well as a room for security and money storage. The application proposes the hours of operation to be four days week, Wednesday to Sunday, from 4:30 PM to 10:00 PM. The application was submitted by Mr. Al Davis in conjunction with It Takes a Village, a nonprofit organization formed for the express purpose of operating and managing bingo halls.

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- 2) The receipts from the games may be used only for charitable purposes.

In addition to the two basic rules, there are other notable regulations and restrictions:

- It is a misdemeanor for any person to receive or pay a profit, wage, or salary from any bingo game with the exception that security personnel employed by the organization conducting the bingo game may be paid from the revenues of the bingo games.
- Authorized organizations may only conduct games "on property owned or leased by" the organization, or on property "whose use is donated to the organization" and which property is used by the organization for office space or for the purposes for which the organization was organized.

- A bingo game "shall be operated and staffed only by members" of the non-profit, and those members may not "receive a profit, wage, or salary from any bingo game," except that the non-profit may employ outside security personnel.
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ENVIRONMENTAL

The moratorium is not subject to CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, because it has no potential for resulting in a physical change to the environment, directly or indirectly; rather it prevents changes in the environment pending the completion of the contemplated municipal code review.

DISCUSSION

The City's current rules and regulations pertaining to bingo halls and/or bingo operations are in need of an update and modernization in order to comply with State law. Given that the City has not amended its bingo ordinance since 1980 (nearly 35 years) and the fact that the City has received two applications for new bingo hall operations using new technologies and proposing continued daily uses, the City has established a need to study the impacts of new bingo halls and/or bingo operations as well as the expansion of existing bingo halls and/or bingo operations.

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In the recent past, the City has had to address criminal activities with other gambling uses such as internet access businesses and card rooms; therefore staff feels that the City should be proactive with these potential issues that may occur at bingo halls and/or bingo operations, particularly given the limited resources of the Police Department. The Police Department recommends adopting the moratorium to allow time to better study the uses and consider appropriate regulations, as opposed to waiting for problems to occur that will tax an already under-staffed Police Department.

Further, other cities such as Pleasant Hill, Concord, and Fairfield, have had incidents involving prostitution, loan-sharking, assaults, theft, and drug dealing, particularly at facilities that appear only to exist for the purpose of running bingo games. A copy of a memo prepared by the Pleasant Hill Police Department is attached (Attachment "F"). Given the criminal activity associated with other gambling uses within the City of Antioch and the issues experienced by other communities, the Police Department is concerned with the public safety, health, and welfare by having an increased demand in services on an already thinly stretched department.

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- Determining whether, in addition to land use regulations, a police licensing process should be established similar to card rooms and computer gaming businesses, which is an approach that other cities have taken.

Urgency Findings

The City presently has two requests received, and anticipates additional requests, for the establishment and operation of bingo halls and/or bingo operations within the City. However, the provisions in the Municipal Code that regulates bingo halls and/or bingo operations in the City are inadequate and need review, study, and revision. The provisions fail to take into consideration the impacts related to the location and manner of the operation of bingo halls and/or bingo operations, and the related public health, safety, and welfare concerns, including, but not limited to the impacts they may have on parking, surrounding uses, and the community.

Given the City's historic criminal activities and land use impacts associated with gambling at internet access businesses and card rooms, and other jurisdictions having land use and/or criminal activity associated with bingo halls and/or bingo operations, the City has concerns with a potential increase in calls for police services and increased criminal activities such as theft, assault, prostitution, loan sharking, and drug dealing. Further study is required to address these potential issues and to create rules and regulations that are fitting for the needs of the City of Antioch to minimize impacts to the public health, safety, and welfare.

Operation of additional bingo halls and/or bingo operations will increase these negative impacts while the use is being studied. Due to the threat posed to the public health, safety, and welfare the City requires additional time to prepare, evaluate, and adopt reasonable regulations regarding the operation of bingo halls and/or bingo operations.

FISCAL IMPACT

There is no direct fiscal impact with the adoption of the proposed Interim Urgency Zoning Ordinance. The organizations that are involved with bingo halls and/or bingo operations are non-profits therefore are exempt from the business license tax. There will be staff time expended to draft a regular ordinance and to prepare a zoning amendment, if appropriate.

OPTIONS

1. If the Council chooses not to adopt the Interim Urgency Zoning Ordinance by 4/5 vote, then additional bingo halls and/or bingo operations could open with the approval of a use permit in any zoning district without the benefit of the City further studying the impacts of these businesses and appropriate land use regulations or police regulatory requirements.

ATTACHMENTS

- A. Interim Urgency Zoning Ordinance prohibiting the issuance of permits, licenses or approvals for construction, establishment or operation of any new bingo halls or operations, or the expansion of current bingo operations, within the City of Antioch on an interim basis pending consideration of amendments to Title 5, Chapter 15 and Title 9 of the Antioch Municipal Code for a period of forty-five days and declaring the urgency thereof
- B. Proposed Bingo Hall Application at 2317 Buchanan Road
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- G. Newspaper Article on Internet Access Businesses and Gambling

ATTACHMENT "A"

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH ADOPTING AN INTERIM URGENCY ZONING ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 PROHIBITING THE ISSUANCE OF PERMITS, LICENSES OR APPROVALS FOR CONSTRUCTION, ESTABLISHMENT OR OPERATION OF NEW BINGO HALLS OR OPERATIONS, OR THE EXPANSION OF CURRENT BINGO OPERATIONS, WITHIN THE CITY ON AN INTERIM BASIS PENDING CONSIDERATION OF AMENDMENTS TO TITLE 5, CHAPTER 15 AND TITLE 9 OF THE ANTIOCH MUNICIPAL CODE FOR A PERIOD OF FORTY-FIVE DAYS AND DECLARING THE URGENCY THEREOF

The City Council of the City of Antioch does ordain as follows:

SECTION 1. Interim Urgency Zoning Ordinance. This ordinance is adopted pursuant to the authority of Section 65858 of the Government Code of the State of California, the Antioch City Municipal Code and applicable laws.

SECTION 2. Findings. The Antioch City Council hereby finds, determines and declares as follows:

A. The City of Antioch may make and enforce all laws and regulations not in conflict with the general laws, and the City holds all rights and powers established by state law.

B. The City has received and anticipates additional requests for the construction, establishment and operation of bingo halls and/or bingo operations within the City. However, the provisions of the City Municipal Code that may regulate the construction, operation, and establishment of bingo halls and/or bingo operations in the City are inadequate and need review, study, and revision. The current provisions also fail to fully take into account the impacts related to the location and manner of construction, establishment and operation of bingo halls and/or bingo operations, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community.

C. The City of Antioch is aware that other cities, including Pleasant Hill, Concord and Fairfield, have experienced land use impacts and/or criminal activity associated with bingo halls and/or bingo operations, including incidents involving assaults, theft, prostitution, loan-sharking and drug dealing. These impacts are set forth in more detail in the staff report and attachments provided to the City Council at the July 22, 2014 meeting (<http://www.ci.antioch.ca.us/CityGov/agendas/default.asp>). These impacts have particularly occurred at facilities that appear only to exist for the purpose of running continual bingo games, as distinguished from occasional bingo games operated as an ancillary or occasional use at an established non-profit location.

D. The City is not aware of any currently operating bingo halls in Antioch at facilities that exist only for the purpose of running continual bingo games, as distinguished

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from occasional bingo games currently operating as an ancillary use at a few established non-profit locations in the City. The City Council of the City of Antioch is concerned with the potential increased calls for police services, increasing reports of assaults, theft, loan sharking behavior, prostitution and drug dealing and related detrimental neighborhood effects associated with bingo halls and/or expanded bingo operations, particularly at facilities that appear only to exist for the purpose of running continual bingo games. The potential for increased calls for police service is of particular concern given the current staffing of the Antioch Police Department and challenges in responding to existing criminal activity in the community. (see Police Department presentations at the City Council meetings on July 22, 2014 and April 22, 2014 at <http://www.ci.antioch.ca.us/CityGov/agendas/default.asp>)

E. Under California Constitution and Penal Code, bingo games are illegal lotteries unless conducted in strict conformance with the detailed requirements in the Penal Code. In addition, there would be further State requirements if a city is going to allow remote caller bingo.

F. While the City's Municipal Code does nominally address bingo operations in the City, that section of the Code has not been revised or updated in nearly 35 years, despite revisions to the State Penal Code regarding bingo games during this period.

G. During the past several years, the City has faced similar land use impacts and criminal activity at computer gaming and internet access businesses, leading the City to adopt a moratorium and eventually regular ordinances to address those issues (see the attached and incorporated staff reports, resolutions and ordinances at <http://www.ci.antioch.ca.us/CityGov/agendas/CityCouncil/2012/agendas/022812/022812.pdf> ; <http://www.ci.antioch.ca.us/CityGov/agendas/CityCouncil/2013/agendas/012213/012213.pdf> ; <http://www.ci.antioch.ca.us/CityGov/agendas/CityCouncil/2013/agendas/111213/111213.pdf>). In addition, the City has also been required to address issues regarding card rooms and illegal activity occurring at those establishments (see the attached and incorporated staff report, resolution and newspaper article regarding Kelly's Card Room in Antioch at <http://www.ci.antioch.ca.us/CityGov/agendas/CityCouncil/2013/agendas/111213/111213.pdf>; http://www.justice.gov/usao/can/news/2014/2014_04_25_keslinke.charged.press.html). These computer gaming and internet access businesses, card rooms and continual or expanded bingo operations all raise some similar issues regarding gambling and the criminal and secondary land use impacts of gambling.

H. Without the enactment of this Ordinance, multiple applicants could quickly receive entitlements which would allow additional bingo halls and/or bingo operations that pose a threat to the public health, safety, and welfare. The City Council hereby determines that the Municipal Code is in need of updating to protect the public against health, safety, and welfare dangers caused by bingo halls and/or bingo operations. The City requires additional time to prepare, evaluate and adopt reasonable regulations regarding the construction, placement and operation of bingo halls and/or bingo operations so that such regulations are applied in a nondiscriminatory manner.

I. In order to prevent the frustration of these studies and the implementation of new regulations, the public interest, health, safety, and welfare require immediate enactment of this Ordinance. The absence of this Ordinance would impair the orderly and effective implementation of contemplated Municipal Code amendments, and any further authorization of these uses within the City during the period of the interim zoning regulations may be in conflict with or may frustrate the contemplated updates and revisions of the Municipal Code.

J. Based on the foregoing, the City finds that there is a current and immediate threat to the public health, safety, or welfare and that this Ordinance is necessary in order to protect the City from the potential effects and impacts of bingo halls and/or bingo operations in the City, potential increases in crime, impacts on parking availability in the business areas of the City, the aesthetic impacts to the City, and other similar or related effects on property values and the quality of life in the City's neighborhoods.

K. The City Council further finds that this interim zoning regulation is a matter of local and City-wide importance and is not directed towards any particular business that currently seeks to construct or operate bingo halls and/or bingo operations.

L. The City Council finds that this Ordinance is authorized by the City's police powers. The City Council further finds that the length of the interim zoning regulations imposed by this Ordinance will not in any way deprive any person of rights granted by state or federal laws, because the interim zoning regulation is short in duration and essential to protect the public health, safety and welfare.

SECTION 3. Imposition of Temporary Moratorium.

A. In accordance with the authority granted the City under Government Code section 65858, and pursuant to the findings stated herein, the City Council hereby (1) finds that there exists a current and immediate threat to the public health, safety, and welfare requiring this change in the City's permitting provisions for bingo halls and/or bingo operations, (2) further finds that this ordinance is necessary for the immediate preservation of the public peace, health and safety, and (3) hereby declares and imposes a temporary moratorium for the immediate preservation of the public health, safety and welfare as set forth below.

B. The City orders as follows: For a period of forty-five (45) days from and after the date of adoption of this Ordinance, no permits (including use permits, conditional use permits, special or temporary permits) or other applicable use entitlement (including variances, building permits, certificates of occupancy or business licenses) may be issued for the establishment or operation of a new bingo halls and/or bingo operations within the City, except as otherwise provided for herein. In addition, no existing bingo halls and/or bingo operations may be relocated or expanded, whether by means of additional space, construction of new facility, reconfiguration of existing facility, additional equipment, or additional days or hours of operation.

C. The moratorium set forth above shall not apply to the renewal of any existing business license for bingo halls and/or bingo operations or existing bingo halls and/or bingo

operations permit issued under Title 5, Chapter 15 of the Antioch Municipal Code provided the renewal seeks to maintain the business in the existing location with no expansion in use or facilities, whether by means of additional space, construction of new facility, reconfiguration of existing facility, additional equipment, or additional days or hours of operation.

SECTION 4. CEQA. This ordinance is not subject to CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, because it has no potential for resulting in a physical change to the environment, directly or indirectly; rather it prevents changes in the environment pending the completion of the contemplated municipal code review.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date. This interim ordinance shall take effect immediately upon its adoption and shall continue in effect for forty-five (45) days from the date of its adoption by not less than a four-fifths vote of the Antioch City Council, and shall thereafter be of no further force and effect, unless, after notice pursuant to Government Code Section 65090 and public hearing, the Antioch City Council extends this Ordinance, and the interim zoning regulations adopted thereby, pursuant to Government Code Section 65858.

SECTION 7. Report of Council. Ten days prior to the expiration of this Ordinance, or any extension thereof, this Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this ordinance, or any extension thereof.

SECTION 8. Declaration of Urgency. This ordinance is hereby declared to be an urgency measure necessary for the immediate protection of the public health, safety and welfare. This Council hereby finds that there is a current and immediate threat to the public health, safety and welfare. The reasons for this urgency are declared and set forth in Section 2 of this Ordinance and are incorporated herein by reference.

SECTION 9. Publication; Certification. The City Clerk shall certify to the adoption of this Ordinance and cause same to be published in accordance with State law.

* * * * *

I HEREBY CERTIFY that the foregoing Ordinance was introduced and adopted as an urgency ordinance pursuant to the terms of California Government Code Section 65858 at a regular meeting of the City Council of the City of Antioch on the 22nd day of July, 2014, by the following vote:

AYES:

NOES:

ABSENT:

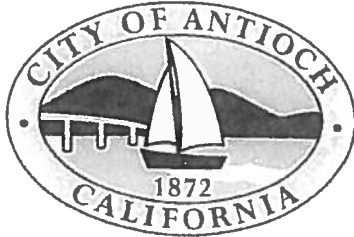
ABSTAIN:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "B"



DEVELOPMENT APPLICATION

Community Development Department

P.O. Box 5007

Third & "H" Streets

Antioch, CA 94531-5007

Phone: (925) 779-7035 Fax: (925) 779-7034

SITE LOCATION: 2317 Buchanan Rd #A Antioch CA 9453

ASSESORS PARCEL NO. (S): 076432022 TOTAL ACREAGE: .5301

BRIEF DESCRIPTION OF REQUEST: 23,089.57

Non-Profit Bldg

PROPERTY OWNER OF RECORD

Name: Lawrence Leong

Company Name: Excel Financial Management

Address: 25222 Cypress Av
Hayward CA 94544

Telephone No. 510-582-7700

Fax No. 510-786-2605

Email: excel.financemgmt@gmail.com

Signature: [Signature]

APPLICANT

Name: TRICIA SIMMONS

Company Name: Patriotic Heart

Address: 300 Carlsbad Village Dr
#154 Suite 108A

Carlsbad CA 92008

Telephone No. 760-730-3734

Cell No. 925-209-8332

Email: Hiire Patriots upo @ Gmail. com

Signature: _____

ANY OTHER PERSON THAT YOU WOULD LIKE THE CITY OF ANTIOCH TO NOTIFY OF THE PUBLIC HEARING

Name: TRICIA SIMMONS

Company Name: Patriotic Heart

Address: 2470 Vallejo Ct
Antioch CA 94531

Telephone No. 925-209-8332

Fax No. _____

Email: Hiire Patriots upo @

Gmail.com

AGENT/DESIGNER

Name: Nole

Company Name: _____

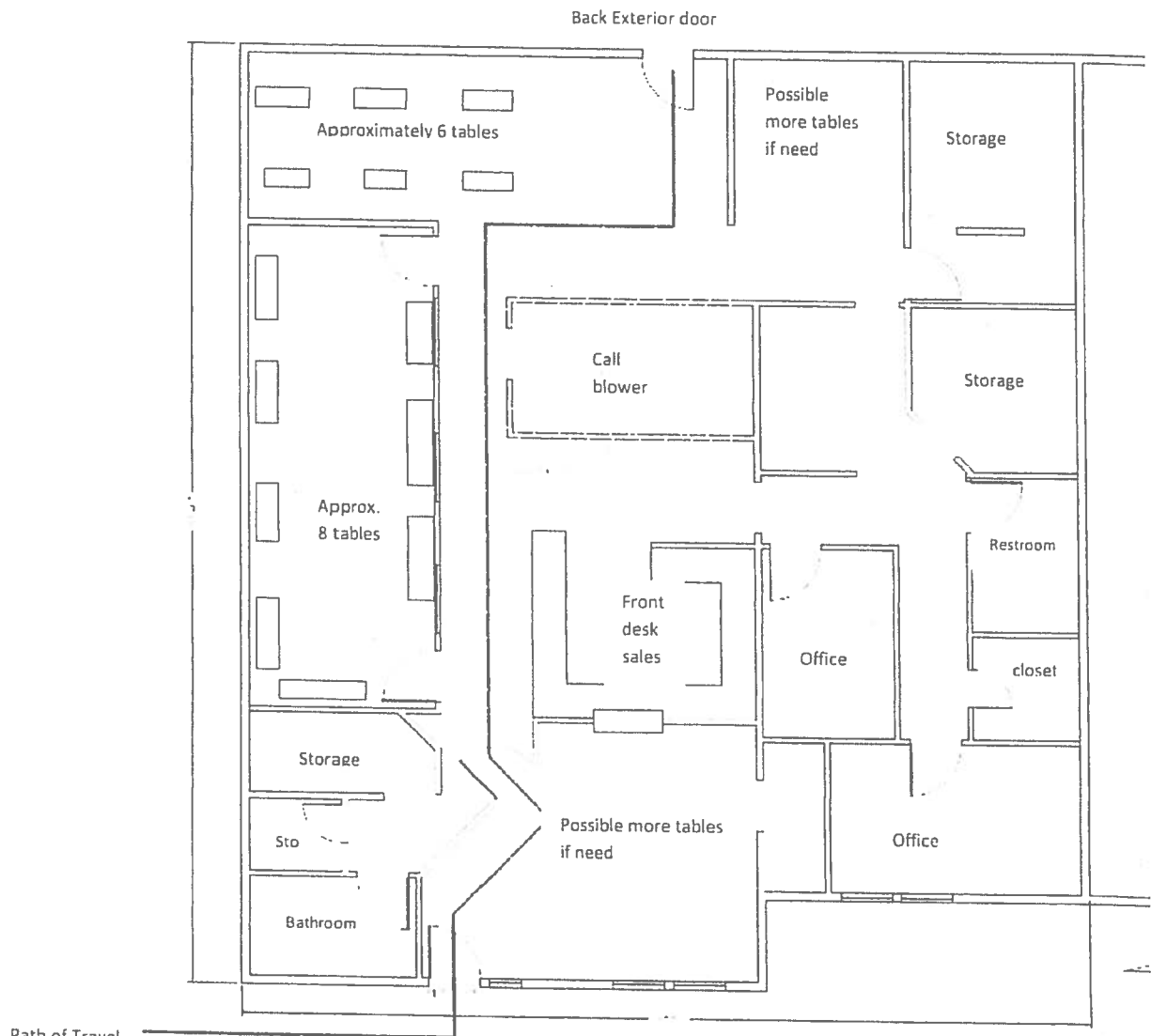
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Telephone No. _____

Fax No. _____

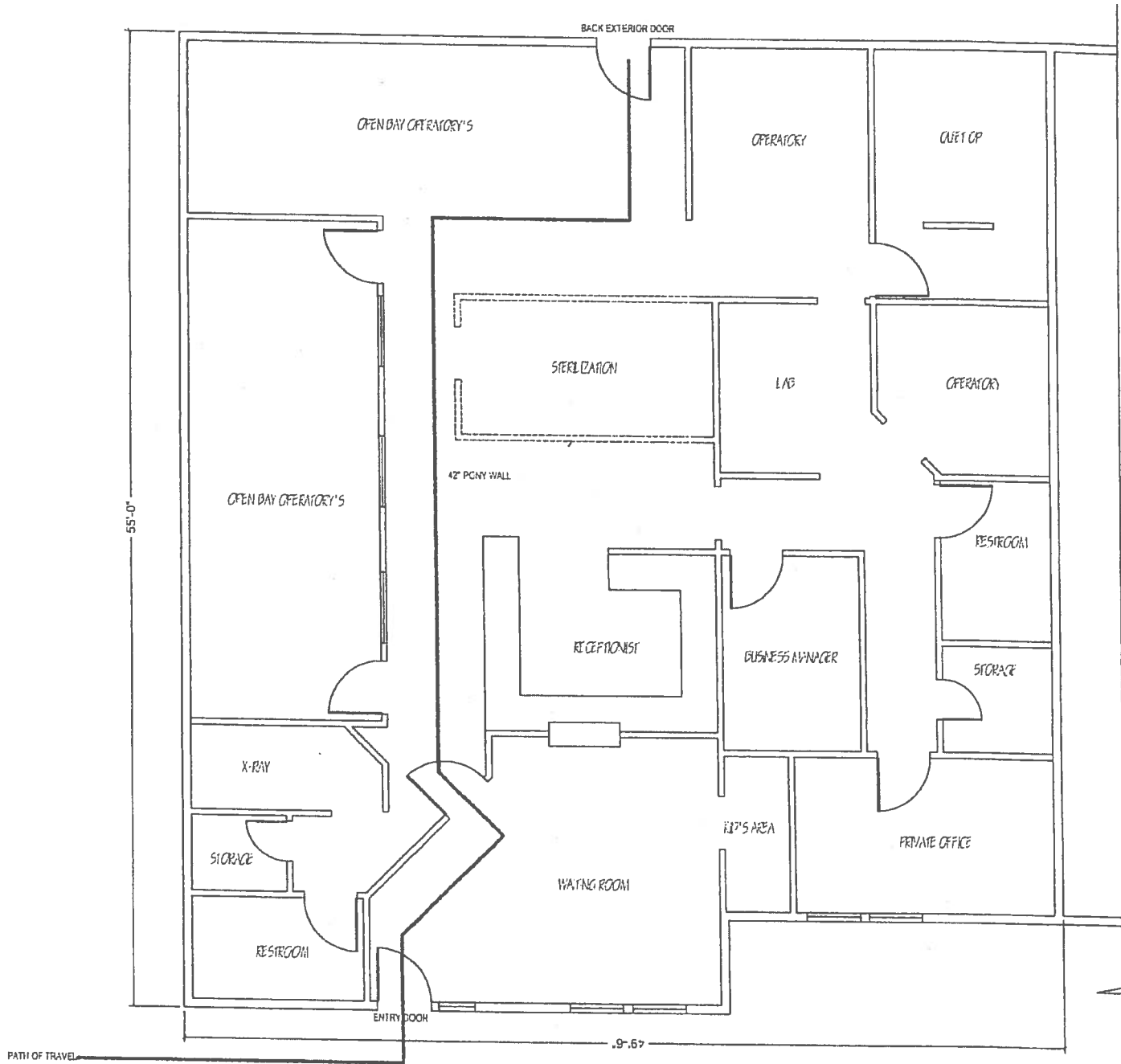
Email: _____

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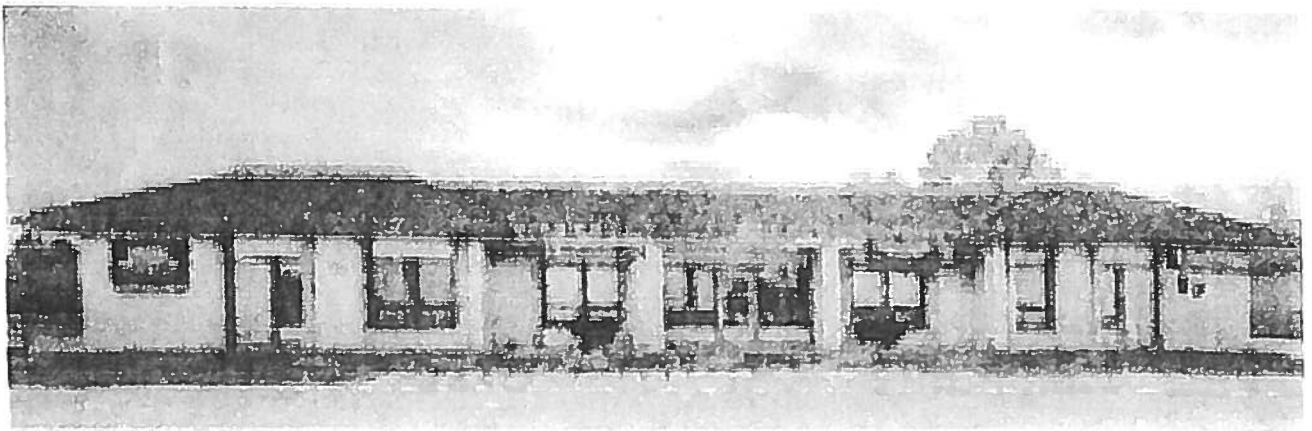
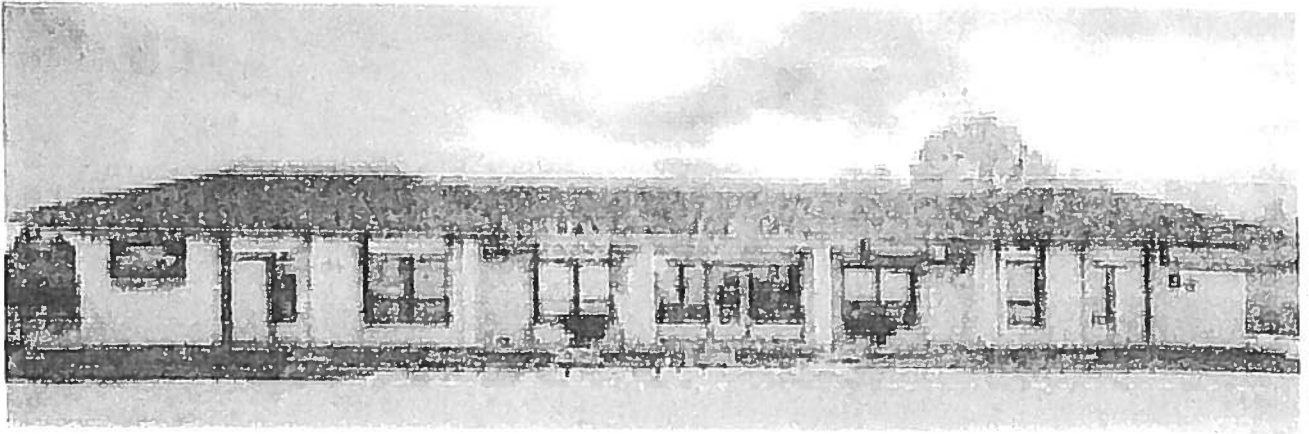
2317 BUCHANAN ROAD SUITE A

C26 ~~B18~~
BZ



2317 BUCHANAN ROAD SUITE A

C27 B14 B3



C28 B20
B4



C29 B24
B5



C30 ^{B72}
B6

Patriotic Heart is a Non-Profit organization that was started in 2007. The Patriot Heart Non-Profit organization would love the opportunity to open a Bingo Hall at, 2317 Buchannan Rd Suit #1 in Antioch Ca 94509. We have followed and reviewed all state regulations to operate a NPO Bingo Hall in the state of California. We do many fundraisers each year and would like to add this to our fundraising portfolio. If allowed to open, we would like to host Bingo games from noon to midnight 7 days a week. Our goal is to have other NPO open a few days/nights a week (they would be responsible to get their own bingo permit from the city) I have had informal talks with a couple local NPO that seem very interested. In the state of California we are aware no one under the age of 18 is allowed in a Bingo Hall, and we will never allow anyone under age or without an ID to be in the building for any reason. There will never be more than seventy people in the building at any given time. The building department has looked at the square footage of the building and said that it would be easily cleared for a maximum of seventy people. There are over ninety immediate parking spaces in front of the building, and another ninety spaces around the area. As a Non-Profit Bingo Hall there is only allowed to be one bingo Director employed, and one Security Guard, to protect the hall and walk people to their cars during open hours. However, we are always looking for new volunteers to help with any fundraiser and would love to get the community involved. We look forward to getting the public and local businesses involved in the Hire Patriots Program.

I have also attached the state of California npo bingo rules that we intend to fallow strictly

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Past and current fundraising

As a NPO that has been active for coming up on 8 years we have done countless number of fundraising I will only name a few if you would like more please don't hesitate to ask or visit our web site at www.hirepatriots.com

Donation

Sponsorship

Grants

Advertisement on web site

73% of all top selling book sales "An American Crisis"

Job fairs

Interviews

TV appearances

Local and national

Public/privet appearances

Veterans "Green Project"

Media Package

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B8

PATRIOTIC HEARTS' PROGRAMS FOR US VETERANS

- Patriotic Hearts' mission is to provide essential services and assistance to US veterans and their families, and to educate the US citizenry about their valiant sacrifices and value to our nation. Patriotic Hearts is a tax-exempt 501(c) 3 non-profit (EIN 20-8599179) that is supported largely by charitable contributions. It is in "good standing" with the IRS.
- We began as a response to a Marine who returned from Iraq to discover his wife and two small children living without utilities, due to his wife being laid off while he was deployed. He knocked on our founders' door and asked: "Sir, Ma'am, I need to earn some money right away to get the electric and gas turned on in my home for my family. Do you have any work that I can do for you right now around your home or yard?"
- The first program of Patriotic Hearts was a site called HireMarines.com. That became HirePatriots.com. Our first job board was a One Day job board that residents in San Diego used to hire local Marines, Corpsmen and sailors. It was a sensation and received several prestigious awards for the benefit it brought to US veterans, as well as to San Diego's communities and economy. Since, we have expanded this program across America, and we will continue to do so with your participation
- Our U.S. military, particularly the lower and mid-range enlisted and their families, often endure extreme financial stress, coupled with multiple, lengthy deployments and the rigors of military life. And our transitioning veterans often take years before catching up with their civilian peers and securing sustainable employment. This lengthy financial stress takes its toll. Too often it means that a veteran also loses his family as a part of his or her sacrifice to our country.

In response to this burgeoning crisis, Patriotic Hearts has developed several free programs. -- In recognition of our vital programs President Bush presented us with his "Congressional Medal of Merit." And President Obama awarded us the "Presidents Volunteer Service Medal."

- **Programs Provided by Patriotic Hearts:**
- HirePatriots.com Job Board
- Transitional Preparedness Program
- Military Job Fairs
- Vet-Entrepreneur Mentoring
- Military Marriage Enrichment Retreats
- Financial Wellness Training
- Green Program (Carbon Credits and Recycling)
- Career & Personal counselling & Mentoring
- Sales Training & Placement
- Welcome Home Parties
- Community Service Chapters

- School Kids Program
- Educational Endeavours
- Public Speaking & Media Interviews for US veterans
- **HirePatriots.com:** This is our most popular program. It creates daily and vocational opportunities for U.S. military: Active duty, Reserves, Guard, veterans and their spouses. This is a free job board for residents and businesses to hire their local military, veterans and their spouses. We currently have HirePatriots websites in multiple areas of the U.S. This popular program is quickly spreading into every state with the collaboration of veteran owned and patriotic businesses, passionate volunteers, and schools. -- The goal of the HirePatriots program is to establish HirePatriots job boards in all 50 states, near every active US military base and throughout every region. This will enable us to assist hundreds of thousands of U.S. Military: Active duty, Reserves, Guard, veterans and their spouses every year.
- **One Day Jobs:** HirePatriots is an entirely unique and free national outreach. It provides a One Day job board for our U.S. military, veterans and their spouses. These are jobs posted primarily by patriotic U.S. residents who want a nearby G.I. or veteran to come to their home and help them with chores.

These One Day jobs fill a critical need for transitioning troops and veterans. With 900,000 unemployed U.S. veterans, as of this writing, HirePatriots' One Day jobs give patriotic U.S. residents an opportunity to pitch in and temporarily employ them until they can find full time employment.

But these One Day jobs do far more than help our dear veterans financially. These jobs allow them to keep their heads held high. And it keeps their focus where it should be: protecting you and me. But they also help stimulate local economies. And it is a great assistance to senior citizens on limited incomes. Plus, it creates a wonderful bond with citizens and veterans. Here are a few of the thousands of comments from those who post jobs and find jobs on HirePatriots.com: <http://www.hirepatriots.com/news-and-blogs/entry/what-people-say-about-hirepatriots-job-program>

Careers Job Board: HirePatriots encourages companies to post their jobs on HirePatriots.com. Companies benefit from our niche market. They comment on how they receive far more responses to their jobs from HirePatriots than giants like Monster.com. We use all of our resources to help you fill your positions with qualified personnel. Our job board is connected to Facebook, Twitter and LinkedIn. And we create a permanent blog post of your company too. HirePatriots ranks in the top 1% of all U.S. websites and continues to receive constant media attention. The ultimate goal for HirePatriots is to succeed in helping every U.S. veteran to secure sustainable, full-time employment.

- **Transitional Training:** HirePatriots offers online and on-site training seminars for transitioning military personnel and US veterans. This unique and comprehensive program was developed by a veteran with decades of HR experience. This program was created by Captain Cesar Nader (USMC). Here is a sample video: <http://www.youtube.com/watch?v=FPvpwL6rYQ>

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- **Job Fairs:** HirePatriots has hosted many job fairs for the U.S. military and veterans. HirePatriots has a stellar reputation with businesses across America and the world. And of course, we are highly regarded by the U.S. military.
- **Warriors to the Workforce** is comprehensive hiring events that combines pre-interview training and resume writing for veterans. And they also hold events and seminars for the attending employers to help them better appreciate the value of military training and veteran experience. – Lt. General Donald Jones (Army Ret.) and Crystal Dyer (Army Ret.) are the directors of this program. These job fairs are held across the breadth of our nation.
- **Veteran Entrepreneur Mentoring:** HirePatriots vigorously seeks to support veterans who have chosen to start their own businesses. We believe that this is crucial to the rebuilding of the American economy and to employing more of our transitioned U.S. military. HirePatriots has created a valuable training and support program for U.S Veteran entrepreneurs. We use the combined business acumen of our multiple HirePatriots' business leaders to provide step-by-step hands on business development training.
- **Military Marriage Enrichment Retreats:** Our military's emotional and psychological health, as well as their professionalism is largely dependent upon the health of their relationships with their immediate family members. The divorce rate has risen as high as 90% on bases with frequent combat deployments. Military wives call it "The Plague."
- Patriotic Hearts hosts military marriage enrichment retreats to strengthen military and veterans' marriages. The theme of our retreats is "Love and Respect." They last from Friday night until Sunday afternoon. We continue to follow each couple closely after the retreats. And we have had wonderful success in keeping marriages and families united. These are all-expenses paid retreats.
- **Financial Wellness:** Patriotic Hearts provides training on how to manage personal and family income, through seminars, retreats and online. This is a unique and comprehensive 5 point Financial Wellness series of workshop courses that has been specifically designed for veterans, active duty, and military families. It is a customized, financial wellness curriculum that focuses on helping our heroes and their families understand their particular spending personalities. Then we teach the essentials of money management. And we also explain the necessity for multiple streams of income and investment strategies.
- **Career & Personal Counselling:** Many qualified volunteers offer to give professional counselling to US veterans' career search. And marriage counsellors, PTSD experts and licensed psychologists also donate their time and services.

Sales Training & Placement. For US veterans and their spouses who need immediate employment beyond our One Day jobs, we offer professional sales training. HirePatriots has created sales opportunities for these veterans. And we have contracted with companies seeking US veterans' help with marketing their products and services too

- **Welcome Home Parties:** Patriotic Hearts hosts all-day picnics for recently returned combat battalions. These include barbeques, games, rides, contest, popular personalities and live music for the entire military family. Volunteers from the local community volunteer to serve at these events and they are a wonderful celebration of our warriors and their families

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- **Community Service Chapters:** The goal of HirePatriots is to create a Nationwide One Day Jobs Safety Net for U.S. veterans and their spouses. To accomplish this goal, we are creating HirePatriots chapters across America. These chapters have their own local, customized HirePatriots website on which they control the content. We seek leaders in these areas to create and manage a volunteer force of veteran supporters. Their mission is simple: Inform the local business and residents about their HirePatriots.com site and job board and get jobs posted for local veterans. Then inform their local veterans and spouses. They also host fundraisers and seek sponsors to provide Patriotic Hearts programs in their areas.

School Kids Program: A wonderful result of our increasing popularity has been that public schools are adopting Patriotic Hearts and HirePatriots as a community service project. These schools receive their own HirePatriots.com website, and the students fill it with their patriotic efforts, essays, videos and pictures. We are also writing a curriculum and a book to promote this program and make it a perpetual part of our American fabric.

Educational Endeavours: In the last 50 years the American population has gone from 90% of American males being US military veterans to less than 1% of our current generation. And further reductions in our nation's Armed Forces are being planned. There now exists a tremendous vacuum of understanding and appreciation for the important role veterans and their families play in keeping America a safe haven for democracy and freedom. In response, Patriotic Hearts trains patriotic citizens to speak and seeks out opportunities on TV, radio, in the press, and at community events, associations, clubs and schools for them to teach about US veterans' sacrifices and critical role in preserving our way of life.

- **In Development:**
- Road Trip for Veterans: HirePatriots is also seeking funds to purchase an RV and to fund a trip to every state in order to get the HirePatriots Job program started for US veterans everywhere. -- This is an opportunity for company sponsorship.
- Wireless for Heroes: Helping Our Heroes One Cell Phone at a Time

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ATTACHMENT "C"

DEVELOPMENT APPLICATION

Community Development Department

P.O. Box 5007

Third & "H" Streets

Antioch, CA 94531-5007

Phone: (925) 779-7035 Fax: (925) 779-7034

SITE LOCATION: 201 E-18th STREET

ASSESORS PARCEL NO. (S): 065-164-023 TOTAL ACREAGE: _____

BRIEF DESCRIPTION OF REQUEST: USE BUILDING FOR HALL OPERATION

MAY 28 2014

CITY OF ANTIOCH
COMMUNITY DEVELOPMENT

PROPERTY OWNER OF RECORD

Name: JOAN D & MARIA M TRE

Company Name: 18th ST. PARTNERSHIP

Address: 41386 REDCLOUD CT
CONCORD, CA 94518-1913

Telephone No. 925-372-6100, ext 12

Fax No. 372-4715

Email: _____

Signature: [Signature]
18th St Partners

APPLICANT

Name: AL DAVIS

Company Name: IT TAKES A VILLAGE

Address: 4720 FOOTHILL BLVD
OAKLAND, CA 94601

Telephone No. 510-467-7494

Fax No. _____

Email: DAVIS BARBARA 4720 @

Signature: [Signature]

ANY OTHER PERSON THAT YOU WOULD LIKE THE CITY OF ANTIOCH TO NOTIFY OF THE PUBLIC HEARING

Name: AL DAVIS

Company Name: _____

Address: 5233 FLEMING AVE.
OAKLAND, CA 94619

Telephone No. 510-706-4562

Fax No. (510) 261-4612

Email: DAVIS 52 @ COMCAST.NET

AGENT/DESIGNER

Name: AL DAVIS

Company Name: ADL LIMITED

Address: 5233 FLEMING AVE
OAKLAND, CA 94619

Telephone No. 510-706-4562

Fax No. 510-261-4612

Email: DAVIS 52 @ COMCAST.NET

C37 [Signature]



May 26, 2014

RECEIVED

MAY 28 2014

Executive Summary

CITY OF ANTIOCH
COMMUNITY DEVELOPMENT

"It Takes a Village Development Center (ITAV)", is a Non-profit organization formed for the express purpose of operating and managing bingo halls in the San Francisco Bay Area Under the rulings of California Attorney General Guideline (Daniel E. Lungren and Deputy Attorney Clayton P. Roche, December 1998 and subsequently reviewed and reaffirmed by California Governor Edmund G. Brown, Jr. in 2007). Their ruling is that electronic hand devices are legal in California. (See Appendix A)

Thus, It Takes a Village Development Center is formally submitting an application to operate and manage a Bingo Hall in an existing facility located at 201 E. 18th Street, Antioch, California. The attached building and layout drawings provided would meet the guidelines for the planned operation of the facility, for the purpose of offering charity bingo programs to the community of Antioch. It is proposed to operate four days a week Wednesday through Saturday, 4:30 PM until approximately 10:00 PM.

To assist ITAV, they have employed the services of a consultant firm, skilled in project development, implementation and on-going monitoring of both the financial and physical strength of the Non-Profit organization's day to day operations. The consultant firm's resumes are attached for reference.

The City was selected by ITAV's Executive staff and Board of Directors, after a lengthy study of the city of Antioch's demographics, which points to a combined influx of new residents from other communities seeking affordable housing costs; and the previous severe cut backs by City, State and Federal governments' funding sources. The community of Antioch is in need of alternative solutions to some of its economic challenges. There already exists some form of bingo and card room facility in the surrounding communities of Pittsburg, Brentwood, Oakley, Bethel Island, and similar locations. However, neither offers the depth of service, and commitment to adequately tap the hidden resources for community support, as those proposed by ITAV.

Market Area:

The demographics of the city of Antioch as of 2010 have a population of 102,372. The ethnic make-up is:

White	38.6%
Hispanic	31.5%
Afro American	15.1%
Asian	7.2%
Two or More	6.1%
Other Race	0.07%
Native American	0.06%
Hawaiian & Pacific Islander	0.1%

High Schools

Public	8
Private	3

Elementary Schools

Public	10
Private	5

Proposed Infusion of Capital:

ITAV is proposing to invest upward of \$3,010,888.80 in year one, to acquire and start operate of the Bingo Hall.

It is projected, that this amount should generate conservatively, \$10,044,000.00 annually. Of this amount, \$572,214.00 in donations can go directly to Schools, Youth and Senior programs.

Additionally, 18 new full and part time jobs can be created for the communities of Antioch, Oakley, Brentwood, Pittsburg, and Bethel Island. At least 5 secondary economic spend offs will be needed to support the Bingo Hall Management and Operation.

Security:

Of major concern will be the security deployed to deter or minimize the opportunity for robbery and theft in an establishment that will be dealing with significant sums of cash on a daily basis. Therefore, attention has been given to how best to warrant against such occurrences. This issue is being addressed as the "first line of defense" and is reflected in the budget (See Pro forma sheets). Thus, the following is planned:

- Hire certified armed security guards, with number determined by capacity of facility.
- Install surveillance cameras at strategic locations throughout the facility, both inside and outside, particularly where cash transactions are taking place.
- Contract with a money transportation company such as Loomis, to pick up and deliver money to and from a FDIC institution on a daily basis.
- Install change counting machine and a "Bill" counting machine that is capable of detecting counterfeit bills immediately.
- Ongoing training and monitoring for staff and volunteers selling special game cards and pull tabs.

Medical Considerations:

Due to the fact that a larger number of Bingo Players appear to be senior citizens, the Managers are also installing at least one **defibrillator**, provided for Medical EMTs, or at a minimum, have a certified CPR person during all Bingo sessions.

Planned Donation Opportunities from Bingo Operation:

The largest benefit of being allowed to operate a Bingo Hall lies in the ability of the Non-profit organization to provide a mechanism to morally, legally and ethically distribute funds to a large number of other non-profit organizations, who may not have the capability to financially sustain themselves. Some of these non-profits are, Diverse ethnic groups, Public Schools, Boys and Girls Clubs, Senior Centers, Foundations, Arts and Repertory Groups, Scouting programs, Church food programs, Battered Women and Children Shelters, and Youth sports programs are but a few of the programs that are being reduced or eliminated due to Federal and State Government cut backs. Such cutbacks negatively impact our communities and provide fewer, if any alternatives for relief.

Our strategy is to use profits from operation of the Bingo Halls to make up the shortfall in our communities.

Exit Strategy:

At the end of the life of the Non-Profit, a decision will be made to liquidate commercial properties through distribution of assets to a non-profit organization and/or "shareholders" or exercise option to renew the Non-profit under new management. This is a "Buy Out" opportunity for new investor(s).

Management Team:

CEO and Fund Manager, Funding Wealth Capital, LLC

AL DAVIS

After serving 10 years in the United States Air Force, Mr. Davis started a new career in the Construction Industry. This was the result of not being able to find suitable employment to support his newly acquired family after his military career. Reflecting upon two of his earlier childhood experiences, the first seeing his step-father building their first house from adobe, straw and railroad ties at the age of five or six; and second, having learned Architectural drafting in High School. These influences set in motion, perhaps unconsciously, a career in Designer and Developer. Mr. Davis' first venture was his participation in the development of a Modular Home Manufacturing Company in Benicia, California in 1963. At the time housing was on the up rise and new and innovative experimental methods of construction were being developed in the housing construction industry. During the two years of operation of DGH Industries, the company manufactured dozens of houses in the plant that was ultimately shipped to building sites. Each 1,100 to 1,500 square foot house was erected on site, finished and ready for occupancy in less than 45 working days. Unions were not ready for this in those days.

After closing of the plant in Benicia, Mr. Davis moved to Richmond California, where he operated a freelance Housing Design service. This ultimately led to acquiring a General Contractor's License for commercial and residential properties. These two combined careers resulted in acquiring an in-depth knowledge of the various aspects associated with the building industry which included planning, designing, construction cost estimating, building permit processing, building, inspection procedures and "Turn Key" operations.

From 1964 through 1979, Mr. Davis worked for four U.S. Presidential Administrations (Presidents Johnson, Nixon, Ford and Carter) in Contract Evaluation Analyst for the Department of Labor, Department of Commerce and Department Education's Office of Child Development, Head Start and Supplemental Training. During this period of time, Mr. Davis also provided free consultant services to building contractors and homeowners involved in remodeling and construction projects in various communities in the United States.

Between 1972 and 1984, Mr. Davis was engaged in the development of the Bay Area Purchasing Council, where he served two terms as President of the Purchasing Council. The Council's objective during that time period was to provide contracting opportunities to Black and Hispanic contractors, Engineers, Architects, Certified Public Accountants, and support services to Private Industry, State and Federal Governments. The high point in this endeavor was in May 1976, generating over \$5,000,000 in contracts being awarded to black and Hispanic contractors by private, State and Federal contracting agencies, in a span of three days.

Mr. Davis returned to the building industry in 1986, by remodeling and adding onto his own home in Oakland, California. He was also an Executive Director of a federally funded non-profit organization.

Mr. Davis retired from active participation in the construction industry in 1999.

His prior experiences lead to the development authoring and publishing of four significant books associated with the building industry. These publications were: "The Source Exchange Guide" Published by Source Publications, Inc. 1973 to 1984; and "Owner-Builders Work Book for Remodeling House Moving" editions, 1989, 2000 and 2005. In addition, Mr. Davis has authored two non-construction related publications.

Mr. Davis is currently the Chief Operating Officer of ADC Limited, LLC, which is a management training and technical assistant firm, engaged in improving communications between home owners and general contractors during construction engagements. This company was born out of the desire to minimize the conflict that occurs between homeowners and general contractors. Most conflicts result in three issues:

- 1) Homeowners losing money, or property loss resulting from litigation;
- 2) General contractors losing licenses resulting from faulty work, lack of work and in some cases, no work at all; and
- 3) Lending institutions, insurance and bonding companies losing money, resulting from the former two issues; leading to the development of a Real Estate Investment Company.

Mr. Davis also operates several other internet marketing companies, including: www.adcbuildersseminar.com; and www.fundingwealthcapital.com. Mr. Davis has two children, eight grandchildren, and two great grandchildren, all living in California. His hobbies include flying, fishing, coaching and sports.

President and Fund Manager

LEONA GREENLOW-TURNER

Mrs. Greenlow-Turner is a Bay Area Realtor, specializing in the listing and sale of distressed properties. She works with several prominent lending institutions (Chase, Indy Mac, Bank of America, and Wells Fargo) in the evaluation of their residential and commercial real estate assets.

The beginning of her career included telecommunications, banking and financial planning industries. Every career opportunity has led her to teaching those around her vital technical skills necessary for their careers. Her area of expertise is coaching new entrepreneurs in starting and maintaining new business ventures.

With this training background, she began creating custom training materials and classes. She has taught and created technical courses over the past 20 years. She brings real estate insight to Funding Wealth Capital, LLC with her extensive training and real estate expertise. Additionally, she provides sound financial guidelines regarding profit, losses, income and expenditures for Funding Wealth Capital, LLC and other companies hired by FWC, LLC in a consultant capacity.

She has created three feature courses for Funding Wealth Capital, LLC:

1. Tax Deed and Tax Lien Investing (the course includes training and one-on-one coaching.)
2. Investing in California Short Sales
3. Bingo Hall Operations

Mrs. Greenlow-Turner is the mother of four and grandmother of four. Her hobbies include reading and studying the Bible, writing, blogging, knitting and sewing. She currently serves as Parent Teacher Association (PTA) President at a prominent Oakland Elementary school.

The following additional resumes are available to Subscriber upon request:

- Real Estate Attorney
- Certified Public Accountant
- Mortgage Broker
- Administrator and Business Development Consultant

For more detailed information, or to request a full disclosure of the Private Placement Memorandum (PPM) from www.FundingWealthCapital.com, please email your request to: info@FundingWealthCapital.com or call (510)706-4562



Date: May 26, 2014

Barbara Davis, Executive Director

"It Takes a Village Development Center"



Date: 5/26/14

Al Davis, Project Consultant (Not Related to Exc. Dir.)

CEO: Funding Wealth Capital, LLC

Appendix A

Electronic Handheld Devices

Traditional bingo is a game of chance where players pay a bingo hall an entrance fee for game cards to play several bingo games. Players can play multiple cards at the same time to increase their chance at winning games. Bingo cards consist of 24 random numbers and a free space in the center. During the game a caller calls random numbers from a bingo blower. The caller calls each number as it comes up until a player announces "bingo". Once the winning combination is established as a winning bingo, the winner is paid.

Section 326.5 specifies precisely what the game of bingo is that is permitted under these conditions. Subdivision (o) of California Penal Code section 326.5 provides: (o) As used in this section, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card that conform to numbers or symbols selected at random. Notwithstanding Section 330c, as used in this section, the game of bingo includes cards having numbers or symbols that are concealed and preprinted in a manner providing for distribution of prizes. The winning cards shall not be known prior to the game by any person.

Currently, bingo halls are using a combination of paper cards and electronic handheld devices to play bingo. Electronic handheld devices are used as an aid to notify the player of a winning card. The serial numbers of each bingo card are programmed into the handheld device. These devices do not require any additional financial investment from the players. Electronic handheld devices and paper games are the same game and are played simultaneously.

In 1991, State Attorney General, Dan Lungren said, "Lungren's directive--sent Tuesday to the state's district attorneys, city attorneys, sheriffs and chiefs of police--noted that the only gambling machines legal in California are "actual facsimiles of the game of bingo," such as terminals that enable players to keep track of 250 bingo cards at once. "All other machines are illegal," Lungren said."

"During the 20-year period which has followed the Attorney General's (Lungren) opinion quoted above, the Legislature has amended Penal Code section 326.5 twice, but it has not amended the section to authorize electronic bingo. It has, however, amended subdivision (o), containing the definition of bingo, but notably, it has made no change to the elements of the definition itself. Accordingly, subdivision (o) of section 326.5, as quoted above, continues to prescribe the elements of the game that is permissible as bingo, conducted by organizations authorized by section 326.5, subdivision (a)."

"The Attorney General (Edmund G. Brown, Jr., 2007), however, has subsequently concluded that in games in which players purchase and receive traditional bingo cards, the use of an

electronic aid to notify the player of a winning card is **not prohibited**. The Attorney General concluded that under these circumstances, "the combined use of the electronic aid and traditional cards will allow each player to meet the requirements of subdivision (o), since the 'designated numbers or symbols' are 'on a card' as well as being programmed into the electronic aid." (81 Ops.Cal.Atty.Gen 415, at p. 417 (1998).)"

With the handheld electronic bingo device players can play as many bingo cards as they can afford since monitoring each bingo card is no longer a problem. All it takes for a bingo player to do is to key in the numbers being drawn into the portable handheld electronic device and the computer will automatically search for these numbers from the bingo card of the players then daub it in their behalf.

This type of electronic bingo device has a tracking system that automatically monitors the bingo cards of the player making it plausible for its players to play multiple bingo cards simultaneously. The best thing about electronic bingo device is the opportunity it gives to bingo players with physical disabilities to play bingo with less efforts and added convenience.

References:

Subdivision (o) of section 326.5 defines "bingo" as follows:

"As used in this section 'bingo' means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card that conform to numbers or symbols selected at random. Notwithstanding Section 330c, as used in this section, the game of bingo includes cards having numbers or symbols which are concealed and preprinted in a manner providing for distribution of prizes. The winning cards shall not be known prior to the game by any person participating in the playing or operation of the bingo game. All preprinted cards shall bear the legend, 'for sale or use only in a bingo game authorized under California law and pursuant to local ordinance.' It is the intention of the Legislature that bingo as defined in this subdivision applies exclusively to this section and shall not be applied in the construction or enforcement of any other provision of law."

"We believe that when bingo players purchase and receive traditional bingo cards, the use of electronic aids in conjunction therewith to ascertain when a game has been won does not remove the game from the scope of section 326.5. The courts have ruled similarly in somewhat analogous situations. (See *Lubavitch Congregation v. City of Long Beach* (1990) 217 Cal.App.3d 1388; *People v. 8,000 Punchboard Card Devices* (1983) 142 Cal.App.3d 618.) We conclude that the requirements of section 326.5, subdivision (o), are satisfied when bingo players use, in conjunction with traditional bingo cards, electronic aids to notify them when a game has been won."

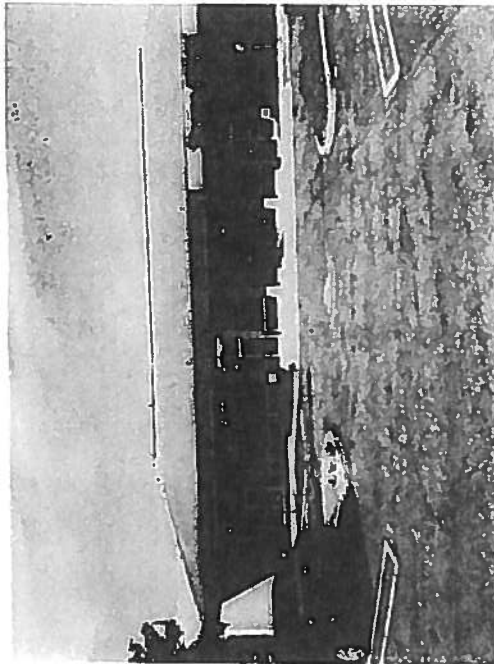
Proposed Bingo Hall 201 E 18th Street Antioch, CA 94509

"Scope of Work"

Change of Occupancy:

Remodel structure to meet to compliance to meet Fire Code and ADA requirement

to use as Bingo Hall:
remove non bearing wall on south side of building; relocate and modify electrical install new framing of non bearing walls per plans.



Legend

- Page 1 Cover Sheet
- Page 2 Working Drawing
- Page 3 Sealing Level
- Page 4 New Electrical Plan
- Page 5 notes
- Page 6 Fire Escape Plan
- Page 7 ADA Requirements
- Page 8 Security Surveillance cameras

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MAY 28 2014

CITY OF ANTIOCH
COMMUNITY DEVELOPMENT

APN: 065-164-023

201 E 18th Street
Commercial Property

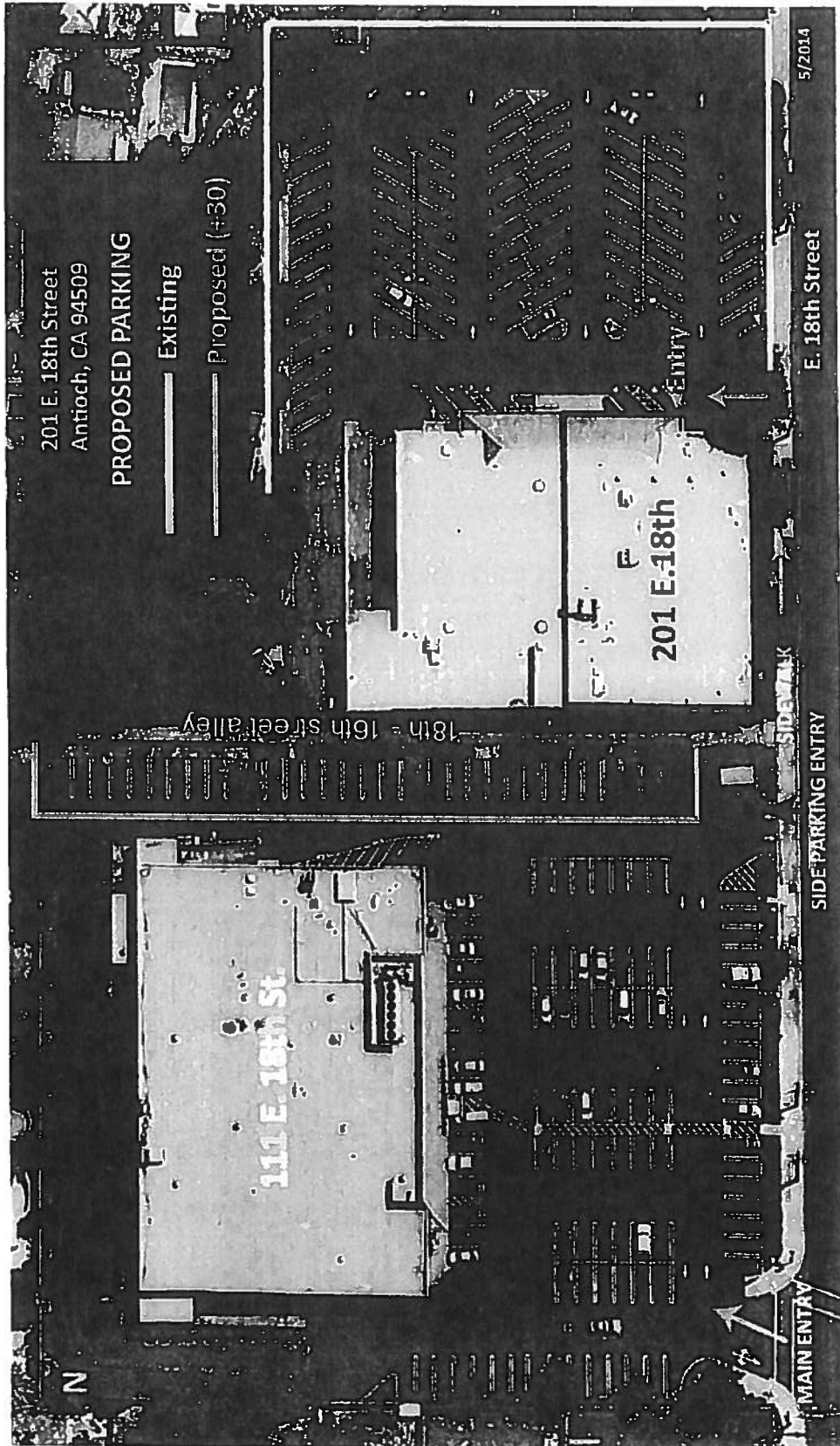
DESIGN BY:
5/27/2014

201 E 18th Street Antioch_auto_save_bak
Cover Sheet

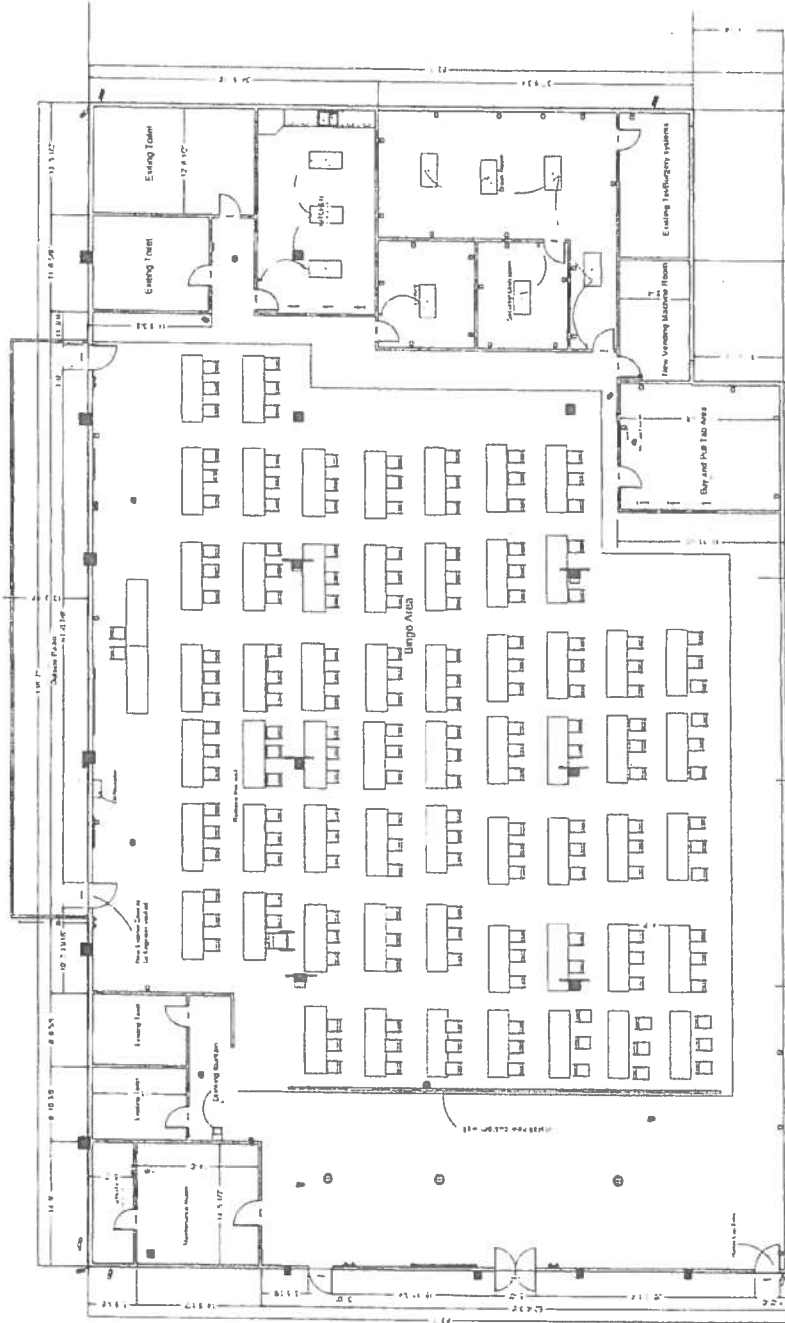
ADC Limited
3542 Fruitvale Avenue #306
Oakland, CA 94602
510-706-4562

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|---|---------------------------------------|---|--|--|
| Equip with WiFi and 3 modems
equally spaced
Emergency Phone 911
Install Cabinet for Deflator on wall
behind Caller's Table.
one EMT or CPR Tech per each
Session. | Bingo Electronic
Hand Held Devices | Material and Labor
Estimates
Archit
Permits/ Fees
972 Square yards of Carpet
Electrical
Plumbing
Mechanical
Finishing | Security protection
5 Armed Guards
Money Transporters
11 Security Cameras
4 Exterior Security Cameras
6 security Monitors | Capacity: 54 tables with 3
persons per one side
of table for a total low of
162 participants to a
maximum of
both side of table for
max.324
individuals |
|---|---------------------------------------|---|--|--|

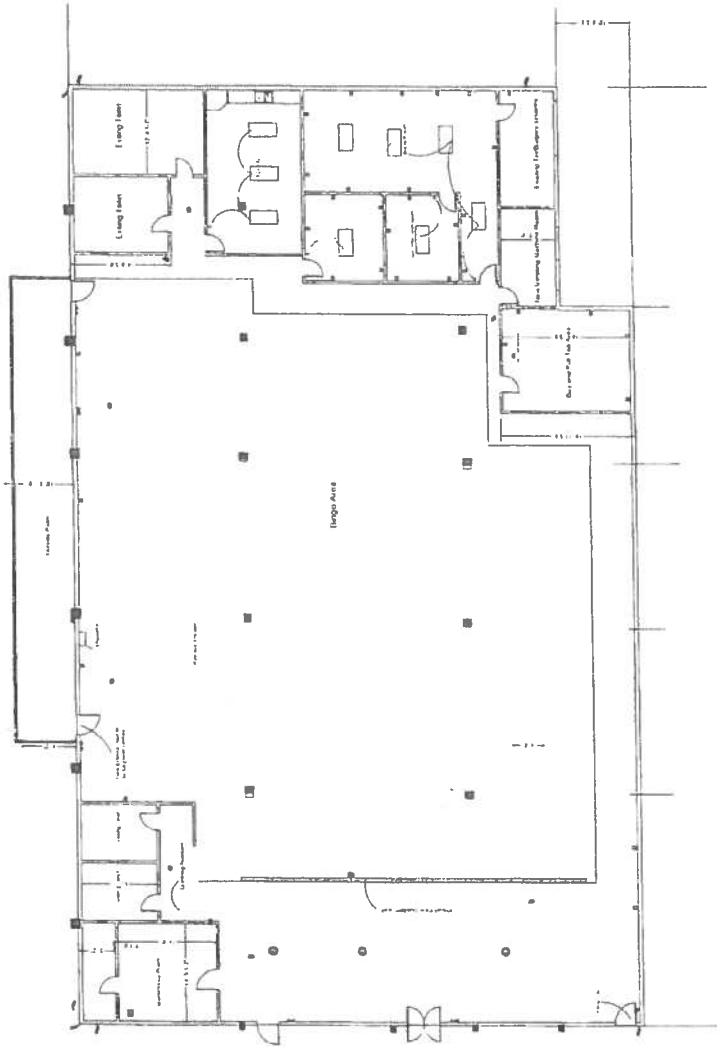
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DESIGN BY:
5/27/2014

201 E 18th Street Antioch_auto_save_bak
New Electrical

ADC Limited
3542 Fruitvale Avenue #306
Oakland, CA 94602
510-706-4562

4



New Electrical Plan
Scale: 1/8" = 1'-0"

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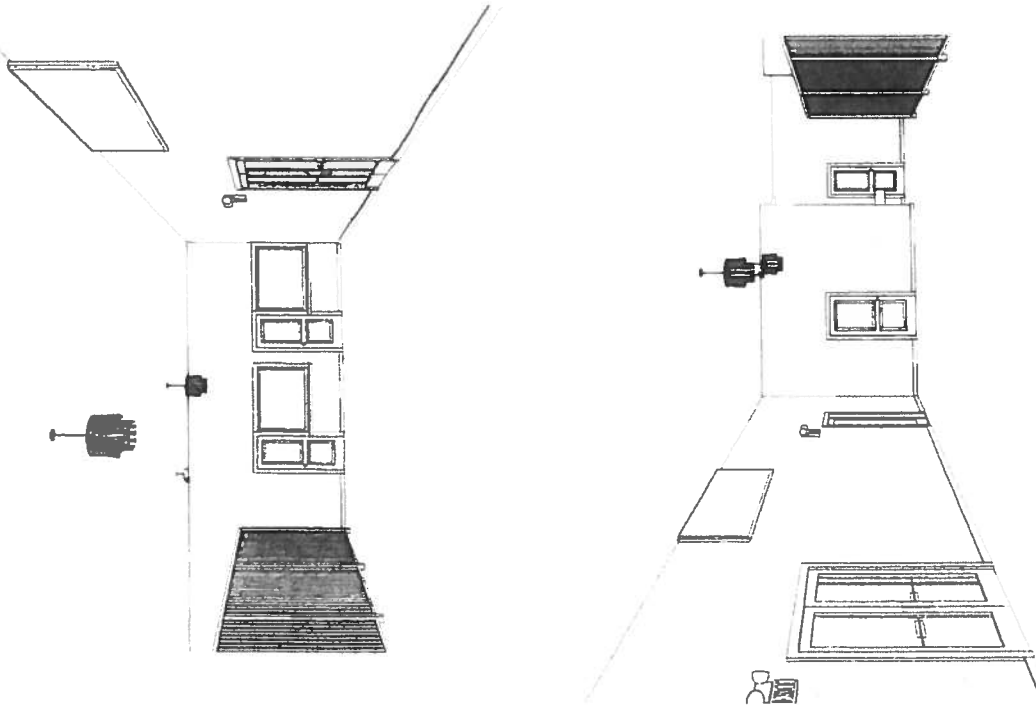
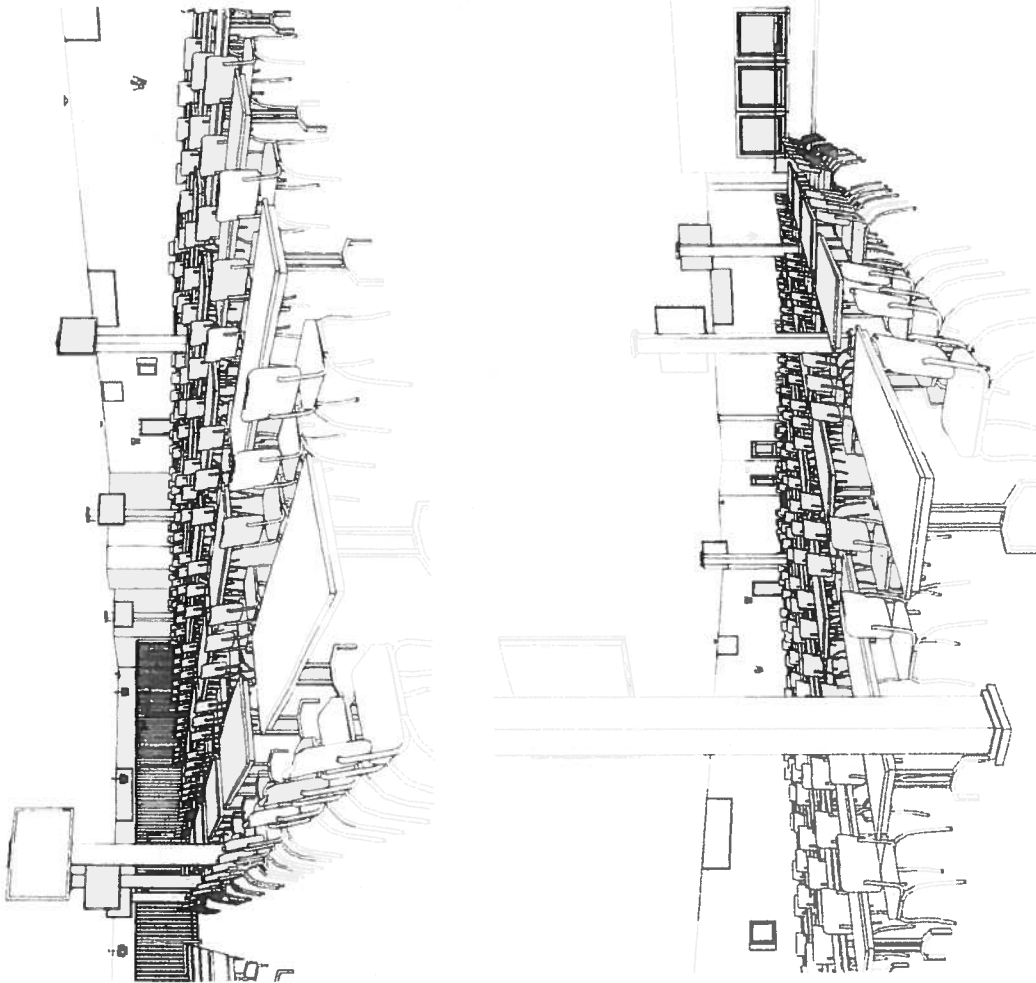
5/27/2014

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510-706-4562

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ATTACHMENT "D"

Antioch, CA Code of Ordinances

CHAPTER 15: BINGO GAMES

Section

5-15.01 Bingo games authorized

§ 5-15.01 BINGO GAMES AUTHORIZED.

Any bingo game played pursuant to Cal. Penal Code § 326.5, or successor legislation, is hereby authorized to be conducted within the city.

('66 Code, § 5-15.01) (Ord. 451-C-S, passed 5-22-80)

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ATTACHMENT "E"

326.3. (a) The Legislature finds and declares all of the following:

(1) Nonprofit organizations provide important and essential educational, philanthropic, and social services to the people of the state.

(2) One of the great strengths of California is a vibrant nonprofit sector.

(3) Nonprofit and philanthropic organizations touch the lives of every Californian through service and employment.

(4) Many of these services would not be available if nonprofit organizations did not provide them.

(5) There is a need to provide methods of fundraising to nonprofit organizations to enable them to provide these essential services.

(6) Historically, many nonprofit organizations have used charitable bingo as one of their key fundraising strategies to promote the mission of the charity.

(7) Legislation is needed to provide greater revenues for nonprofit organizations to enable them to fulfill their charitable purposes, and especially to meet their increasing social service obligations.

(8) Legislation is also needed to clarify that existing law requires that all charitable bingo must be played using a tangible card and that the only permissible electronic devices to be used by charitable bingo players are card-minding devices.

(b) Neither the prohibition on gambling in this chapter nor in Chapter 10 (commencing with Section 330) applies to any remote caller bingo game that is played or conducted in a city, county, or city and county pursuant to an ordinance enacted under Section 19 of Article IV of the California Constitution, if the ordinance allows a remote caller bingo game to be played or conducted only in accordance with this section, including the following requirements:

(1) The game may be conducted only by the following organizations:

(A) An organization that is exempted from the payment of the taxes imposed under the Corporation Tax Law by Section 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, or 23701w of the Revenue and Taxation Code.

(B) A mobilehome park association.

(C) A senior citizens' organization.

(D) Charitable organizations affiliated with a school district.

(2) The organization conducting the game shall have been incorporated or in existence for three years or more.

(3) The organization conducting the game shall be licensed pursuant to subdivision (1) of Section 326.5.

(4) The receipts of the game shall be used only for charitable purposes. The organization conducting the game shall determine the disbursement of the net receipts of the game.

(5) The operation of bingo may not be the primary purpose for which the organization is organized.

(c) (1) A city, county, or city and county may adopt an ordinance in substantially the following form to authorize remote caller bingo in accordance with the requirements of subdivision (b):

Sec. __.01. Legislative Authorization.

This chapter is adopted pursuant to Section 19 of Article IV of the California Constitution, as implemented by Sections 326.3 and 326.4 of the Penal Code.

Sec. __.02. Remote Caller Bingo Authorized.

Remote Caller Bingo may be lawfully played in the [City, County,

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or City and County] pursuant to the provisions of Sections 326.3 and 326.4 of the Penal Code, and this chapter, and not otherwise.

Sec. __.03. Qualified Applicants: Applicants for Licensure.

(a) The following organizations are qualified to apply to the License Official for a license to operate a bingo game if the receipts of those games are used only for charitable purposes:

(1) An organization exempt from the payment of the taxes imposed under the Corporation Tax Law by Section 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, or 23701w of the Revenue and Taxation Code.

(2) A mobilehome park association of a mobilehome park that is situated in the [City, County, or City and County].

(3) Senior citizen organizations.

(4) Charitable organizations affiliated with a school district.

(b) The application shall be in a form prescribed by the License Official and shall be accompanied by a nonrefundable filing fee in an amount determined by resolution of the [Governing Body of the City, County, or City and County] from time to time. The following documentation shall be attached to the application, as applicable:

(1) A certificate issued by the Franchise Tax Board certifying that the applicant is exempt from the payment of the taxes imposed under the Corporation Tax Law pursuant to Section 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, or 23701w of the Revenue and Taxation Code. In lieu of a certificate issued by the Franchise Tax Board, the License Official may refer to the Franchise Tax Board's Internet Web site to verify that the applicant is exempt from the payment of the taxes imposed under the Corporation Tax Law.

(2) Other evidence as the License Official determines is necessary to verify that the applicant is a duly organized mobilehome park association of a mobilehome park situated in the [City, County, or City and County].

Sec. __.04. License Application: Verification.

The license shall not be issued until the License Official has verified the facts stated in the application and determined that the applicant is qualified.

Sec. __.05. Annual Licenses.

A license issued pursuant to this chapter shall be valid until the end of the calendar year, at which time the license shall expire. A new license shall only be obtained upon filing a new application and payment of the license fee. The fact that a license has been issued to an applicant creates no vested right on the part of the licensee to continue to offer bingo for play. The [Governing Body of the City, County, or City and County] expressly reserves the right to amend or repeal this chapter at any time by resolution. If this chapter is repealed, all licenses issued pursuant to this chapter shall cease to be effective for any purpose on the effective date of the repealing resolution.

Sec. __.06. Conditions of Licensure.

(a) Any license issued pursuant to this chapter shall be subject to the conditions contained in Sections 326.3 and 326.4 of the Penal Code, and each licensee shall comply with the requirements of those provisions.

(b) Each license issued pursuant to this chapter shall be subject to the following additional conditions:

(1) Bingo games shall not be conducted by any licensee on more than two days during any week, except that a licensee may hold one additional game, at its election, in each calendar quarter.

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(2) The licensed organization is responsible for ensuring that the conditions of this chapter and Sections 326.3 and 326.4 of the Penal Code are complied with by the organization and its officers and members. A violation of any one or more of those conditions or provisions shall constitute cause for the revocation of the organization's license. At the request of the organization, the [Governing Body of the City, County, or City and County] shall hold a public hearing before revoking any license issued pursuant to this chapter.

(3) This section shall not require a city, county, or city and county to use this model ordinance in order to authorize remote caller bingo.

(d) It is a misdemeanor for any person to receive or pay a profit, wage, or salary from any remote caller bingo game, provided that administrative, managerial, technical, financial, and security personnel employed by the organization conducting the bingo game may be paid reasonable fees for services rendered from the revenues of bingo games, as provided in subdivision (1), except that fees paid under those agreements shall not be determined as a percentage of receipts or other revenues from, or be dependent on the outcome of, the game.

(e) A violation of subdivision (d) shall be punishable by a fine not to exceed ten thousand dollars (\$10,000), which fine shall be deposited in the general fund of the city, county, or city and county that enacted the ordinance authorizing the remote caller bingo game. A violation of any provision of this section, other than subdivision (d), is a misdemeanor.

(f) The city, county, or city and county that enacted the ordinance authorizing the remote caller bingo game, or the Attorney General, may bring an action to enjoin a violation of this section.

(g) No minors shall be allowed to participate in any remote caller bingo game.

(h) A remote caller bingo game shall include only sites that are located within this state.

(i) An organization authorized to conduct a remote caller bingo game pursuant to subdivision (b) shall conduct the game only on property that is owned or leased by the organization, or the use of which is donated to the organization. This subdivision shall not be construed to require that the property that is owned or leased by, or the use of which is donated to, the organization be used or leased exclusively by, or donated exclusively to, that organization.

(j) (1) All remote caller bingo games shall be open to the public, and shall not be limited to the members of the authorized organization.

(2) No more than 750 players may participate in a remote caller bingo game in a single location.

(3) If the Governor or the President declares a state of emergency in response to a natural disaster or other public catastrophe occurring in California, an organization authorized to conduct remote caller bingo games may, while that declaration is in effect, conduct a remote caller bingo game pursuant to this section with more than 750 participants in a single venue if the net proceeds of the game, after deduction of prizes and overhead expenses, are donated to or expended exclusively for the relief of the victims of the disaster or catastrophe, and the organization gives, for each participating remote caller bingo site, the department and local law enforcement at least 10 days' written notice of the intent to conduct that game.

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(4) For each participating remote caller bingo site, an organization authorized by the commission to conduct remote caller bingo games shall provide the department and local law enforcement with at least 30 days' advance written notice of its intent to conduct a remote caller bingo game. That notice shall include all of the following:

(A) The legal name of the organization and the address of record of the agent upon whom legal notice may be served.

(B) The locations of the caller and remote players, whether the property is owned by the organization or donated, and if donated, by whom.

(C) The name of the licensed caller and site manager.

(D) The names of administrative, managerial, technical, financial, and security personnel employed.

(E) The name of the vendor and any person or entity maintaining the equipment used to operate and transmit the game.

(F) The name of the person designated as having a fiduciary responsibility for the game pursuant to paragraph (2) of subdivision (k).

(G) The license numbers of all persons specified in subparagraphs (A) to (F), inclusive, who are required to be licensed.

(H) A copy of the local ordinance for any city, county, or city and county in which the game will be played. The department shall post the ordinance on its Internet Web site.

(I) A copy of the license issued to the organization by the governing body of the city, county, or city and county pursuant to subdivision (b).

(k) (1) A remote caller bingo game shall be operated and staffed only by members of the authorized organization that organized it. Those members shall not receive a profit, wage, or salary from any remote caller bingo game. Only the organization authorized to conduct a remote caller bingo game shall operate that game, or participate in the promotion, supervision, or any other phase of a remote caller bingo game. Subject to subdivision (m), this subdivision shall not preclude the employment of administrative, managerial, technical, financial, or security personnel who are not members of the authorized organization at a location participating in the remote caller bingo game by the organization conducting the game. Notwithstanding any other law, exclusive or other agreements between the authorized organization and other entities or persons to provide services in the administration, management, or conduct of the game shall not be considered a violation of the prohibition against holding a legally cognizable financial interest in the conduct of the remote caller bingo game by persons or entities other than the charitable organization, or other entity authorized to conduct the remote caller bingo games, if those persons or entities obtain the gambling licenses, the key employee licenses, or the work permits required by, and otherwise comply with, Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code. Fees to be paid under those agreements shall be reasonable and shall not be determined as a percentage of receipts or other revenues from, or be dependent on the outcome of, the game.

(2) An organization that conducts a remote caller bingo game shall designate a person as having fiduciary responsibility for the game.

(1) No individual, corporation, partnership, or other legal entity, except the organization authorized to conduct or participate in a remote caller bingo game, shall hold a legally cognizable

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financial interest in the conduct of that game.

(m) An organization authorized to conduct a remote caller bingo game pursuant to this section shall not have overhead costs exceeding 20 percent of gross sales, except that the limitations of this section shall not apply to one-time, nonrecurring capital acquisitions. For purposes of this subdivision, "overhead costs" includes, but is not limited to, amounts paid for rent and equipment leasing and the reasonable fees authorized to be paid to administrative, managerial, technical, financial, and security personnel employed by the organization pursuant to subdivision (d). For the purpose of keeping its overhead costs below 20 percent of gross sales, an authorized organization may elect to deduct all or a portion of the fees paid to financial institutions for the use and processing of credit card sales from the amount of gross revenues awarded for prizes. In that case, the redirected fees for the use and processing of credit card sales shall not be included in "overhead costs" as defined in the California Remote Caller Bingo Act. Additionally, fees paid to financial institutions for the use and processing of credit card sales shall not be deducted from the proceeds retained by the charitable organization.

(n) A person shall not be allowed to participate in a remote caller bingo game unless the person is physically present at the time and place where the remote caller bingo game is being conducted. A person shall be deemed to be physically present at the place where the remote caller bingo game is being conducted if he or she is present at any of the locations participating in the remote caller bingo game in accordance with this section.

(o) (1) An organization shall not cosponsor a remote caller bingo game with one or more other organizations unless one of the following is true:

(A) All of the cosponsors are affiliated under the master charter or articles and bylaws of a single organization.

(B) All of the cosponsors are affiliated through an organization described in paragraph (1) of subdivision (b), and have the same Internal Revenue Service activity code.

(2) Notwithstanding paragraph (1), a maximum of 10 unaffiliated organizations described in paragraph (1) of subdivision (b) may enter into an agreement to cosponsor a remote caller game, but that game shall have no more than 10 locations.

(3) An organization shall not conduct remote caller bingo more than two days per week.

(4) Before sponsoring or operating any game authorized under paragraph (1) or (2), each of the cosponsoring organizations shall have entered into a written agreement, a copy of which shall be provided to the department, setting forth how the expenses and proceeds of the game are to be allocated among the participating organizations, the bank accounts into which all receipts are to be deposited and from which all prizes are to be paid, and how game records are to be maintained and subjected to annual audit.

(p) The value of prizes awarded during the conduct of any remote caller bingo game shall not exceed 37 percent of the gross receipts for that game. When an authorized organization elects to deduct fees paid for the use and processing of credit card sales from the amount of gross revenues for that game awarded for prizes, the maximum amount of gross revenues that may be awarded for prizes shall not exceed 37 percent of the gross receipts for that game, less the amount of redirected fees paid for the use and processing of credit

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card sales. Every remote caller bingo game shall be played until a winner is declared. Progressive prizes are prohibited. The declared winner of a remote caller bingo game shall provide his or her identifying information and a mailing address to the onsite manager of the remote caller bingo game. Prizes shall be paid only by check; no cash prizes shall be paid. The organization conducting the remote caller bingo game may issue a check to the winner at the time of the game, or may send a check to the declared winner by United States Postal Service certified mail, return receipt requested. All prize money exceeding state and federal exemption limits on prize money shall be subject to income tax reporting and withholding requirements under applicable state and federal laws and regulations and those reports and withholding shall be forwarded, within 10 business days, to the appropriate state or federal agency on behalf of the winner. A report shall accompany the amount withheld identifying the person on whose behalf the money is being sent. Any game interrupted by a transmission failure, electrical outage, or act of God shall be considered void in the location that was affected. A refund for a canceled game or games shall be provided to the purchasers.

(q) (1) The commission shall require the licensure of the following:

(A) Any person who contracts to conduct remote caller bingo on behalf of an organization described in subdivision (b) or who is identified as having fiduciary responsibility for the game pursuant to subdivision (k).

(B) Any person who directly or indirectly manufactures, distributes, supplies, vends, leases, or otherwise provides supplies, devices, services, or other equipment designed for use in the playing of a remote caller bingo game by any organization described in subdivision (b).

(C) Beginning January 31, 2009, or a later date as may be established by the commission, all persons described in subparagraph (A) or (B) may submit to the commission a letter of intent to submit an application for licensure. The letter shall clearly identify the principal applicant, all categories under which the application will be filed, and the names of all those particular individuals who are applying. Each charitable organization shall provide an estimate of the frequency with which it plans to conduct remote caller bingo operations, including the number of locations. The letter of intent may be withdrawn or updated at any time.

(2) (A) Background investigations related to remote caller bingo conducted by the department shall be in accordance with the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code) and as specified in regulations promulgated by the commission or the department.

(B) Fees to cover background investigation costs shall be paid and accounted for in accordance with Section 19867 of the Business and Professions Code.

(3) (A) Every application for a license or approval by a person described in subparagraph (A) of paragraph (1) shall be submitted to the department and accompanied by a nonrefundable fee.

(B) Fees and revenue collected pursuant to this paragraph shall be deposited in the California Bingo Fund, which is hereby created in the State Treasury. The funds deposited in the California Bingo Fund shall be available, upon appropriation by the Legislature, for expenditure by the commission and the department exclusively for the support of the commission and department in carrying out their duties

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and responsibilities under this section and Section 326.5.

(C) A loan is hereby authorized from the Gambling Control Fund to the California Bingo Fund on or after January 1, 2009, in an amount of up to five hundred thousand dollars (\$500,000) to fund operating, personnel, and other startup costs incurred by the commission and department relating to this section. Funds from the California Bingo Fund shall be available to the commission and department upon appropriation by the Legislature in the annual Budget Act. The loan shall be subject to all of the following conditions:

(i) The loan shall be repaid to the Gambling Control Fund as soon as there is sufficient money in the California Bingo Fund to repay the amount loaned, but no later than July 1, 2019.

(ii) Interest on the loan shall be paid from the California Bingo Fund at the rate accruing to moneys in the Pooled Money Investment Account.

(iii) The terms and conditions of the loan are approved, prior to the transfer of funds, by the Department of Finance pursuant to appropriate fiscal standards.

The commission and department may assess and collect reasonable fees and deposits as necessary to defray the costs of regulation and oversight.

(D) Notwithstanding any other law, the loan authorized by Provision 1 of Item 0855-001-0567 of the Budget Act of 2009, in the amount of four hundred fifty-seven thousand dollars (\$457,000), shall be repaid no later than July 1, 2019.

(E) The licensing fee for any person or entity that directly or indirectly manufactures, distributes, supplies, vends, leases, or otherwise provides supplies, devices, services, or other equipment designed for use in the playing of a remote caller bingo game by any nonprofit organization shall be in an amount determined by the department, not to exceed the reasonable regulatory costs to the department and in accordance with regulations adopted pursuant to this chapter. Prior to the adoption of the regulations, the nonrefundable license fee shall be the amount of the reasonable regulatory costs to the department, not to exceed three thousand dollars (\$3,000) per year.

(r) The administrative, managerial, technical, financial, and security personnel employed by an organization that conducts remote caller bingo games shall apply for, obtain, and thereafter maintain valid work permits, as defined in Section 19805 of the Business and Professions Code.

(s) An organization that conducts remote caller bingo games shall retain records in connection with the remote caller bingo game for five years.

(t) (1) All equipment used for remote caller bingo shall be certified as compliant with regulations adopted by the department by a manufacturing expert recognized by the department. Certifications shall be submitted to the department prior to the use of any equipment subject to this subdivision.

(2) The department may monitor operation of the transmission and other equipment used for remote caller bingo, and monitor the game.

(u) (1) As used in this section, "remote caller bingo game" means a game of bingo, as defined in subdivision (o) of Section 326.5, in which the numbers or symbols on randomly drawn plastic balls are announced by a natural person present at the site at which the live game is conducted, and the organization conducting the bingo game uses audio and video technology to link any of its in-state

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facilities for the purpose of transmitting the remote calling of a live bingo game from a single location to multiple locations owned, leased, or rented by that organization, or as described in subdivision (o) of this section. The audio or video technology used to link the facilities may include cable, Internet, satellite, broadband, or telephone technology, or any other means of electronic transmission that ensures the secure, accurate, and simultaneous transmission of the announcement of numbers or symbols in the game from the location at which the game is called by a natural person to the remote location or locations at which players may participate in the game. The drawing of each ball bearing a number or symbol by the natural person calling the game shall be visible to all players as the ball is drawn, including through a simultaneous live video feed at remote locations at which players may participate in the game.

(2) The caller in the live game must be licensed by the California Gambling Control Commission. A game may be called by a nonlicensed caller if the drawing of balls and calling of numbers or symbols by that person is observed and personally supervised by a licensed caller.

(3) Remote caller bingo games shall be played using traditional paper or other tangible bingo cards and daubers, and shall not be played by using electronic devices, except card-minding devices, as described in paragraph (1) of subdivision (p) of Section 326.5.

(4) Prior to conducting a remote caller bingo game, the organization that conducts remote caller bingo shall submit to the department the controls, methodology, and standards of game play, which shall include, but not be limited to, the equipment used to select bingo numbers and create or originate cards, control or maintenance, distribution to participating locations, and distribution to players. Those controls, methodologies, and standards shall be subject to prior approval by the department, provided that the controls shall be deemed approved by the department after 90 days from the date of submission unless disapproved.

(v) A location shall not be eligible to participate in a remote caller bingo game if bingo games are conducted at that location in violation of Section 326.5 or any regulation adopted by the commission pursuant to Section 19841 of the Business and Professions Code, including, but not limited to, a location at which unlawful electronic devices are used.

(w) (1) The vendor of the equipment used in a remote caller bingo game shall have its books and records audited at least annually by an independent California certified public accountant and shall submit the results of that audit to the department within 120 days after the close of the vendor's fiscal year. In addition, the department may audit the books and records of the vendor at any time.

(2) An authorized organization that conducts remote caller bingo games shall be audited by an independent California certified public accountant at least annually and copies of the audit reports shall be provided to the department within 60 days of completion of the audit report. A city, county, or city and county shall be provided a full copy of the audit or an audit report upon request. The audit report shall account for the annual amount of fees paid to financial institutions for the use and processing of credit card sales by the authorized organization and the amount of fees for the use and processing of credit card sales redirected from "overhead costs" and deducted from the amount of gross revenues awarded for prizes.

(3) The costs of the licensing and audits required by this section

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shall be borne by the person or entity required to be licensed or audited. The audit shall enumerate the receipts for remote caller bingo, the prizes disbursed, the overhead costs, and the amount retained by the nonprofit organization. The department may audit the books and records of an organization that conducts remote caller bingo games at any time.

(4) If the department identifies practices in violation of this section, the license for the audited entity may be suspended pending review and hearing before the commission for a final determination.

(x) (1) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(2) Notwithstanding paragraph (1), if paragraph (1) or (3) of subdivision (u), or the application of either of those provisions, is held invalid, this entire section shall be invalid.

(y) The department shall submit a report to the Legislature, on or before January 1, 2016, on the fundraising effectiveness and regulation of remote caller bingo, and other matters that are relevant to the public interest regarding remote caller bingo.

(z) The following definitions apply for purposes of this section:

(1) "Commission" means the California Gambling Control Commission.

(2) "Department" means the Department of Justice.

(3) "Person" includes a natural person, corporation, limited liability company, partnership, trust, joint venture, association, or any other business organization.

(aa) This section shall become inoperative on July 1, 2016, and, as of January 1, 2017, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2017, deletes or extends the dates on which it becomes inoperative and is repealed.

326.4. (a) Consistent with the Legislature's finding that card-minding devices, as described in subdivision (p) of Section 326.5, are the only permissible electronic devices to be used by charity bingo players, and in an effort to ease the transition to remote caller bingo on the part of those nonprofit organizations that, as of July 1, 2008, used electronic devices other than card-minding devices to conduct games in reliance on an ordinance of a city, county, or city and county that, as of July 1, 2008, expressly recognized the operation of electronic devices other than card-minding devices by organizations purportedly authorized to conduct bingo in the city, county, or city and county, there is hereby created the Charity Bingo Mitigation Fund.

(b) The Charity Bingo Mitigation Fund shall be administered by the Department of Justice.

(c) Mitigation payments to be made by the Charity Bingo Mitigation Fund shall not exceed five million dollars (\$5,000,000) in the aggregate.

(d) (1) To allow the Charity Bingo Mitigation Fund to become immediately operable, five million dollars (\$5,000,000) shall be loaned from the accrued interest in the Indian Gaming Special Distribution Fund to the Charity Bingo Mitigation Fund on or after January 1, 2009, to make mitigation payments to eligible nonprofit organizations. Five million dollars (\$5,000,000) of this loan amount is hereby appropriated to the California Gambling Control Commission

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for the purposes of providing mitigation payments to certain charitable organizations, as described in subdivision (e). Pursuant to Section 16304 of the Government Code, after three years the unexpended balance shall revert back to the Charity Bingo Mitigation Fund.

(2) To reimburse the Special Distribution Fund, those nonprofit organizations that conduct a remote caller bingo game pursuant to Section 326.3 shall pay to the Department of Justice an amount equal to 5 percent of the gross revenues of each remote caller bingo game played until that time as the full advanced amount plus interest on the loan at the rate accruing to moneys in the Pooled Money Investment Account is reimbursed.

(e) (1) An organization meeting the requirements in subdivision (a) shall be eligible to receive mitigation payments from the Charity Bingo Mitigation Fund only if the city, county, or city and county in which the organization is located maintained official records of the net revenues generated for the fiscal year ending June 30, 2008, by the organization from the use of electronic devices or the organization maintained audited financial records for the fiscal year ending June 30, 2008, which show the net revenues generated from the use of electronic devices.

(2) In addition, an organization applying for mitigation payments shall provide proof that its board of directors has adopted a resolution and its chief executive officer has signed a statement executed under penalty of perjury stating that, as of January 1, 2009, the organization has ceased using electronic devices other than card-minding devices, as described in subdivision (p) of Section 326.5, as a fundraising tool.

(3) Each eligible organization may apply to the California Gambling Control Commission no later than January 31, 2009, for the mitigation payments in the amount equal to net revenues from the fiscal year ending June 30, 2008, by filing an application, including therewith documents and other proof of eligibility, including any and all financial records documenting the organization's net revenues for the fiscal year ending June 30, 2008, as the California Gambling Control Commission may require. The California Gambling Control Commission is authorized to access and examine the financial records of charities requesting funding in order to confirm the legitimacy of the request for funding. In the event that the total of those requests exceeds five million dollars (\$5,000,000), payments to all eligible applicants shall be reduced in proportion to each requesting organization's reported or audited net revenues from the operation of electronic devices.

326.45. Up to five hundred thousand dollars (\$500,000), as determined by order of the Director of Finance, is hereby appropriated from the California Bingo Fund to the California Gambling Control Commission for use in the 2008-09 fiscal year for the purposes described in subparagraph (C) of paragraph (3) of subdivision (q) of Section 326.3.

326.5. (a) Neither the prohibition on gambling in this chapter nor in Chapter 10 (commencing with Section 330) applies to any bingo game

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that is conducted in a city, county, or city and county pursuant to an ordinance enacted under Section 19 of Article IV of the State Constitution, if the ordinance allows games to be conducted only in accordance with this section and only by organizations exempted from the payment of the bank and corporation tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701w, and 23701l of the Revenue and Taxation Code and by mobilehome park associations, senior citizens organizations, and charitable organizations affiliated with a school district; and if the receipts of those games are used only for charitable purposes.

(b) It is a misdemeanor for any person to receive or pay a profit, wage, or salary from any bingo game authorized by Section 19 of Article IV of the State Constitution. Security personnel employed by the organization conducting the bingo game may be paid from the revenues of bingo games, as provided in subdivisions (j) and (k).

(c) A violation of subdivision (b) shall be punishable by a fine not to exceed ten thousand dollars (\$10,000), which fine is deposited in the general fund of the city, county, or city and county that enacted the ordinance authorizing the bingo game. A violation of any provision of this section, other than subdivision (b), is a misdemeanor.

(d) The city, county, or city and county that enacted the ordinance authorizing the bingo game may bring an action to enjoin a violation of this section.

(e) Minors shall not be allowed to participate in any bingo game.

(f) An organization authorized to conduct bingo games pursuant to subdivision (a) shall conduct a bingo game only on property owned or leased by it, or property whose use is donated to the organization, and which property is used by that organization for an office or for performance of the purposes for which the organization is organized. Nothing in this subdivision shall be construed to require that the property owned or leased by, or whose use is donated to, the organization be used or leased exclusively by, or donated exclusively to, that organization.

(g) All bingo games shall be open to the public, not just to the members of the authorized organization.

(h) A bingo game shall be operated and staffed only by members of the authorized organization that organized it. Those members shall not receive a profit, wage, or salary from any bingo game. Only the organization authorized to conduct a bingo game shall operate such a game, or participate in the promotion, supervision, or any other phase of a bingo game. This subdivision does not preclude the employment of security personnel who are not members of the authorized organization at a bingo game by the organization conducting the game.

(i) Any individual, corporation, partnership, or other legal entity, except the organization authorized to conduct a bingo game, shall not hold a financial interest in the conduct of a bingo game.

(j) With respect to organizations exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code, all profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Those profits shall be used only for charitable purposes.

(k) With respect to other organizations authorized to conduct bingo games pursuant to this section, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not

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be commingled with any other fund or account. Proceeds are the receipts of bingo games conducted by organizations not within subdivision (j). Those proceeds shall be used only for charitable purposes, except as follows:

(1) The proceeds may be used for prizes.

(2) (A) Except as provided in subparagraph (B), a portion of the proceeds, not to exceed 20 percent of the proceeds before the deduction for prizes, or two thousand dollars (\$2,000) per month, whichever is less, may be used for the rental of property and for overhead, including the purchase of bingo equipment, administrative expenses, security equipment, and security personnel.

(B) For the purposes of bingo games conducted by the Lake Elsinore Elks Lodge, a portion of the proceeds, not to exceed 20 percent of the proceeds before the deduction for prizes, or three thousand dollars (\$3,000) per month, whichever is less, may be used for the rental of property and for overhead, including the purchase of bingo equipment, administrative expenses, security equipment, and security personnel. Any amount of the proceeds that is additional to that permitted under subparagraph (A), up to one thousand dollars (\$1,000), shall be used for the purpose of financing the rebuilding of the facility and the replacement of equipment that was destroyed by fire in 2007. The exception to subparagraph (A) that is provided by this subparagraph shall remain in effect only until the cost of rebuilding the facility is repaid, or January 1, 2019, whichever occurs first.

(3) The proceeds may be used to pay license fees.

(4) A city, county, or city and county that enacts an ordinance permitting bingo games may specify in the ordinance that if the monthly gross receipts from bingo games of an organization within this subdivision exceed five thousand dollars (\$5,000), a minimum percentage of the proceeds shall be used only for charitable purposes not relating to the conducting of bingo games and that the balance shall be used for prizes, rental of property, overhead, administrative expenses, and payment of license fees. The amount of proceeds used for rental of property, overhead, and administrative expenses is subject to the limitations specified in paragraph (2).

(1) (1) A city, county, or city and county may impose a license fee on each organization that it authorizes to conduct bingo games. The fee, whether for the initial license or renewal, shall not exceed fifty dollars (\$50) annually, except as provided in paragraph (2). If an application for a license is denied, one-half of any license fee paid shall be refunded to the organization.

(2) In lieu of the license fee permitted under paragraph (1), a city, county, or city and county may impose a license fee of fifty dollars (\$50) paid upon application. If an application for a license is denied, one-half of the application fee shall be refunded to the organization. An additional fee for law enforcement and public safety costs incurred by the city, county, or city and county that are directly related to bingo activities may be imposed and shall be collected monthly by the city, county, or city and county issuing the license; however, the fee shall not exceed the actual costs incurred in providing the service.

(m) A person shall not be allowed to participate in a bingo game, unless the person is physically present at the time and place where the bingo game is being conducted.

(n) The total value of prizes available to be awarded during the conduct of any bingo games shall not exceed five hundred dollars

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(\$500) in cash or kind, or both, for each separate game which is held.

(o) As used in this section, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols that are marked or covered by the player on a tangible card in the player's possession and that conform to numbers or symbols, selected at random and announced by a live caller. Notwithstanding Section 330c, as used in this section, the game of bingo includes tangible cards having numbers or symbols that are concealed and preprinted in a manner providing for distribution of prizes. Electronics or video displays shall not be used in connection with the game of bingo, except in connection with the caller's drawing of numbers or symbols and the public display of that drawing, and except as provided in subdivision (p). The winning cards shall not be known prior to the game by any person participating in the playing or operation of the bingo game. All preprinted cards shall bear the legend, "for sale or use only in a bingo game authorized under California law and pursuant to local ordinance." Only a covered or marked tangible card possessed by a player and presented to an attendant may be used to claim a prize. It is the intention of the Legislature that bingo as defined in this subdivision applies exclusively to this section and shall not be applied in the construction or enforcement of any other provision of law.

(p) (1) Players who are physically present at a bingo game may use hand-held, portable card-minding devices, as described in this subdivision, to assist in monitoring the numbers or symbols announced by a live caller as those numbers or symbols are called in a live game. Card-minding devices may not be used in connection with any game where a bingo card may be sold or distributed after the start of the ball draw for that game. A card-minding device shall do all of the following:

(A) Be capable of storing in the memory of the device bingo faces of tangible cards purchased by a player.

(B) Provide a means for bingo players to input manually each individual number or symbol announced by a live caller.

(C) Compare the numbers or symbols entered by the player to the bingo faces previously stored in the memory of the device.

(D) Identify winning bingo patterns that exist on the stored bingo faces.

(2) A card-minding device shall perform no functions involving the play of the game other than those described in paragraph (1).

Card-minding devices shall not do any of the following:

(A) Be capable of accepting or dispensing any coins, currency, or other representative of value or on which value has been encoded.

(B) Be capable of monitoring any bingo card face other than the faces of the tangible bingo card or cards purchased by the player for that game.

(C) Display or represent the game result through any means, including, but not limited to, video or mechanical reels or other slot machine or casino game themes, other than highlighting the winning numbers or symbols marked or covered on the tangible bingo cards or giving an audio alert that the player's card has a prize-winning pattern.

(D) Determine the outcome of any game or be physically or electronically connected to any component that determines the outcome of a game or to any other bingo equipment, including, but not limited to, the ball call station, or to any other card-minding

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device. No other player-operated or player-activated electronic or electromechanical device or equipment is permitted to be used in connection with a bingo game.

(3) (A) A card-minding device shall be approved in advance by the department as meeting the requirements of this section and any additional requirements stated in regulations adopted by the department. Any proposed material change to the device, including any change to the software used by the device, shall be submitted to the department and approved by the department prior to implementation.

(B) In accordance with Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code, the commission shall establish reasonable criteria for, and require the licensure of, any person that directly or indirectly manufactures, distributes, supplies, vends, leases, or otherwise provides card-minding devices or other supplies, equipment, or services related to card-minding devices designed for use in the playing of bingo games by any nonprofit organization.

(C) A person or entity that supplies or services any card-minding device shall meet all licensing requirements established by the commission in regulations.

(4) The costs of any testing, certification, license, or determination required by this subdivision shall be borne by the person or entity seeking it.

(5) On and after January 1, 2010, the Department of Justice may inspect all card-minding devices at any time without notice, and may immediately prohibit the use of any device that does not comply with the requirements established by the department in regulations. The Department of Justice may at any time, without notice, impound any device the use of which has been prohibited by the commission.

(6) The Department of Justice shall issue regulations to implement the requirements of this subdivision, and the California Gambling Control Commission may issue regulations regarding the means by which the operator of a bingo game, as required by applicable law, may offer assistance to a player with disabilities in order to enable that player to participate in a bingo game, provided that the means of providing that assistance shall not be through any electronic, electromechanical, or other device or equipment that accepts the insertion of any coin, currency, token, credit card, or other means of transmitting value, and does not constitute or is not a part of a system that constitutes a video lottery terminal, slot machine, or device prohibited by Chapter 10 (commencing with Section 330).

(7) The following definitions apply for purposes of this subdivision:

(A) "Commission" means the California Gambling Control Commission.

(B) "Department" means the Department of Justice.

(C) "Person" includes a natural person, corporation, limited liability company, partnership, trust, joint venture, association, or any other business organization.

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ATTACHMENT "F"



CITY OF PLEASANT HILL POLICE DEPARTMENT



MEMORANDUM

Date: October 3, 2012
To: Troy Fujimoto, Senior Planner
From: Lieutenant Dan Connelly
Subject: Blue Devils Bingo

Bingo Parlors operated outside of religious organizations and senior citizen groups have historically caused issues for the police department by attracting some people who have engaged in criminal activity. The proposed Blue Devils Bingo Arcade would merely replace the two previous bingo parlors that were in place at the same address for many years, the Bingo Arcade and the I-Zone. The I-Zone operated with a slightly different bingo model but it was essentially the same concept. Both businesses utilize bingo machines or on-line bingo to operate. There has been controversy over the way these games have been played and their legality has been questioned. The law recently changed and now requires a "tangible card" and that the only electronic device that may be used is a "card minding device".

From January 1, 2005, to June 14, 2012, the Bingo Arcade and the I-Zone had a total of 306 events reported at the address. The majority were related to disturbances, narcotic violations, suspicious persons, and warrant arrests.

The Blue Devils Bingo (BDB) has operated in Concord for many years, dating back to the 1990's. Concord PD has experienced similar issues with patrons of the BDB, drunks, assaults, thefts, etc., but not to the extent that PHPD has with the Bingo Arcade and the Izone. One possible explanation is that the BDB in Concord is located in an industrial park in the far north end of Concord and away from the downtown businesses and shops. Since April 15, 2012 the Concord PD generated 11 events at the BDB; one petty theft, a misdemeanor assault, a felony assault, a hit and run collision, and five officer-initiated contacts resulting in two arrests.

The BDB also supports the Concord High School band, the Contra Costa Food Bank, and the Walnut Creek Aquanauts. Each charity is allotted one or two sessions per week for charity bingo. Each Charity is provided with \$500 for the session and all the tips from winning patrons. Officer Biama spoke with the Contra Costa Food Bank and confirmed that they receive a guaranteed \$500.00 per week from the BDB. In the last few months they have received over \$2000 each month from BDB.

Despite the charitable benefits for community organizations derived from BDB operations, police staff does not favor granting a use permit to the BDB for a bingo arcade. This position is based upon the history of problematic bingo parlors at that same location, albeit with different operators than the BDB.

If the use permit is granted, police staff recommends the following conditions be implemented:

- A video surveillance system, including the interior of the premise, with retention of stored images for a minimum of 30 days.
- On site security officer (s). Note: If this condition is implemented it could be written into the terms that this requirement is subject to review after a specified period of time, e.g., 90 days.

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ATTACHMENT "G"

NEWS - FEATURE

February 02, 2011

Login / Create Account

A New Place to Gamble?

Some so-called "Internet cafes" allow you play computer games of chance and win cash. Are they legal?

By Anna McCarthy

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Tweet Strip away the packaging of your average slot machine — the flashy lights, the alluring ring-a-ding-dinging— and you've basically got a computer game that spits out money when you win. In the Bay Area, a few enterprising entrepreneurs, including reputed bingo mogul **Robert "Bob" Casteel**, have figured out a way to exploit the similarities between computers and slots by capitalizing on a gray area in California law. They've opened "Internet cafes" that offer slot-like games on computers that pay out cash.

Share Sound sketchy? The City of Oakland thought so, too. Two of these local ventures, one operated by Casteel at **Foothill Square** and another at **Durant Square**, recently fell under serious scrutiny by city officials. They sent a cease and desist letter last fall to Casteel and Durant Square operator, Ray Abels, stating that the storefronts were operating Internet bingo, which is not allowed in the City of Oakland. The **Oakland City Attorney's Office** then threatened to shut down the businesses.

Although both Casteel and Abels insisted on the legality of their ventures, they voluntarily closed their cafes in mid-October while the city figured out whether the businesses were legit or just a cover for illegal gambling.

During their closure, I visited another one of these Internet cafes — the **I-Zone** — in a strip mall next to a few restaurants near **Diablo Valley College** in Pleasant Hill. The windows of the I-Zone were shaded. About fifteen patrons were inside, sitting among rows of roughly thirty computer screens. I saw one person using the Internet to browse Facebook. The rest were playing flashy, colorful games, some of which made hushed chiming sounds as they played.

I paid the woman at the front desk \$5 for about twenty minutes of "Internet time." She also said I would get "100 chances" to win at a computer sweepstakes game. She said I had the option of sitting at an "Internet exclusive" computer, but I told her I wanted to play the games. Then she sat me at a computer screen and explained that the Internet time would not run while I was playing my chances.

A colorful stack of balls bounced across the screen, and I clicked the "Play" button with my mouse until I had increased my original \$5 investment to \$7.40. A cautious gambler, I decided to quit while I was ahead. There was a button on the corner of the screen that took me back to a Google search prompt when I was ready to use my Internet time. However, the computer I was on didn't really seem set up for Internet use. The keyboard didn't work. So I collected my winnings, and went on my way.

The manager of the I-Zone refused to divulge any names associated with the business or owner, and said that the owner would not comment on the controversy surrounding the sweepstakes cafes in Oakland or the legality of the operations at the I-Zone.

But **James Mechem**, a consultant who works for SweepsCoach, a company that helps people all over the country open "sweepstakes gaming cafes," insists that if the owners are running a tight ship, the ventures could very well be legal. A sweepstakes game, Mechem explained, is lawful where slots aren't

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because, technically speaking, the game is designed to encourage people to buy a product, and not directly buy "chances" like in other forms of gambling. For instance, burger lovers at McDonald's are automatically entered in their "Monopoly" game for the chance to win a bunch of money every time they purchase a burger. Sweepstakes cafes offer the same deal, Mecham argued. "It's kind of like the McDonald's Monopoly game on steroids," he said.

Still sound sketchy? Legally speaking, there are three elements of gambling: prizes, chance, and consideration. The first two are self-explanatory. The third means that the customer paid directly to enter the game. By charging customers for Internet time, or in some cases for long-distance phone time, instead of directly for entrance into a game, a sweepstakes cafe, Mecham argued, removes the third element of gambling — consideration. "Simply put, the sweepstakes machines are our Monopoly game and the Internet or phone time is our cheeseburger," reads the SweepsCoach web site.

Of course, few people buy 1,000 burgers at McDonald's then throw out the burgers to up their chances at winning the Monopoly game. In order for the sweepstakes cafes to remain legal, selling the featured product — Internet time — has to remain the central purpose of the business. **Patricia Simmons**, who owns T's, an Internet cafe in Antioch, said in a phone interview that the games are merely a promotional tool for her Internet business. "Everyone is up in arms about something they don't understand," she said.

Mecham, who is based in Sacramento, said that his SweepsCoach business is booming all over the country — except in California. That's because gambling laws here tend to be more rigid than elsewhere, he said. But that doesn't mean they're airtight.

Depending on how far California sweepstakes cafe operators are willing to go and how much money the vendors providing the games are willing to spend, an operator that chooses to fight the legal battle could very well win, Mecham said. And a higher court decision in favor of the cafes would set a precedent for the whole state. It hasn't been done yet in California because no one has wanted to take such a potentially pricey risk, Mecham said. "They don't want to be the pioneer in charge, taking the arrows," he said.

But local critics contend that Casteel and Abels, the Oakland Internet cafe operators, were using the money they made from computer sweepstakes games to supplement their bingo halls. The two are also the bingo permit holders at Foothill and Durant squares charitable bingo halls, according to Oakland Assistant City Administrator **Arturo Sanchez**. In both cases, the cafes were located adjacent to the respective bingo halls.

Casteel also appears to own an Internet café in Vallejo around the corner from his bingo hall in that city, 777 **Bingo**. According to a Vallejo city official, the business license for the Vallejo Internet cafe, **Lucky Business Services**, is listed under the name **Surety Administrative Service**. And the phone number given for that business belongs to Casteel.

Critics claim that the Internet cafes also give bingo operators like Casteel a competitive advantage over local charities that are trying to raise funds through bingo games. They allege that Casteel can keep his bingo hall "buy-in" charges low because of the extra cash flowing from his nearby cafe. Neither Casteel nor Abels responded to calls for comment.

At an Oakland City Council meeting in October, **Richard Poe**, a Richmond bingo hall landlord who said he was leasing his space to charities at no cost, said that given the prices being offered by the two Oakland halls, there's no way they could be making a profit, let alone stay afloat. "We'd like to see these shut down," Poe said. "What we see going on really is not what they intended in 1976 for charitable bingo."

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Of course, in 1976, when state voters decided to legalize bingo for charitable fund-raising purposes, there was no such thing as electronic bingo. There was just the old paper game. Both Foothill and Durant bingo halls featured electronic bingo until January 2009, when a new California law banned the machines from all charitable bingo halls in the state. Oakland and other Bay Area municipalities adopted the new state rules into their bingo ordinances.

Nancy Marcus, an assistant to the Oakland city administrator, said the city told the two Internet cafe operators to shutter their doors and move out under direction of the California Attorney General's Office. If Casteel and Abels refused, then they might have faced state charges.

In June 2009, the attorney general's office announced it had shut down "illegal gaming operations" in Stockton and San Diego after raids of a number of "Internet cafes," operating video poker, keno, and slots. "The agents purchased a card that allowed them 'Internet time' on the cafe's computers. If they won, an on-site employee paid them in cash," read the press release.

As of January 23, a visit to the former Foothill Square Internet cafe revealed that Casteel had decided to heed the city's warning and move out. However, the Durant Square Internet cafe was still open, advertising itself as the "Bingo Zone." Marcus said she wasn't aware that the cafe was still open and games still were being offered.

Although it's unclear whether Abels, the Durant Internet cafe owner, will fight if the city cracks down again. If it does, he may have a legal case to stay open. Mecham argued that as long as sweepstakes cafe operators stick to a business plan that features the product instead of the gaming, an expert will find that "although it looks like a duck and quacks like a duck, it's not necessarily a duck."

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by Anna McCarthy

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ATTACHMENT "C"

August 7, 2014

City Of Antioch

City Council

Attn: Mindy Gentry, Tony Tiscareno and Mary Rocha

Re: Moratorium on Bingo Halls in Antioch

My name is Francine McMahon and I am part of the East County Hot Shots. We are a non-profit organization Founded in 2007, located in Antioch, Oakley, Brentwood and Pittsburg. We support a fast pitch traveling softball teams, we focus on keeping the kids in sports and off the streets. We have an indoor practice facility in Antioch where all the girls can go to practice and learn to play ball. Our bingo is located in Pittsburg and funds all proceeds to the kids. Due to economic times for the bingo, we moved to Pittsburg this year, where we had been operating at the VFW Hall in Antioch for several years. We are a small but, very successful bingo operation.

My purpose of the letter is to advise on the impact of additional bingo's opening in Antioch. If the City allows another organization into the city, we will likely be forced to close our doors. I believe we are also speaking on behalf of the VFW Woman's Aux Bingo, whom supports our Veterans and The Antioch Senior Center whom help the senior citizens in our community. We are all legitimate non-profit organizations doing the right things for our organizations. I reside in Antioch myself, we all know the crime and criminal activity is a daily ongoing problem.

Letting new bingo halls into the community will jeopardize the safety of our City and bring additional crime into the community, based on the new organization's history. We have been approached on several different occasions and phone calls to request we let It Takes a Village, operate in our existing building in Pittsburg, on the days we did not do bingo and share costs. After additional research from Bingo Managers and Supply Distributors, we declined, due to their reputation and credibility. The local bingo supply distributors will not do business with them either.

I did some personal research:

It Takes a Village Development Center – previously located in Oakland and Richmond, if we let them in, it will draw all the bad apples from Oakland and Richmond into our city. They have advised they will have the cheapest bingo in town and run the smaller bingo's out. The organization has a bad reputation in Oakland and have been run out, they are not currently operating. I cannot confirm this with the City Of Oakland. They do not have a current 501-C-3 charity organization to run a charity bingo, based on the Secretary of State and has been previously suspended. They are not currently registered with the Secretary of State nor the IRS. No fictitious name has been filed in Contra Costa County, so I'm not sure how they plan to operate.

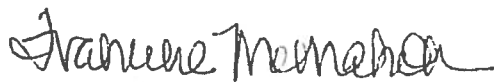
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Patriotic Hearts – This is Patricia Cooper who also goes by Patricia Simmons with the internet café's. She was the President of Love 2 Danz Bingo, she was removed from the board for suspicious activity and left the organization flat broke and in debt. The organization Love 2 Danz was closed by the State of California for non-filing of taxes and revoked there entity and the doors were closed. She then moved on to the internet cafes, in which she kept moving her locations around Pittsburg. The Pittsburg police ended up shutting her down. She then landed in Antioch were it was very difficult to shut down her gaming operation. My understanding is she was facing charges for illegal gaming and was placed on probation instead of jail time, and suppose to have no contact with gaming. She is now trying to open another bingo under the name of Patriotic Hearts, I cannot find any current information on them. There are no current 501C-3 charity nor are they registered with the Secretary of State or the IRS, there is no fictitious name filed with the county. She is clearly opening another internet café. I know her business tactics, she is not a nice person.

I did hear there are new gaming machines coming out soon and they will be just like the internet sweepstakes machines, just formatted differently, same concept. I also was told that these 2 applicants will join together if one location is approved, but this is here say. This is likely her motivation to open a new bingo as a cover up for the internet operations.

If there is a public hearing on this matter please let us know, so all interested parties can attend. I hope that you reconsider allowing any other bingo operations into Antioch. This will impact our local organizations greatly and we will no longer be able to do what we do so well. Should you have any questions or concerns, please feel free to contact me directly.

Sincerely,



Francine McMahon

East County Hot Shots – Bingo Operations Coordinator

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925-726-6211

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