

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

WEDNESDAY, OCTOBER 16, 2013

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 **THURSDAY, OCTOBER 24, 2013**.

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

6:37 P.M.

Commissioners	Hinojosa, Vice-Chair
	Motts
	Baatrup
	Miller
	Westerman
	Pinto

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:**
- A. September 4, 2013 **APPROVED**
 - B. September 18, 2013 **APPROVED**
 - C. September 9, 2013 (Special Mtg) **APPROVED**

* * * END OF CONSENT CALENDAR * * *

NEW PUBLIC HEARINGS

MINUTES

MINUTES

MINUTES

2. **UP-13-03 – Panda Express** requests a use permit for a 2,230 sf freestanding restaurant building with a drive-thru that would be located on a 29,622 sf site carved out of the northwest corner of the existing Lowe's Home Improvement Warehouse Store parking lot, including a request for a Tentative Minor Subdivision Map, a Use Permit and Design Review for the proposed drive-thru restaurant. The project is located north of State Route 4 at the northeastern corner of the intersection of Somersville Road and Mahogany Way (**APN 074-370-029**). An Initial Study/Mitigated Negative Declaration is also proposed for adoption.

CONTINUED TO 11/20/13

STAFF

3. **UP-13-07 – Mesa Outdoor** requests the approval of a Use Permit to construct a billboard. The billboard is proposed to be 48 feet in length and 14 feet wide on a 46 foot tall cylindrical column, which would have an overall height of 60 feet from finished grade. The project site is located on the northeast corner of Delta Fair Boulevard and Century Way, (**APN 074-080-029**). This project is exempt from the California Environmental Quality Act.

RESOLUTION NO. 2013-14

STAFF

4. **Z-13-06 – The City of Antioch** requests that the Planning Commission recommend adoption of an ordinance amending the zoning code to allow fortunetellers to be permitted by right in certain commercial zoning district. This ordinance is exempt from the California Environmental Quality Act.

RESOLUTION NO. 2013-15

STAFF

5. **Z-12-02 – The City of Antioch** requests that the Planning Commission recommend adoption of an ordinance establishing zoning regulations for computer gaming and internet access businesses. This ordinance is exempt from the California Environmental Quality Act.

RESOLUTION NO. 2013-16

STAFF

NEW ITEM

6. **Election of Chair**

KRYSTAL HINOJOSA

STAFF

ORAL COMMUNICATIONS

WRITTEN COMMUNICATIONS

COMMITTEE REPORTS

ADJOURNMENT – 9:09 P.M.

Notice of Availability of Reports

This agenda is a summary of the 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 Thursday 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.

**CITY OF ANTIOCH
PLANNING COMMISSION MINUTES**

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

**September 4, 2013
City Council Chambers**

CALL TO ORDER

Chair Sanderson called the meeting to order at 6:30 p.m. on Wednesday, September 4, 2013, 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 Thursday, September 12, 2013.

ROLL CALL

Present: Commissioners Azevedo, Motts, Baatrup (arrived at 6:32 pm), Miller, Westerman
Chair Sanderson
Absent: Vice Chair Hinojosa
Staff: Community Development Director, Tina Wehrmeister
Minutes Clerk, Cheryl Hammers

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

None.

CONSENT CALENDAR

1. Approval of Minutes: None

END OF CONSENT CALENDAR

NEW ITEM

2. **Housing Element Implementation** – Provide direction on a set of draft amendments to the City Zoning Ordinance (Antioch Municipal Code Title 9, Chapter 5), including development standards for multi-family residential development and provisions for discretionary parking reductions, in order to implement policies of the adopted 2007 – 2014 Housing Element.

CDD Wehrmeister introduced Vivian Kahn, Dyett & Bhatia, who provided a power point presentation which included objectives, reviewed progress to date, key issues for revising multi-family standards, key issues for parking modifications, proposed revisions

to multi-family standards, articulating facades and varying roof forms, multi-family to single family transitions, parking location and frontage, usable open space and storage, and additional landscaping requirements

Ms. Kahn then presented three questions to the Planning Commission for discussion:

How much flexibility for modifying additional setback adjacent to single family development and other transition standards?

Is the proposed daylight plane an appropriate approach to reduce effect on adjacent lower-density development and districts?

Are the proposed choices for parking locations a good way to limit visual impact without unduly restricting design options on different sites?

Commissioner Azevedo stated that he had concerns with reducing the setbacks with respect to safety and noise interfering with quality of life.

Commissioner Baatrup asked Ms. Kahn about the interpretation of flexibility and said that it seems a little narrow to which she said that they are looking for feedback on flexibility in transition areas adjacent to single family as well as front setbacks with less open space in the front and more in the back. Ms. Kahn said that they are proposing a tradeoff and asked if there were circumstances when you might want less of a setback in the back.

Commissioner Azevedo responded that this appears to almost be taking away some flexibility by shortening the front setback and moving more to the back which removes flexibility by forcing the owner of the property to spend their leisure time in the back yard. He said that he is not sure that he buys this flexibility as an advantage.

Mr. Kahn said that these setbacks are minimums and that if someone wants to provide more of a setback in the front, they can increase this setback. She then asked if it is appropriate to require more setback in the back.

Commissioner Miller asked if the intent is to get more space in the front in multi-family on a court and more of a setback to allow kids to play in front.

Ms. Kahn said that the design guidelines talk about doing things to make the streets more attractive for pedestrians and the idea is that if you have buildings closer to the street with interesting facades, it is more attractive. She said that it also provides a buffer between single family and multi-family and the tradeoff is to provide transition to protect lower density areas.

Chair Sanderson said that she has a different perspective and that she was focused on minimums thinking what is very trendy in apartment housing to have a short setback so people could sit on the porch and talk to neighbors. She said that she thinks that supply and demand is going to determine what developers will do and that personally she doesn't have a problem with the ten foot minimum but would want to keep twenty feet

setback for apartments.

Commissioner Miller stated that a single family unit having a big multi-family unit next to it would appreciate more of that twenty feet zone.

Chair Sanderson said that in addition to trying to make things more visually appealing that one of the primary reasons for these revisions is to make it more attractive to potential developers. She asked if flexibility on the twenty foot requirements would be resolved on a case by case basis handled by staff or the Planning Commission

Ms. Kahn said that it is more difficult for staff and the commission if it is unclear to applicants in the ordinance what you want; that it is confusing looking at the design guidelines and then looking at standards which are silent on more issues. She said it is usually the other way around and that they should be working together which will ultimately save time and money. As far as the twenty foot flexibility, she said that in some instances this could be done by staff and others would have to go to the Planning Commission; that would be a discretionary process dependent upon how specific the ordinance will be but that it could be subject to appeal.

Commission Baatrup clarified with Ms. Kahn that this could be a formal process before the Commission or could be a decision made at staff level but would be based upon something in the record.

Commissioner Motts stated that this would seem appropriate to him if it is a major arterial with maybe low fencing to which Ms. Kahn said that low fencing could work but they would not want it too high.

Commissioner Baatrup said that his thought is that in these areas you could end up with a three story multi-family next to single family and you have a tunnel effect with narrow setbacks in front with a very tall building next to you and feel trapped. He asked how this would be handled to which Ms. Kahn said that three story buildings are unusual for Antioch but there would not be a tunnel effect with three story buildings given the width of arterial streets and it would just make the area more interesting.

Commissioner Westerman asked if there is a requirement for upper floors of buildings to be set back as the multi stories go up to which Ms. Kahn responded that this is what they are showing in the slides as the daylight plan. She said that doing this on the rear and sides would aid with privacy to adjacent properties and that they are proposing requiring the daylight plan to deal with transition from higher density to lower density.

Commissioner Baatrup stated that with the flexibility aspect, he can see developers pushing setbacks to a minimum to put more product in there and he would feel more comfortable with a certain percentage of minimum setbacks to break up the tunneling effect.

Ms. Kahn suggested creating a setback average to vary the setbacks to which CDD Wehrmeister said that this may put staff in a difficult situation to implement between varying property owners but an average can be required within one lot or project.

Chair Sanderson clarified with Ms. Kahn that tonight would be for comment but that sufficient direction is needed so that ultimately recommendations would be made to City Council. Ms. Kahn said that the next step will be to come back with a public review draft and that recommendation to City Council would follow.

Commissioner Motts clarified with Ms. Kahn that they are trying to come up with guidelines and standards that work together which are more stringent.

Commissioner Baatrup discussed with Ms. Kahn the graphic on the daylight plane and the proper direction of the arrow.

Commissioner Miller stated that the articulation on the front may address the issue of the daylight plane to break it up and that he liked the idea of larger setbacks in back but with different views in the front.

Chair Sanderson said that the daylight plane in the back is a functional necessity to protect neighbors but that in the front it may be architecturally limiting and confusing.

Commissioner Miller clarified with Ms. Kahn that the site would have to be oriented, have entry features and have variation in roof form regardless of setbacks.

Commissioner Baatrup asked how parking locations would be addressed on corners to which Ms. Kahn said that there is a standard for that with a setback from the street and that on a corner lot setbacks would be required to keep it clear for sight purposes. Commissioner Baatrup said that he would like it made clear what can be done on a corner.

Chair Sanderson asked if it was a requirement that developers fence the parking so that it is not accessible from the street to which Ms. Kahn said that it can be screened with fencing or landscaping or a combination but that there are guidelines to address that; that they want enough in the standards to give the applicant and the public a good idea of what is expected.

Commissioner Westerman said that he is concerned about visibility of parking from the street, that it is possible that there be landscaping to hide all but the entry and that the owner could opt for a reduction. Ms. Kahn said that she would have to check but ordinances have requirements for visibility on corners. She said that maybe they can't put fences on a corner and can put in landscaping not exceeding a certain height so as to maintain visibility.

CDD Wehrmeister interjected that the City does have those standards.

Ms. Kahn asked if there were other places that the Commission might want to put parking to which Commissioner Motts said that there was some discussion in the report of offsite parking. Ms. Kahn said that there is a possibility of doing shared parking and offsite parking typically in a more urban area or close to an area that has commercial uses. That maybe a mixed use on a parcel can share parking.

Chair Sanderson clarified that no formal motion is needed.

Ms. Kahn said that they are proposing amendments to existing provisions showing those sections where proposed amendments are adding some basic requirements. That they are proposing expanding the types of projects that are eligible for parking reductions and have looked at reducing standards for those developments based on what they hear from the Commission and from architects and that it is actually easier to work with a situation where they can get modifications without going through a variance where it is necessary to reduce parking standards. She said that they would propose that these situations be eligible for a parking reduction and asked if there was any other situations to grant a parking reduction that were not covered.

Commissioner Baatrup said that he can't think of any others and asked if this is allowing private developers to utilize public parking. Ms. Kahn said that this would be a discretionary process. She referenced the slide and said that the application would include a parking demand study and whatever else was deemed necessary. That if it were for shared parking, a study would be needed to show demand at different times of day and findings would be based on information in the record that may require monitoring. She discussed the slides with requirements for shared, off site and tandem parking. Ms. Kahn said that if housing is a mixed use and very close to things, then it may be more reasonable to expect people will walk but that there may be areas where walking is not attractive.

Chair Sanderson said that there is one thing that she has a problem with which is offsite parking facilities and that she is concerned that a developer comes in and presents facts, studies are done, findings are made, and then 20 years later surrounding area has changed and then there is no way now to add parking; that this may be letting developers off too easy to not incorporate reasonable parking in their plans and to not plan for onsite parking facilities. She said that even if there is an adjacent parking garage the owner of that parking garage can sell that property to be developed and the parking is wiped out.

Commissioner Miller agreed and said that they can't let developers off on parking.

Ms. Kahn asked the Commission if proposing requirements for what should be in the application and what the findings would have to be, could some parking reductions be approved at staff level or should everything come to the Commission.

Chair Sanderson said that with the exception of offsite parking she thinks the remainder of the special circumstances could be evaluated by staff.

Commissioner Motts said that this might be connected to the size of the development but if looking at something larger, the Commission may want to weigh in on that.

Commissioner Azevedo said that the impact on the surrounding community should be taken into consideration if staff is making the decision or whether it makes sense to come to the Commission and get public input.

CDD Wehrmeister said that she thinks staff would be comfortable with a provision that allows administrative reviews but if controversial and should have a hearing, then it can come back to the Commission, similar to the administrative design review provisions.

Ms. Kahn said that they can make it clear that staff maintains authority and if one is controversial and has a bigger impact, then it can be taken to the Commission. She said that regarding the standards for offsite parking for non-residential uses that she believes the consensus is that it not be allowed for residential uses

Commissioner Azevedo said that he had experiences with the Rivertown District, that there was an example of that recently, and that this should be decided on by a use by use basis.

Commissioner Baatrup and Chair Sanderson discussed with Ms. Kahn mixed use development and tandem parking arrangements. They discussed attended tandem parking using valets. In response to Ms. Kahn's question if there was any other circumstances where this would be appropriate for non residential, Chair Sanderson said that this could be used for a hotel situation.

Commissioner Miller said that a hotel would be the only situation appropriate for a valet with tandem parking.

Ms. Kahn said that some cities have approved projects with a City valet where there would be a charge and the valets will come take your car to an offsite location and then bring it back to encourage restaurants in the area where there is no parking.

Ms. Kahn asked if there should be an option for guest parking for a visitor to someone in the building where the guest can park behind them in tandem parking.

Commissioner Motts said that this could be a workable situation and that he has seen it for events where people go in and leave at the same time.

Chair Sanderson stated that she has personal experience and that the danger is that parking is used by tenants who have more cars than they have spaces and the property owner utilizes tow companies to patrol which can be difficult.

Ms. Kahn went over the next steps with the Commission.

ORAL COMMUNICATIONS

CDD Wehrmeister reminded the Commission about the meeting on Monday and said that she also sent the Commissioners an invitation by e-mail for the ribbon cutting for the turf fields.

She said that three applications were received for the three Planning Commission positions.

She said that no appeals were received on the Kelly's item and that this item may be taken to City Council on the 24th.

WRITTEN COMMUNICATIONS

None.

COMMITTEE REPORTS

None..

ADJOURNMENT

Chair Sanderson adjourned the Planning Commission at 8:23 p.m.

Respectfully Submitted,
Cheryl Hammers

**CITY OF ANTIOCH
PLANNING COMMISSION MINUTES**

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

**September 18, 2013
City Council Chambers**

CALL TO ORDER

Vice Chair Hinojosa called the meeting to order at 6:30 p.m. on Wednesday, September 18, 2013, 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 Thursday, September 26, 2013.

ROLL CALL

Present: Commissioners Azevedo, Motts, Baatrup and Westerman
Vice Chair Hinojosa
Absent: Chair Sanderson and Commissioner Miller
Staff: Senior Planner, Mindy Gentry
City Attorney, Lynn Tracy Nerland
Minutes Clerk, Cheryl Hammers

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

None.

CONSENT CALENDAR

1. Approval of Minutes: August 21, 2013

On motion by Commissioner Azevedo, and seconded by Commissioner Westerman, the Planning Commission approved the Minutes of August 21, 2013.

AYES: Hinojosa, Azevedo, Motts, Baatrup, Westerman
NOES: None
ABSTAIN: None
ABSENT: Sanderson, Miller

END OF CONSENT CALENDAR

NEW PUBLIC HEARING

2. **Z-13-05 – The City of Antioch** requests that the Planning Commission recommend adoption of an ordinance creating an Exclusive Parking District and amending the zoning map to designate specified parcels that are currently parking lots in Rivertown as Exclusive Parking (P) (APN 066-052-003, 066-053-002, 066-061-009, 066-061-010, 066-062-016, 066-071-005, 066-072-020, 066-082-005, 066-082-006, 066-082-007, 066-107-001, 066-107-003, 066-107-010, 066-107-011).

SP Gentry provided a summary of the staff report dated September 12, 2013.

Commissioner Motts asked staff if all of the parking lots in Rivertown were in the redevelopment and subject to what has happened to redevelopment. CA Nerland responded that all of them are held by the agency and that ownership was conveyed to the City in 2011. She said that the State has created an oversight board to oversee the dissolution and approval of these parcels being conveyed to the City. She said that there continues to be discussions with the State who has allowed some of the parcels to remain with the City but not all of them and that this is part of that effort.

Commissioner Azevedo said that it appears that some parking lots have multiple parcels and asked if there was a reason for that. SP Gentry responded that although she does not know the history, that these parcels were apparently never merged over time, that they can be merged in the future and that having multiple parcels does not affect the parking lots.

Vice Chair Hinojosa stated that she was wondering if street parking was allowed to meet parking requirements for businesses downtown. SP Gentry answered that currently the Code does not allow on street parking to meet parking requirements and that given that Rivertown has zero setback requirements and smaller lots, onsite parking in downtown is more difficult.

Vice Chair Hinojosa said that she has heard rumors that the State was requiring that any assets held between January and the Spring of 2011 were to be sold and asked if that has come up as a possibility. CA Nerland said it is a possibility if a parking lot is determined not to be in governmental use. She said that the oversight board has agreed that parking lots should remain and serve the purpose they have, that State legislators have been engaged and that they are hopeful that this will not be the outcome.

OPENED PUBLIC HEARING

Noel Pinto asked if there were any plans to charge for parking in Antioch in the future. CA Nerland said that the goal is to encourage people to come down to the area and at this point there are no plans to charge.

CLOSED PUBLIC HEARING

Commissioner Westerman said that this looks fairly straight forward and appears to be an administrative change. He said that he has no problem with this.

Commissioner Azevedo said that the Rivertown District was set up to encourage people to come down, that he haven't seen where that has changed, that he thinks this is an incentive for businesses not having to deal with parking issues, that this is a smart move and that he is in support.

Commissioner Motts asked if there were any potential parking structures proposed for any of these parking lots to which SP Gentry said that none have been designated.

RESOLUTION NO. 2013-**

On motion by Commissioner Azevedo and seconded by Commissioner Westerman, the Planning Commission recommends to the City Council approval to amend the Antioch Municipal Code to create the Exclusive Parking District (P) and amending the zoning map to designate specified parcels as Exclusive Parking (Z-13-05).

AYES: *Hinojosa, Azevedo, Motts, Baatrup, Westerman*
NOES: *None*
ABSTAIN: *None*
ABSENT: *Sanderson, Miler*

ORAL COMMUNICATIONS

SP Gentry said that Planning Commissioner interviews will be conducted on September 26th.

CA Nerland thanked those Commissioners who attended the Community Café. She said that there should be an e-mail coming from the facilitator.

CA Nerland said that the annexation rezoning was approved by the City Council but that there continues to be sticking points with the County on financial issues.

CA Nerland said that Kelly's Cardroom was not appealed but that there is an application pending with the Police Department and the State Gambling Commission.

CA Nerland stated that the zoning regulations on internet gaming may be coming to the Commission in the next couple of months.

WRITTEN COMMUNICATIONS

None.

COMMITTEE REPORTS

Commissioner Azevedo said that Transplan has a scheduled September meeting for the 26th.

He thanked the Commission and staff for the opportunity to serve on the Planning Commission, this being his last meeting after ten years of service. He said that this was a good experience and he appreciates all of the help and advice. He said that he also spent eight years on the Parks and Recreation Commission and he looks at his service as a way to give back to the community.

Commissioner Motts said that Commissioner Azevedo will be sorely missed.

Commissioner Baatrup said that he appreciates the thoughtfulness Commissioner Azevedo put into each decision, that he made well grounded decisions and that he will be missed.

Commissioned Westerman said that Commissioner Azevedo has been a role model to the rest of the Commission, and he has showed how it should be done and what a planning commissioner should do and he wished him good luck.

Vice Chair Hinojosa said that although she has known Commissioner Azevedo the shortest amount of time, she feels she has a connection, that she respects him as a mentor and that she has learned a lot from him.

Vice Chair Hinojosa confirmed with staff that the next meeting will be October 16th.

ADJOURNMENT

Chair Sanderson adjourned the Planning Commission at 6:58 p.m.

Respectfully Submitted,
Cheryl Hammers

**CITY COUNCIL
BOARD OF ADMINISTRATIVE APPEALS
ECONOMIC DEVELOPMENT COMMISSION
PARKS AND RECREATION COMMISSION
PLANNING COMMISSION
POLICE CRIME PREVENTION COMMISSION**

SPECIAL MEETING/WORKSHOP

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

**September 9, 2013
Antioch Police Department
Community Room
300 L Street**

On September 9, 2013, the workshop was called to order by Mayor Harper at 6:44 p.m. City Council members present were Mayor Harper, Mayor Pro Tem Rocha, Council member Tiscareno and Council member Wilson. Council member Agopian had an excused absence.

Staff present:

Alan Barton, IS Director
Mike Bechtholdt, Deputy Public Works Director
Ron Bernal, Public Works Director/City Engineer
Allan Cantando, Chief of Police
Michelle Fitzer, Human Resources/Economic Development Director
Jim Jakel, City Manager
Dawn Merchant, Finance Director
Lynn Tracy Nerland, City Attorney
Tina Wehrmeister, Community Development Director
Consultant Stacey McLaughlin of Mountaintop Insight facilitated the workshop.

Public Comment:

Karl Dietzel stated that the Council should start spending tax money on public safety and not these "fun get-togethers."

1. Preparation for Workshop

Stacey McLaughlin provided the Council and staff with an introduction to the process of the "Community Café." She explained that this process has been used for information gathering in several different settings. The purpose this evening is to gather community input on the future of Antioch. Ms. McLaughlin explained the role of the table hosts and discussed with Council the role that they would take at this initial meeting. It was decided that the Council would observe the table activities for this meeting.

2. Strategic Planning Process for Community Workshops

At 7:27 pm Mayor Harper welcomed the Board/Commission members and the public in attendance to the first Antioch Community Café. Stacey McLaughlin was introduced.

Roll Call:

City Council Present: Mayor Harper, Mayor Pro Tem Rocha, Council member Tiscareno and Council member Wilson. Council member Agopian had an excused absence.

Board of Administrative Appeals Members Present: Vice Chair Deborah Simpson.

Economic Development Commissioners Present: Vice Chair Keith Archuleta, Richard Asadoorian, Peter Donisanu, Rhoda Parhams, Martha Parsons, and Lamar Thorpe.

Parks and Recreation Commissioners Present: Chair Roy Immekus, Gene Davis, Rodney McClelland, and Brent Thibeaux.

Planning Commissioners Present: Chair Greg Baatrup, Krystal Hinojosa, Kerry Motts, Virginia Sanderson, and Thomas Westerman.

Police Crime Prevention Commissioners Present: Vice Chair Lovece Headd, Richard Augusta, William Cook, Gregory Hayes, and Hansel Ho.

Each of the Boards/Commissions introduced themselves and had a spokesperson share what the Board/Commission's function is.

Stacey McLaughlin provided an overview of the process for all of the participants. The Café began and participants worked on contributing thoughts/suggestions/ideas on the two questions posed.

Feedback of the process was provided as follows:

Positive

- Engaging/forward thinking
- Non-traditional – very well done
- Opportunity to hear and be heard
- Not just about crime – a healthy discussion about things other than crime

Improvements

- Distill questions for future cafes to 5 words
- Language issues? Spanish/Filipino/Chinese

The workshop with the Board/Commission members was adjourned at 9:47 pm.

The Council and staff stayed to debrief the process with Ms. McLaughlin. The meeting was fully adjourned at 10:20 pm.

**STAFF REPORT TO THE PLANNING COMMISSION
FOR CONSIDERATION AT THE MEETING OF OCTOBER 16, 2013**

Prepared by: Cindy Gnos, Contract Planner
Raney Planning & Management, Inc.

Reviewed by: Mindy Gentry, Senior Planner *MG*

Date: October 10, 2013

Subject: Minor Subdivision Map, Use Permit, Design Review – Panda Express
(PW 357-301-13, UP-13-03, AR-13-02)

REQUEST

The applicant, CRM Architects & Planners, Inc., has applied for a Tentative Minor Subdivision Map to subdivide the 11.2-acre Lowe's Home Improvement Warehouse parcel into two, creating a 0.68-acre parcel for the development of Panda Express restaurant. The applicant has also requested a Use Permit and Design Review for the proposed drive-thru restaurant. An Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program have been prepared and are proposed for adoption. The site is located at the northeastern corner of the intersection of Somersville Road (Auto Center Drive) and Mahogany Way. The proposed Panda Express restaurant is located in the northwestern portion of the existing Lowe's Home Improvement Warehouse Store parking (Attachment "A") (APN: 074-370-029).

Four actions/entitlements are before the Planning Commission, and are each discussed below:

Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program: A Mitigated Negative Declaration was prepared which identified impacts to noise and transportation/circulation. Mitigation measures have been included for these environmental factors which have reduced impacts to a less-than-significant level.

Tentative Minor Subdivision Map: The applicant is requesting a Tentative Minor Subdivision Map to subdivide the one 11.2-acre parcel into two. The parcel for the existing Lowe's would contain 10.54 acres and the new parcel for the proposed Panda Express would contain 0.68 acres.

Use Permit: The applicant is requesting a Use Permit to construct a 2,230-square foot fast food restaurant with a drive-thru.

Design Review: The applicant is requesting Design Review of the 2,230-square foot Panda Express restaurant, landscaping, and signage.

RECOMMENDATION

Staff recommends that the Planning Commission approve the Tentative Minor Subdivision Map, Use Permit and Design Review, subject to the conditions contained in the attached resolution.

BACKGROUND

In 1999, the Zoning Administrator approved a Mitigated Negative Declaration and the Design Review Board approved a Design Review request for the demolition of an existing commercial center and the construction of a Lowe's Home Improvement Warehouse building.

ENVIRONMENTAL

In compliance with the California Environmental Quality Act, the City prepared an Initial Study and Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) for the proposed Panda Express project. The IS/MND was circulated for a 20-day public review period from September 23, 2013 to October 14, 2013. As of the date of this staff report, no comments have been received. The IS/MND and MMRP have been provided to the Planning Commissioners via email on October 2, 2013 and are available for review on the second floor of City Hall in the Community Development Department, and can also be found on the City's website at:

<http://www.ci.antioch.ca.us/CityGov/CommDev/PlanningDivision/Environmental-docs.htm>.

The IS/MND determined the following environmental factors could be potentially affected by the project, involving at least one impact that is "Potentially Significant": noise and transportation/circulation. Mitigation measures have been provided for each potentially significant impact, reducing the impacts to a less-than-significant level. These are described in detail in the environmental document.

ANALYSIS

Issue #1: Project Overview

The proposed project consists of a Tentative Minor Subdivision Map to subdivide the 11.2-acre Lowe's parcel into two, creating a 0.68-acre parcel for the development of a Panda Express restaurant. The applicant has also requested a Use Permit and Design Review for the proposed drive-thru restaurant. The proposed Panda Express restaurant would consist of a 2,230-square foot (sf) freestanding building that would be located on a 29,622-sf site carved out of the northwest corner of the existing Lowe's Home Improvement Warehouse Store parking lot. The restaurant would include a drive-thru, 25 parking stalls, an outdoor patio with seating under a shade structure, and bicycle parking. The site has been configured to include a dedicated drive-thru lane with a

queue length that would accommodate 10 vehicles. Interior seating for the restaurant would accommodate 46 seats along with 16 seats on the exterior patio. The building footprint would consist of the following areas: customer service, dining, single occupancy restrooms, a full service kitchen, dry storage, freezer and cooler, manager's station, and drive-thru station (Attachment "B").

The Panda Express restaurant would operate from 11:00 a.m. to 10:00 p.m. on a daily basis. Peak periods would occur at lunch time from 12:00 to 1:30 p.m., and dinner time from 5:00-6:30 p.m. The store would employ a minimum of two shifts per day with an average team member count of 3 to 5 per shift. The number of employees working during peak hours will range from 4 to 5 team members. Store deliveries would occur once a week and are scheduled to take place in the morning hours before the restaurant opens and the parking lot is utilized. The restaurant would have its own dedicated trash enclosure with separate recycling and trash bins.

Issue #2: General Plan, Zoning, and Land Use

The General Plan designation for the project site is Commercial within the Somersville Road Corridor Focus Area. Eating and drinking establishments are allowed within the Somersville Road Corridor. The Zoning designation is C-3 (Service/Regional Commercial) which requires a Use Permit for fast food restaurant, a drive-thru window, and outdoor seating.

Surrounding land uses and their designations include:

North:	Commercial (C-3)
South:	Commercial (C-3)
East:	Residential behind Lowe's (R-20)
West:	Commercial (C-3)

Issue #3: Architecture and Landscaping

The applicant is proposing a 2,230-sf freestanding Panda Express building. The restaurant would include a drive-thru, 25 parking stalls, an outdoor patio with seating under a shade structure, and bicycle parking. The exterior of the building is concrete with metal and glass accents, including a stone veneer base and steel tubes appearing like bamboo. The colors are reds, greens, and browns. The glass at the corner entrance has a panda mural painted on the interior walls behind the glass. The 22-foot tall, one-story building, is broken up at around the mid-point by several aluminum awnings.

SDG Architects conducted a peer review of the proposed architecture and building design. The building was reviewed for compliance with the general commercial design guidelines. SDG points out that although prototypical buildings should be avoided, the proposed building has no significant local context or special site condition in which the design of the building would need to mimic. Numerous other fast food type

establishments are located in the vicinity and vary greatly in their design. The existing Lowe's Shopping center is a typical big box design and does not offer architectural design or detail with which to coordinate. SDG notes that the proposed design would bring a clean modern look to the area that is not currently present. A canopy has been provided over the drive-thru pick-up window area and the roof is designed to screen the mechanical equipment in compliance with the guidelines.

SDG also comments on the trash enclosure and the bicycle parking. The guidelines state that trash enclosures shall be architecturally integrated into the design of the structure, have metal doors, and include overhead covering. SDG suggests that the concrete masonry unit structure be modified to be compatible with the main structure. This would include similar finish materials and colors as the exterior of the main building. In addition, SDG notes that the trash enclosure is not covered. Conditions have been added to address the trash enclosure comments. In addition, SDG notes that the project provides bicycle racks in an appropriate area, however, the design should be durable and visually subdued as required in the guidelines. A condition has been added regarding bike racks, encouraging the loop racks or ribbon bars based upon their performance.

SDG further points out that the design guidelines state that drive-thru aisles should be located towards the rear of the building and away from the street frontage, screened by landscaping and walls. The proposed drive-thru lane is located in front of the building which does not comply with the guidelines. The applicant has indicated that the location of the building in an existing parking lot makes compliance with this guideline difficult. SDG suggested that the drive-thru lane be relocated or landscaping or walls screen the drive-thru lane from the public street view. The applicant submitted a revised landscape plan which notes that bushes and shrubs will be planted to maintain a three to four foot vegetative screen. Staff believes the applicant's proposed landscape plan does not meet the peer review recommendation or the design guidelines and suggests, at a minimum, that the screening be provided by a berm or a decorative low wall in combination with the vegetative screen. A condition has been added reflecting this recommendation.

The landscape plans submitted indicate Arbutus Standard (Strawberry Tree) and London Plane (Sycamore Tree) trees planted in the parking area landscape planters consistent with the existing parking lot. The building and drive-thru areas are accented with Chanticleer Pear and Coast Live Oak trees. Several three-to-four foot tall shrubs have been located around the perimeter of the trash enclosure, outdoor seating area, and drive-thru lane. Areas of grass have been provided to function as bio-swales in compliance with the C.3 water quality requirements. Although plantings have been enhanced near the drive-thru lane, the existing landscaping at the property frontage of Auto Center Drive and Mahogany Way is to remain. Staff recommends that the landscaping be improved along the street frontage from the driveway on Somersville Road (Auto Center Drive) to the driveway on Mahogany Way. The landscaping should be similar to that used on the Lowe's and Panda Express site. A condition has been added that a revised landscape plan should be submitted for staff review and approval.

Issue #4: Site Layout, Parking, and Traffic

The site access is currently provided with existing driveways serving Lowe's on Sycamore Drive, Somersville Road (Auto Center Drive), and Mahogany Way. A traffic and parking analysis was prepared for the proposed project by Kimley-Horn and Associates, Inc. The analysis determined that the proposed project would not create significant impacts on the surrounding streets and intersections. The analysis further determined that the on-site circulation and driveways are adequate to serve the vehicle traffic, but recommended delivery trucks enter from the driveway on Sycamore Drive and exit at the driveway on Mahogany Way to avoid difficult maneuvering at the Somersville Road driveway. A mitigation measure has been included in the Initial Study/Mitigated Negative Declaration requiring this access route for delivery trucks.

The parking analysis prepared by Kimley-Horn notes that the Lowe's Home Improvement Warehouse store currently has 544 parking spaces, which is greater than the 453 stalls required by the Antioch Municipal Code. When the Panda Express is constructed, the total on-site parking spaces would be reduced to 505 for the combined uses. Per the Antioch Municipal Code, the Panda Express would need to provide 30 spaces for employees and customers as summarized below.

Maximum shift – 5 employees x 1 space/employee =	5 spaces
Inside seating area – 944 sq. ft. x 1 space/50 sq. ft. =	19 spaces
Outside patio seating – 16 seats x 1 space/3 seats =	6 spaces
Total required =	30 spaces

The restaurant would displace parking stalls which would reduce the number of spaces for Lowe's customers; however, upon implementation of the project, sufficient parking spaces would exist on-site for both uses per the Municipal Code. A total of 505 parking spaces would be available and 483 would be required, resulting in a theoretical parking surplus of 22 spaces.

Although the site would have spaces in excess of what is required by Code, parking surveys were conducted to confirm whether sufficient parking supply exists to meet the combined demands of the Lowe's and the proposed Panda Express restaurant. According to the count data, the peak parking demand at Lowe's occurred at 11:30 a.m. when 24 percent of the spaces were occupied, with a second peak at 2:30 p.m. when 24 percent of the spaces were occupied. At the highest peak, 414 spaces were still available. According to the parking analysis, the Panda Express would increase the overall parking demand by two percent. Even with the new restaurant, parking demand is not expected to exceed 26 percent of the total available spaces. Under this worst case scenario, 375 parking spaces would still be unoccupied.

Issue #5: Other Issues

Signage: The applicant is proposing signage on three sides of the building. The north elevation has a 27-sf sign with the words "Panda Express". The west elevation has a

25-sf Panda Express circle logo sign. The south elevation has both the 27-sf sign with the words "Panda Express" as well as the 25-sf logo circle. The wall signs are proposed to be LED lit. In addition, a directional sign is proposed at the exit of the drive-thru (2 square feet) noting "Do Not Enter" in one direction and "Thank You" in the other. The menu board is proposed along the drive aisle totaling 30 sf and a clearance sign containing 2.8 sf spans the drive aisle. Although not technically a sign, the applicant is proposing a mural of pandas located on the wall immediately inside the corner windows which will be visible on the north and east elevations. The sign regulations allow a maximum of 155 sf of signage based upon the building dimensions. The proposal includes 104 sf of wall signs plus 34.8 sf of menu board and directional signage which all complies with the maximum size requirements.

The Citywide Design Guidelines include recommendations for sign legibility, color, contrast, illumination, materials, and visibility. The sign colors are white, red, and black which comply with the color, contrast, and legibility suggestions of the guidelines. The proposed illumination is individual LED-lighted letters for "PANDA" with "EXPRESS" in a single illuminated cabinet below. In addition, the Panda Express logo is a LED-lighted in a single illuminated circle cabinet. The guidelines require individual letters and discourage cabinet-type signs except for logos. Staff has added a condition the cabinet sign containing "EXPRESS" be changed to all individual letters, subject to staff review and approval.

Lighting: The applicant is proposing pole lights in the planter areas of the parking lot similar to the existing lights. In addition, a light will be mounted on the building above the rear door. The drive-thru canopy will also have LED strip lighting mounted below canopy. Lighting has been indicated on the plans submitted by the applicant, including a photometric plan which has been included in the Planning Commissioners' packets. See Sheet E-6.1 for lighting fixture details.

Engineering: The Tentative Minor Subdivision Map indicates the proposed Panda Express parcel as a landlocked parcel. A condition has been added that requires mutual access and parking agreements between the parcels. In addition, the original mapping for the Lowe's Home Improvement Warehouse development did not result in the recording of all the easements. A condition has been added to ensure the easements are recorded as part of this map.

The utility plans for the proposed project indicate the sewer connection to be at the existing sewer line in the Lowe's parking lot and the water connection in Mahogany Way.

The right-of-way line at Mahogany Way and Auto Center Drive does not follow the back of walk as constructed. A condition has been added which requires adjustment of the right-of-way prior to the recording of the Parcel Map.

The grading plan submitted for the proposed project indicates a 0.5% slope on the asphalt paving in the drive-thru lane. The City standard is 2% slope for asphalt. The

standard conditions of approval require 2% slope with review and approval by the City Engineer.

ATTACHMENTS

- A. Aerial Photo Location Map
- B. Applicant's Summary

**CITY OF ANTIOCH PLANNING COMMISSION
RESOLUTION NO. 2013-****

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
ADOPTING THE PANDA EXPRESS MITIGATED NEGATIVE DECLARATION
AND MITIGATION MONITORING AND REPORTING PROGRAM**

WHEREAS, the City prepared an Initial Study to evaluate the potential environmental impacts of the proposed Panda Express project in conformance with Section 15063 of Title 14 of the California Code of Regulations (the "CEQA Guidelines"), and based on that Initial Study, determined that the project could be approved in compliance with the California Environmental Quality Act (CEQA) by adopting a Mitigated Negative Declaration as provided by Section 15074 of the CEQA Guidelines; and

WHEREAS, a draft Initial Study and Mitigated Negative Declaration (IS/MND) was circulated for a 20-day review period, with the public review period commencing on September 23, 2013 and ending on October 14, 2013;

WHEREAS, the Planning Commission has reviewed the IS/MND for this project and any comments received; and

WHEREAS, following the close of the comment period, the City received no comments on the IS/MND and prepared a Mitigation Monitoring and Reporting Program (MMRP) incorporating mitigation measure to be imposed on the project; and these materials were released to the public; and

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

WHEREAS, on October 16, 2013, the Planning Commission held a public hearing on the matter, and received and considered evidence, both oral and documentary; and

WHEREAS, the custodian of the Final IS/MND is the Community Development Department and the Final IS/MND is available for public review on the second floor of City Hall in the Community Development Department, Monday – Thursday 8:00 am – 11:30 am and the MMRP is attached as Exhibit 1 to this document.

NOW THEREFORE BE IT RESOLVED

1. The Planning Commission of the City of Antioch hereby **FINDS**, on the basis of the whole record before it (including the Final Initial Study and any comments received) that:

- a. The City of Antioch exercised overall control and direction over the CEQA review for the Project, including the preparation of the Final Initial Study and Mitigated Negative Declaration, and independently reviewed the Final Initial Study and Mitigated Negative Declaration; and
- b. Substantial evidence does not exist that the project will have a significant effect on the environment; and
- c. The Final Initial Study and Mitigated Negative Declaration reflect the City's independent judgment and analysis.

2. The Planning Commission hereby **APPROVES** and **ADOPTS** the Final Initial Study/Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Project.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was adopted by the Planning Commission of the City of Antioch at a regular meeting thereof held on the 16th day of October, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

TINA WEHRMEISTER,
Secretary to the Planning Commission

**PLANNING COMMISSION
RESOLUTION NO. 2013-****

**RESOLUTION OF THE CITY OF ANTIOCH PLANNING COMMISSION
APPROVING A MINOR SUBDIVISION, USE PERMIT, AND
DESIGN REVIEW FOR THE PANDA EXPRESS PROJECT**

WHEREAS, the City of Antioch did receive a request from CRM Architects & Planners, Inc. for Panda Express, for approval of a Minor Subdivision, a Use Permit, and Design Review of a new 2,230-square foot Panda Express restaurant building with drive-thru service in the existing Lowe's Home Improvement Warehouse parking lot at 1951 Somersville Road (Auto Center Drive) (APN 074-370-029); and

WHEREAS, the Planning Commission has approved a resolution adopting a mitigated negative declaration and mitigation monitoring and reporting program; and

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

WHEREAS, on October 16, 2013, 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 makes the following required findings for approval of a Use Permit:

1. The granting of such use permit will not be detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity.

The proposed drive-thru restaurant is located in an existing developed commercial area. Adequate parking for both the existing and proposed use is provided on-site. The proposed project will not be detrimental to the public health or welfare or injurious to the property or improvements.

2. The use applied at the location indicated is properly one for which a use permit is authorized.

Fast food restaurants and drive-thru services require a use permit. The zoning and General Plan designation for the project site is commercial and the site and surrounding area is developed with commercial uses.

3. That the site for the proposed use is adequate in size and shape to accommodate such use, and all yards, fences, parking, loading, landscaping, and other features required, to other uses in the neighborhood.

The site is currently occupied by Lowe's with a large field of parking. The site is adequate in size and shape to accommodate both the existing and the proposed uses as well as all aspects associated with the use. All yards, fences, parking, loading, landscaping and other required features, as conditioned, meet the requirements of the zoning code standards and are comparable to the surrounding uses in the area. Mitigation measures in the Final Initial Study/Mitigated Negative Declaration ensure adequate circulation for delivery trucks.

4. That the site abuts streets and highways adequate in width and pavement type to carry the kind of traffic generated by the proposed use.

The project site, including the existing Lowe's is bounded by Somersville Road (Auto Center Drive), Mahogany Way, and Sycamore Drive. A traffic study was prepared for the proposed use as part of the Initial Study/Mitigated Negative Declaration which determined impacts would not occur on the surrounding streets.

5. That the granting of such use permit will not adversely affect the comprehensive General Plan.

The General Plan designation is Somersville Road Corridor Focus Area/Commercial. The proposed commercial use is consistent with the designation and with the surrounding uses and will not adversely affect the comprehensive General Plan.

BE IT FURTHER RESOLVED that the Planning Commission does determine:

1. That the subdivision, design and improvements are consistent with the General Plan, as required by Section 66473.5 of the Subdivision Map Act and the City's Subdivision Regulations. The site is designated and zoned Commercial and the subdivision will accommodate uses that are consistent with the General Plan on each of the lots created by the subdivision; and
2. That the subdivision proposed by the Parcel Map complies with the rules, regulations, standards and criteria of the City's Subdivision Regulations. The proposed subdivision meets the City's criteria for the parcel map. The City's Planning and Engineering staff have reviewed the Parcel Map and evaluated the effects of the subdivision proposed and have determined that the Parcel Map complies with and conforms to all the applicable rules, regulations, standards, and criteria of the City's Subdivision Regulations.

NOW THEREFORE BE IT RESOLVED that the Planning Commission of the City of Antioch does hereby **APPROVE** a minor subdivision, use permit and design review for the Panda Express project on an approximately 11.2 acre parcel located at 1951 Somersville Road (Auto Center Drive) (APN 074-370-029), subject to the following conditions:

STANDARD CONDITIONS

1. The project shall comply with Antioch Municipal Code.
2. Conditions required by the Planning Commission, which call for a modification or any change to the site plan submitted, shall be corrected to show those conditions and all standards and requirements of the City of Antioch prior to any submittal for a building permit. No building permit will be issued unless the site plan meets the requirements stipulated by the Planning Commission and the standards of the City.
3. This approval expires two years from the date of approval (Expires October 16, 2015), unless a building permit has been issued and construction has diligently commenced thereon and has not expired, or an extension has been approved by the Zoning Administrator. Requests for extensions must be received in writing with the appropriate fees prior to the expiration of this approval. No more than one, one year extension shall be granted.
4. City Staff shall inspect the site for compliance with conditions of approval prior to final building inspection.
5. The lots and improvements within the development shall comply with the City of Antioch Municipal Code, unless a specific exception is granted thereto.
6. Any revisions to the building exterior materials, paint colors, and/or overall color scheme shall require a new application and shall be subject to Design Review approval.
7. Any required easements or rights-of-way for off-site improvements shall be obtained by the developer, at no cost to the City of Antioch.
8. Advance permission shall be obtained from any property or easement holders for any work done within such property or easements.
9. The applicant shall obtain an encroachment permit for all work done within the public right-of-way.
10. This approval superseded previous approvals that have been granted for this site.

11. Any deviation from the proposed project shall be brought back to the Planning Commission for review and approval.
12. Building permits shall be secured for all proposed construction associated with this facility, including any interior improvements not expressly evident on the plans submitted.
13. The use of construction equipment shall be restricted to weekdays between the hours of 7:00 a.m. and 6:00 p.m., or as approved by the City Manager or his designee.
14. The project shall be in compliance with and supply all the necessary documentation for AMC6-3.2: Construction and demolition debris recycling.
15. The applicant shall defend, indemnify and hold harmless the City in any action brought by a third party to challenge the land use entitlement and shall enter into an agreement to effectuate this condition of approval as required by the City.
16. All requirements for the Contra Costa Environmental Health Department shall be met.

Site Maintenance:

17. A parking lot sweeping program be implemented that, at a minimum, provides for sweeping immediately prior to, and once during, the storm season.
18. No illegal signs, pennants, banners, balloons, flags, or streamers shall be used on this site at any time.
19. No signs shall be installed on this site without prior City approval.
20. The site shall be kept clean of all debris (boxes, junk, garbage, etc.) at all times.
21. Standard dust control methods shall be used to stabilize the dust generated by construction activities.
22. The project shall comply with Property Maintenance Ordinance Section 5-1.204 and enter into a joint maintenance agreement with the shopping center property owners for landscaping maintenance of the entire site. No final landscape and irrigation plan shall be considered to be complete without an approved maintenance agreement reflective of standards contained in Section 5-1.204 (G).

Fees:

23. No permits or approvals, whether discretionary or mandatory, shall be considered if the applicant is not current on fees, reimbursement payments and any other payments that are due.
24. The developer shall pay all fees required by the City Council at the time of building permit issuance.
25. The developer shall pay any required East Contra Costa Regional Traffic Mitigation fees prior to receiving a building permit for structures within this development.
26. The developer shall pay any required Drainage Area fees prior to the issuance of any building permits for this project.
27. The developer shall pay all applicable Delta Diablo Sanitation District fees prior to the issuance of any building permits for this project.
28. The developer shall pay the Contra Costa County Fire Protection District Fire Development Fee in place at the time of permit issuance.

Fire Requirements

29. All requirements of the Contra Costa County Fire Protection District shall be met.
 - a. The developer shall submit three (3) complete sets of plans and specifications of the subject project, including plans for the following required submittals building construction plans and commercial kitchen hood extinguishing systems; to the Fire District for review and approval prior to construction to ensure compliance with fire and life safety. Plan review and inspection fees shall be submitted at the time of plan review submittal. (105.4.1) CFC, (901.2) CFC, (107) CBC

Landscaping:

30. Landscaped areas shall be watered, weeded, pruned, fertilized, sprayed, and/or otherwise maintained as necessary. Plant materials shall be replaced as needed to maintain the landscaping in accordance with the approved plans.
31. Landscaping and signage shall not create a sign distance problem.
32. A minimum of five feet (5') shall be kept clear between any proposed trees and any concrete or asphalt paving within the City right-of-way. Trees closer than ten (10) feet to any concrete or asphalt paving shall use approved root guards.

33. Detailed landscaping and irrigation plans for the entire site shall be submitted to the City for review and approval. All landscaping and irrigation shall be installed in accordance with approved plans prior to the issuance of certificates of occupancy for this building.

Site Design:

34. Asphalt paving shall have a minimum slope of 2%, concrete paving shall have a minimum slope of 0.75%, and asphalt paving for identified accessible parking stalls and access routes may have a minimum slope of 1.5% and a maximum of 2% slope, or as approved by the City Engineer.
35. All on-site curbs, gutters, and sidewalks shall be constructed of Portland cement concrete.
36. All mechanical and roof equipment shall be screened from public view.
37. All parking lot dimensions and striping shall meet minimum City standards.
38. Any cracked or broken sidewalks shall be replaced as required by the City Engineer.
39. All parking and access shall meet the ADA/Title 24 requirements as determined by the Chief Building Official using Checklist #1, Parking, CA Title 24, Sections 1129B.1 and 1130B. The location of such spaces shall provide safe and convenient access to the building as determined by the Chief Building Official.
40. A photometric plan shall be submitted to staff for review and approval prior to the issuance of building permits. The plan shall show the light onsite and beyond the property. All lighting shall be installed on site in accordance with the approved plans, and prior to the issuance of certificates of occupancy for this site.
41. The City Engineer shall determine if it is necessary to engage soils and structural engineers as well as any other professionals deemed necessary to review and verify the adequacy of the building plans submitted for this project. If deemed necessary by the City, this may be extended to include filed inspections by such professional to verify implementation of the plans. Costs of these services shall be borne by the developer.

Utilities

42. All storm water flows shall be collected onsite and discharged into an approved public storm drain system.

43. The developer shall provide adequate water pressure and volume to serve this development, as approved by the City Engineer.
44. All existing and proposed public utilities (e.g. transformers) shall be placed underground or screened from public view, in accordance with the Antioch Municipal Code.
45. A reduced backflow prevention device shall be installed on all City water meter services.
46. Street lighting shall be provided in accordance with the Antioch Municipal Code.
47. The sewer collection system shall be constructed to function as a gravity system.
48. Improvements and fees that are required by the Contra Costa County Flood Control District shall be implemented, as approved by the City Engineer.

Grading

49. All elevations shown on the improvement and grading plans shall be on the USGS 1929 sea level datum.
50. All lots and slopes drain to approved drainage facilities, as approved by the City Engineer.
51. A final grading plan for this development shall be approved by the City Engineer.

Conservation/NPDES

52. Water conservation measures, including low volume toilets and the use of drought tolerant landscaping shall be used.
53. The project shall comply with all Federal, State, and City regulations for the National Pollution Discharge Elimination System (NPDES) (AMC§6-9). Under NPDES regulations, the project is subject to provision C.3: New development and redevelopment regulations for storm water treatment. Provision C.3 requires that the project include storm water treatment and source control measures, as well run-off flow controls, so that post-project runoff does not exceed estimated pre-project runoff. C.3 regulations require the submittal of a Storm Water Control Plan (SWCP) that demonstrates how compliance will be achieved. The SWCP shall be submitted simultaneously with the project plans. An Operation and Maintenance Plan (O&M) for the treatment and flow-controls in the approved SWCP shall be submitted and approved before the Building Department will issue Certificate of Occupancy permits and shall be included in the project CC&Rs. Prior to building permit final and issuance of a Certificate of Occupancy,

the applicant shall execute any agreements identified in the Storm Water Control Plan that pertain to the transfer of ownership and/or long-term maintenance of storm water treatment or hydrograph modification BMPs.

54. That the following requirements of the federally mandated NPDES program (National Pollutant DISCHARGE Elimination System) be complied with, or as required by the City Engineer:
- a. Prior to building permit final and issuance of a Certificate of Occupancy, the applicant shall execute any agreements identified in the Storm Water Control Plan which pertain to the transfer of ownership and/or long-term maintenance of storm water treatment or hydrograph modification BMPs.
 - b. That an application for a State of California "General Construction Activity Storm Water Permit" be submitted to the Regional Resources Control Board, and a copy of the Notice of Intent be submitted to the City, prior to any construction activity on the site.
 - c. Limited construction access routes and stabilizing access points.
 - d. Stabilizing areas denuded due to construction (prior to the wet season, October 1 through May 1) by using suitable practices including, but not limited to temporary or permanent seeding, mulching, sod stabilization, vegetative buffer strips, protection of trees, plastic covering, application of ground base on areas to be paved.
 - e. Protecting adjacent properties by appropriate use of vegetative buffer strips, sediment barriers or filters, dikes or mulching, or by a combination of these measures and other appropriate measures.
 - f. Delineating clearing limits, easements, setbacks, sensitive or critical areas and their buffers, trees and drainage courses by marking them in the field.
 - g. Stabilizing and preventing erosion from temporary conveyance channels and outlets.
 - h. Using sediment controls and filtration to remove sediment from water generated by dewatering.
 - i. Using proper construction material and construction waste storage, handling and disposal practices.
 - j. Using proper vehicle and equipment cleaning, fueling and maintenance practices.

- k. Controlling and preventing discharge of all potential pollutants, including, but not limited to, pesticides, petroleum products, nutrients, solid wastes, and construction chemicals, that occur on site during construction.
- l. Preparing a contingency plan in the event of unexpected rain or BMP failure including, but not limited to, an immediate response plan, storing extra or alternative control materials on-site (stakes, fences, hay bales), notifying the local agency, etc.
- m. Education and Training – For developments with no property owner association or community associate, practical information materials on good housekeeping of hazardous products, proper use and disposal for hazardous products, and prohibited discharge practices and materials must be provided, initially by the developer, to the first residents/occupants/tenants, and thereafter by the City public education program.
- n. Labeling Storm Drain Facilities – The phrase “No Dumping – Drains to River” must be embossed/stamped on new storm drain inlets to alert the public to the destination of storm water and to prevent direct discharge of pollutants into the storm drain. Watercourses should be similarly labeled by posting signs.
- o. Runoff Control – to the extent practicable, maintain post-development peak runoff rate and average volume of runoff at levels that are similar to pre-development levels. The developer must design the proposed project accordingly.

PROJECT SPECIFIC CONDITIONS

- 55. The applicant shall comply with all mitigation measures included in the Mitigation Monitoring and Reporting Program.
- 56. Bike racks shall be selected that are durable and visually subdued. Based on their performance, “loop racks” and “ribbon bars” are encouraged, and shall be sized according to parking requirements. The applicant shall submit details of the bike racks for staff review and approval.
- 57. The trash enclosure shall be covered and have exterior finishes similar in type and color of the main building. The enclosure shall be screened with landscaping as indicated on the plans. The applicant shall submit details of the trash enclosure and cover for staff review and approval.
- 58. The applicant shall screen the drive-thru lane from view of the public street. The screening shall be provided by a berm or a low wall in combination with a vegetative screen for the review and approval of staff.

59. The applicant shall submit a revised landscape plan for staff review and approval which indicates landscaping similar to the Lowe's and Panda Express site along the property frontage from the driveway on Auto Center Drive to the driveway on Mahogany Way.
60. Delivery trucks shall access the parking lot along Sycamore Drive to the north and maneuver to the front of the proposed Panda Express restaurant. After unloading, the delivery trucks shall exit near the front of the Lowe's store to Mahogany Way.
61. A mutual access and parking agreement shall be recorded between the parcels concurrent or prior to the recording of the Parcel Map.
62. The water line easement under the existing Lowe's building shall be vacated and quitclaimed to Lowe's concurrent or prior to the recording of the Parcel Map, at no cost to the City, as directed by the City Engineer.
63. The domestic and fire water connection shall be connected to the water main in Mahogany Way as directed by the City Engineer.
64. The sewer shall be connected into the existing 6 inch line in the Lowe's parking lot as directed by the City Engineer.
65. The existing sewer main in the Lowe's parking lot serving as the connecting line shall be enclosed in an easement and dedicated to the City by separate instrument, at no cost to the City, as directed by the City Engineer.
66. The right-of-way line on Mahogany Way and Auto Center Drive shall follow the back of walk and encompass public facilities which will require dedication of new right-of-way and abandonment of existing right-of-way and shall be recorded by separate instrument, at no cost to the City, concurrent or prior to the recording of the Parcel Map.
67. The existing water mains and public facilities shown on the original Lowe's project to be enclosed in an easement shall be dedicated to the City by separate instrument, at no cost to the City, concurrent or prior to the recording of the Parcel Map.
68. The cabinet sign with the copy "EXPRESS" shall be constructed with individual letters subject to staff review and approval.

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RESOLUTION NO. 2013-**

October 16, 2013

Page 11

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 16th day of October, 2013.

AYES:

NOES:

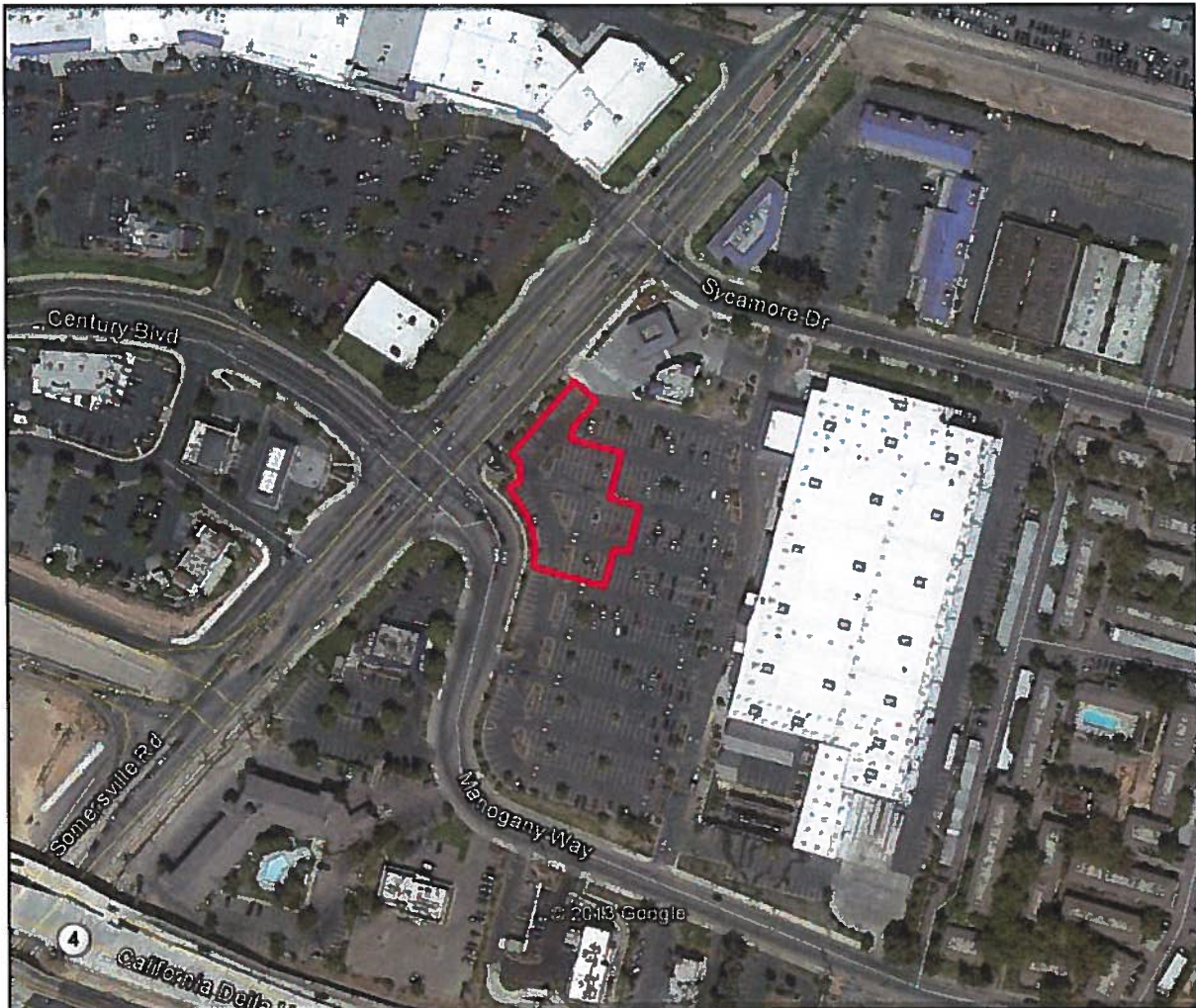
ABSTAIN:

ABSENT:

Tina Wehrmeister
Secretary to the Planning Commission

ATTACHMENT "A"

ATTACHMENT A Aerial Photo Location Map



ATTACHMENT "B"

PROJECT NARRATIVE

Project: Panda Express Restaurant

Location: Auto Center Drive & Mahogany Way, Antioch- AT the Lowe's Shopping Center

APN: 074-370-029-6

The proposed Panda Express Restaurant to be developed as a 2,230 S.F. freestanding building will be part of the existing Lowe's Shopping Center, located at 1951 Auto Center Drive (Somerville Rd.) & Mahogany Way, Antioch. The subject site area is currently part of the parking lot serving Lowe's. The existing 29,622 S.F. of parking area to be carved-out sits on the NWC of the shopping center. The current Zoning is C3 Regional Commercial. The existing Lowe's Center's site conditions and landscape are manicured and maintained. The new Panda Express Restaurant will complement the shopping center at its proposed corner location.

The proposed site improvements will also provide a drive through, 25 parking stalls, an outdoor patio with seating under a shaded structure, and bicycle parking. The site has been configured to include a drive-thru lane which will hold eight (10) vehicle queuing; to accommodate road traffic patrons with easy access from the road. The site design has incorporated City of Antioch parking and landscape design standards. The new site layout has decreased the impervious area by creating additional landscape islands and thus the storm drainage has been designed to meet C.3 Stormwater Guidelines.

The interior seating for the restaurant accommodates 46 seats along with 16 on the exterior patio. The building footprint consists of the following areas; customer service, dining, single occupancy restrooms, a full service kitchen, dry storage, freezer and cooler, manager's area and drive-thru station.

The restaurant is designed to serve Gourmet Chinese Food. Panda Restaurant Group, Inc. proposes to build a facility that will function and perform optimal operations for a great casual dining experience. Panda Restaurants are designed with the customers' pleasant experience in mind, when visiting the restaurants. The open dining room offers an enhanced ambiance of a bright and clean environment for all guests. The open stainless steel kitchen has been created with an emphasis and appeal to good quality and healthy food choices.

The architecture of the building depicts Panda Restaurant Group's unique brand identity by employing the use of subtle variations in facade material, color and window placement. The Facade will use a combination of durable materials and colors to project a fresh vibrant and inviting structure.

Regarding the operations of Panda Restaurants', the store intends to operate from 11 am to 10 pm on a daily basis. Peak periods will occur at lunch time from 12 pm to 1:30 pm and again at dinner time from 5 pm to 6:30 pm. The store will employ a minimum of two shifts daily with an average team member count of 3-5 per shift. The number of employees working during peak hours will range from 4-5 team members. Store deliveries will occur once a week and are scheduled to take place in the morning hours before the store opens, and the parking lot is not utilized. The store will have its own trash enclosure with separate recycling and trash bins.

RECEIVED

JAN 29 2013

CITY OF ANTIOCH
COMMUNITY DEVELOPMENT

B1

**STAFF REPORT TO THE PLANNING COMMISSION
FOR CONSIDERATION AT THE MEETING OF OCTOBER 16, 2013**

Prepared by: Mindy Gentry, Senior Planner *MA*

Date: October 10, 2013

Subject: **UP-13-07 – Billboard Adjacent to State Route 4**

RECOMMENDATION

Staff recommends that the Planning Commission **APPROVE UP-13-07** for the construction of a billboard adjacent to State Route 4.

REQUEST

Mesa Outdoor is requesting the Planning Commission's approval of a use permit to construct a billboard. The billboard is proposed to be 48 feet in length and 14 feet in width on a 43 foot tall cylindrical column, which would have an overall height of 60 feet from finished grade. The project site is located on the northeast corner of Delta Fair Boulevard and Century Way (Attachment "A") (**APN 074-080-029**).

BACKGROUND

On April 12, 2012, CalTrans issued an outdoor advertising permit for the sign which verified compliance with all State of California Advertising Display regulations and the Federal Highway Beautification Act (Page 15 of Attachment "B"). This section of State Route 4 is not a landscaped highway and is not a designated scenic corridor.

The site is currently owned by the City of Antioch and is the location for seasonal businesses, such as the pumpkin patch and Christmas tree sales lot. The City has a twofold decision with this project with the first being the entitlement to construct the billboard and secondly as the underlying property owner or the lessor. The Planning Commission's responsibility in this capacity is to determine the proper entitlement action for the proposed billboard. Assuming approval of the land use entitlement, the City Council would then be the approving body of the lease terms with the applicant. The City Council will not act upon the lease until final land use approval is garnered by the applicant from the City.

ENVIRONMENTAL

This project is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to section 15303 – New Construction. This section falls under a Class 3 exemption of the State CEQA Guidelines because this project consists of a single, new, small structure.

ANALYSIS

Issue #1: Project Overview

The applicant is proposing to construct a two-sided 14'X48' advertising billboard, which is to be supported by a 46 foot column. The sign would be 175 feet from State Route 4 and the overall height of the sign is proposed at 60 feet with a 45 degree "V". According to the applicant, the design specifications provide a desirable aspect ratio for freeway viewing and it has been sized and designed to fit the subject property. The square footage for each side of the sign is 672 with a combined total of 1,344. There are catwalks on the sign for maintenance and access which are 43 feet above finished grade. The structure will be cemented into the ground to minimize the structure's footprint. Page 11 of Attachment "B" shows photo simulations of the billboard when viewing it from the freeway.

The existing height of State Route 4 is approximately 12 feet from finished grade on Century Way. As stated above, the top of the sign is 60 feet in height from finished grade; therefore the approximate viewing height of the sign above the freeway will be 48 feet at the top and 34 feet at the bottom of the sign which exceeds the code allowance. The code allows for 25 feet above freeway grade or a maximum height of 45 feet from ground level, whichever is less. Because the sign exceeds the allowable height, staff recommends that the height of the billboard be reduced to be more in line with the height of the freeway billboard to the south in Pittsburg. The maximum height of the billboard from finished grade in Pittsburg is 50 feet. The recommended reduction would still provide a billboard height of 38 feet at the top and 24 feet at bottom from State Route 4, which will be well above the freeway sound wall.

Issue #2: Zoning and Site Discussion

The site has a zoning designation of Regional Commercial (C-3), which allows for billboards with the approval of a use permit.

The surrounding land use designations are:

North:	State Route 4 (C-3, Regional Commercial)
South:	Vacant Building and Contra Costa County offices (MCR, Mixed Commercial/Residential)
East:	Vacant Land (C-3, Regional Commercial)
West:	Vacant Land and various auto uses (C-3, Regional Commercial and the City of Pittsburg)

The area where the sign would be located is on a vacant non-landscaped parcel that is owned by the City. The project is located in an area where it would not interfere with the seasonal businesses that operate on the parcel.

Issue #3: Lighting

Lighting: The sign is proposed to be illuminated at night with two box-style light fixtures per side of the billboard, which would be activated by a timer and photocell (Attachment "C"). The lighting is comprised of LEDs, which are designed to not cause glare or impair night sky viewing for the nearby residents. The solar package will be designed to be located within the open space of the proposed structure.

ATTACHMENTS

- A: Aerial Photo
- B: Applicant's Project Description
- C: Lighting Specification Sheet

**CITY OF ANTIOCH PLANNING COMMISSION
RESOLUTION NO. 2013/****

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
APPROVING A USE PERMIT FOR A FREEWAY BILLBOARD LOCATED ON THE
NORTHEAST CORNER OF DELTA FAIR BOULEVARD AND CENTURY WAY**

WHEREAS, the Planning Commission of the City of Antioch did receive a request from Mesa Outdoor for a use permit for a freeway billboard, located on the northeast corner of Delta Fair Boulevard and Century Way (**UP-13-07**) (**APN: 074-080-029**); and,

WHEREAS, this project is exempt from the provisions of CEQA pursuant to CEQA Guideline section 15303; and,

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

WHEREAS, the Planning Commission on October 16, 2013, duly held a hearing, received and considered evidence, both oral and documentary.

NOW THEREFORE BE IT RESOLVED, that the Planning Commission makes the following required findings for approval of a Use Permit:

1. The granting of such use permit will not be detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity.

The proposed project will not be detrimental to the public health or welfare or injurious to the property or improvements. The billboard will not have any impacts to the public because the lighting will not produce any glare and the sign is designed in an aesthetically pleasing manner.

2. The use applied at the location indicated is properly one for which a use permit is authorized.

The zoning designation for the project site is commercial and surrounding area is developed with commercial uses and State Route 4. Billboards require a use permit within the Regional Commercial (C-3) zone.

3. That the site for the proposed use is adequate in size and shape to accommodate such use, and all yards, fences, parking, loading, landscaping, and other features required, to other uses in the neighborhood.

The site is currently a vacant parcel. The site is adequate in size and shape to accommodate both the existing seasonal businesses as well as all aspects associated with the use. All yards, fences, parking, loading, landscaping and other required features, as conditioned, meet the requirements of the zoning code standards and are comparable to the surrounding uses in the area.

4. That the site abuts streets and highways adequate in width and pavement type to carry the kind of traffic generated by the proposed use.

The project site is bounded by Delta Fair Boulevard and Century Way. Both streets are adequate for the minimal traffic associated with the proposed use.

5. That the granting of such use permit will not adversely affect the comprehensive General Plan.

The General Plan designation is Office within the Western Gateway Focus Area. The proposed commercial use is consistent with the designation and with the surrounding uses and will not adversely affect the comprehensive General Plan.

NOW THEREFORE BE IT RESOLVED that the Planning Commission of the City of Antioch does hereby **APPROVE UP-13-07** approving a freeway billboard on the northwest corner of Delta Fair Boulevard and Century Way, subject to the following conditions:

STANDARD CONDITIONS

1. The City of Antioch Municipal Code shall be complied with.
2. Building permits shall be obtained prior to installation of signage.
3. City staff shall inspect the site for compliance with conditions of approval prior to final inspection.

4. Conditions required by the Planning Commission, which call for a modification or any change to the site plan submitted, shall be corrected to show those conditions and all standards and requirements of the City of Antioch prior to any submittal for a building permit. No building permits will be issued unless the site plan meets the requirements stipulated by the Planning Commission and standards of the City.
5. That this approval expires two years from the date of approval (Expires: October 16, 2015), unless a building permit has been issued and construction has diligently commenced thereon and has not expired, or an extension has been approved by the Zoning Administrator. Requests for extensions must be received in writing with the appropriate fees prior to the expiration of this approval. No more than one, one year extension shall be granted.
6. Any deviation from the proposed project will be brought back to the Planning Commission for review and approval.
7. The sign shall not encroach into the City's public right-of-way and shall be placed outside of any easements.
8. The applicant shall defend, indemnify and hold harmless the City in any action brought by a third party to challenge the land use entitlement.
9. No permits or approvals, whether discretionary or mandatory, shall be considered if the applicant is not current on fees, reimbursement payments and any other payments that are due.

PROJECT SPECIFIC CONDITIONS

10. The maximum height of the billboard from finished grade shall be 50 feet.
11. The color of the light fixtures shall match the color of the billboard structure.
12. The solar equipment and the interior of the billboard structure shall be screened from public view, subject to staff review and approval.
13. The sign shall be kept clean and free of dirt. The sign shall be painted every seven years or when the sign has visible signs of wear and tear, whichever comes first.
14. Graffiti shall be removed within 10 days and shall be repainted to match the color of the billboard structure.

15. The billboard structure shall be painted a darker color to blend into the background, subject to staff review and approval.

* * * * *

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 16th of October, 2013.

AYES:

NOES:

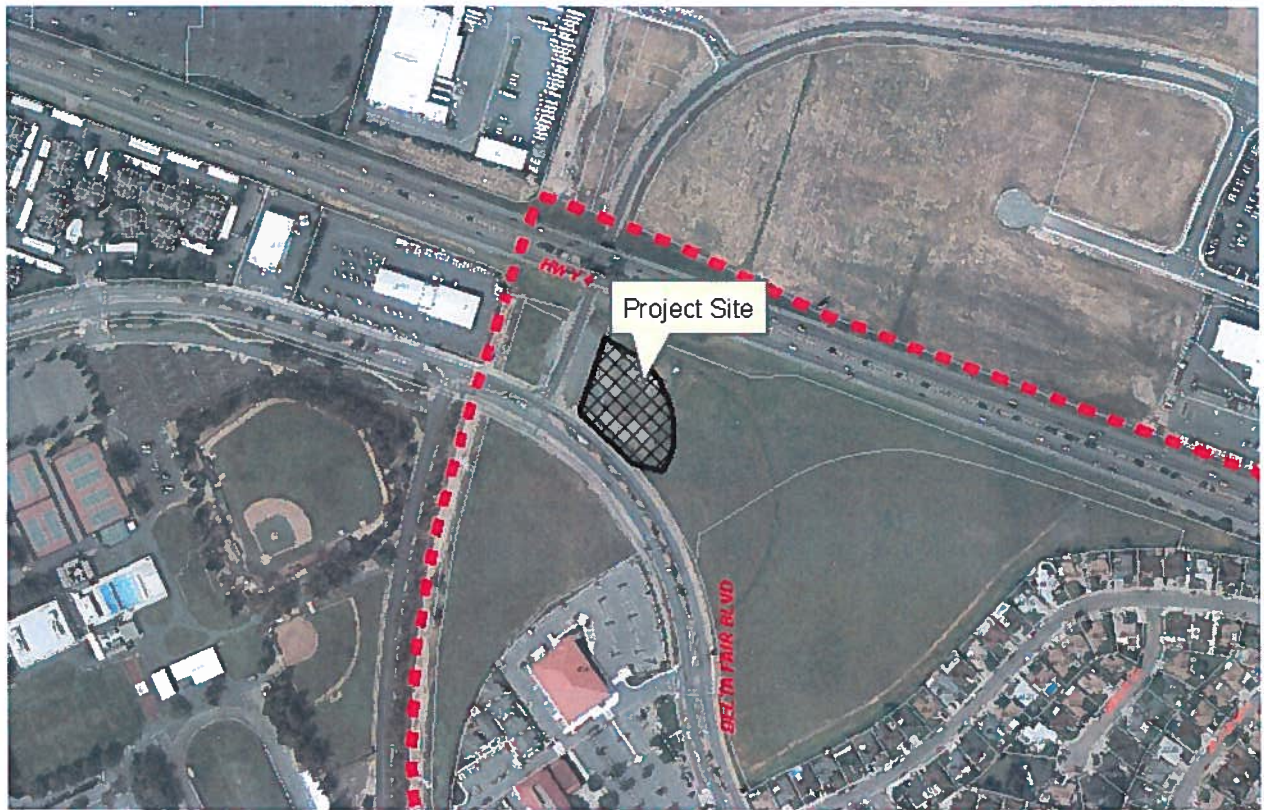
ABSTAIN:

ABSENT:

Tina Wehrmeister
Secretary to the Planning Commission

ATTACHMENT "A"

Aerial Photo



ATTACHMENT "B"



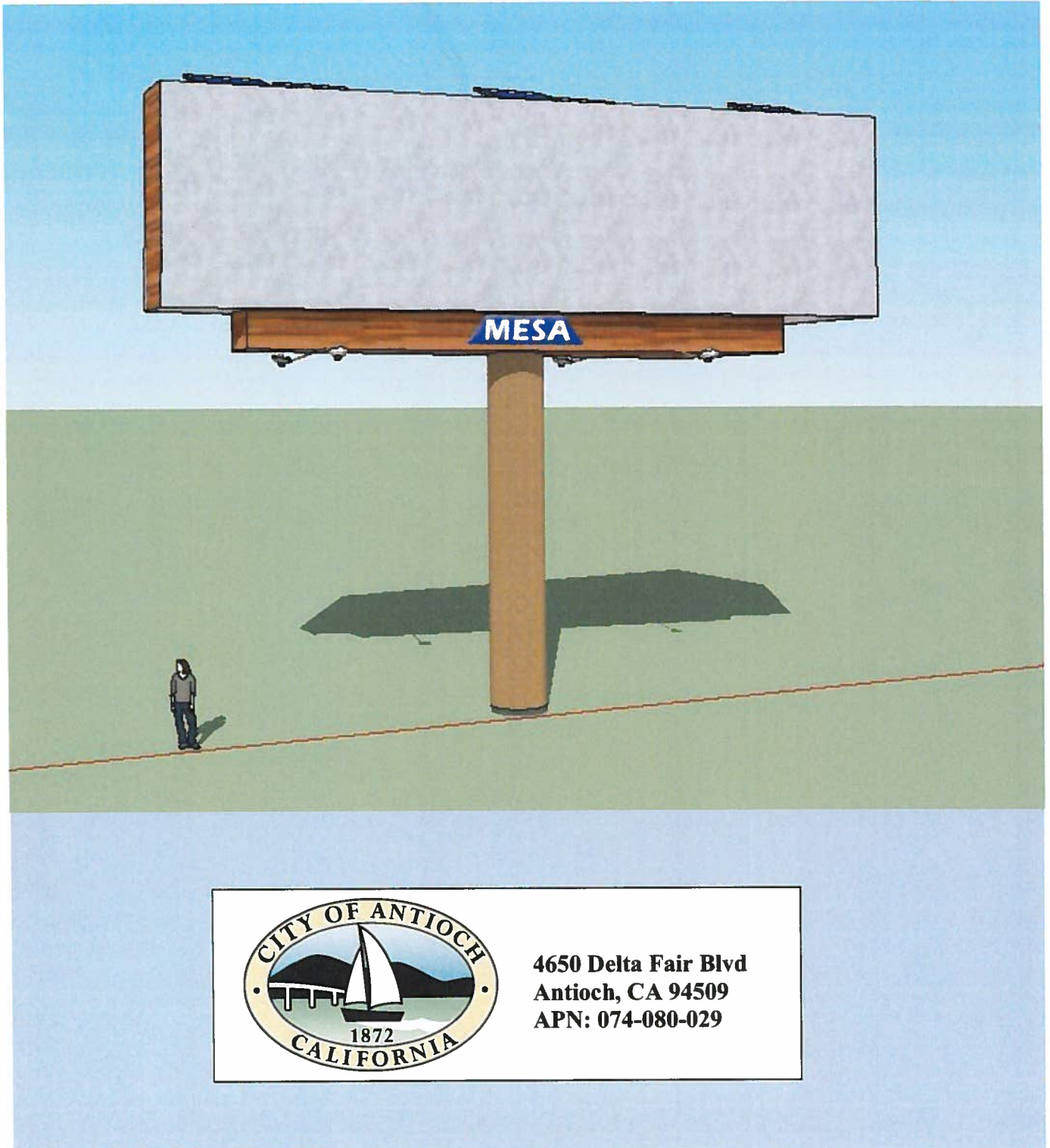
582 Market Street, Ste. 1508 | San Francisco, CA 94104

RECEIVED

Land Use Permit – Off Premises Display

JUL 15 2013

CITY OF ANTIOCH
COMMUNITY DEVELOPMENT





Contact Information

Applicant:

Mesa Outdoor – Attn: Antioch Project

582 Market Street, Ste. 1508

San Francisco, CA 94104

rlewis@mesaoutdoor.com

mmccoy@mesaoutdoor.com

(925) 386-6372

Property Owner:

City Of Antioch

Attn: Brian Nunnally

Third and H Street

Antioch, CA 94509

(925) 779-6168

California Department of Transportation Coordinator:

Jeff Anderson

Department of Transportation

Division of Traffic Operations

Bay Area Outdoor Advertising Program

CalTrans Dept. of Outdoor Advertising

P.O. Box 942874, MS-36

Sacramento, CA 94274-0001

Jeff.Anderson@dot.ca.gov

(916) 654-6230 Office

(916) 769-3098 Mobile

City of Antioch:

Attn: Brian Nunnally

Third and H Street

Antioch, CA 94509

(925) 779-6168

Table of Contents

1.0	Project Description	4
2.0	Property Location Map	4
2.1	Property Description	4
2.2	Site Description	5
2.3	Property Satellite Images	5
2.4	Distances from on/off ramps	6
2.5	Site Photographs (NSEW)	7
2.6	Ground Level Cross Section	10
2.7	Photosimulations	11
3.0	Visual Impacts & Mitigation	12
3.1	Lighting Impacts	12
3.2	Graffiti Control	12
3.3	Existing Business Impact	12
4.0	Structure Description	12
4.1	Scaled Elevations	12
4.2	Illumination	12
4.3	Solar Generation	12
4.4	Building Materials Plan	13
5.0	Non Profit and Community Support	13
5.1	Local Job Creation and Sustainability	13
6.0	Why the selected property is the preferred site in the city	13
6.1	State of CA DOT Outdoor Advertising Criteria	14
Appendix A – Caltrans Approval		15
Appendix B – Assessor’s Map		16
Appendix C – Assessor’s Property Information		17

1.0 Project Description

Mesa Outdoor proposes to construct an aesthetically pleasing and environmentally efficient Off-site Advertising Display in Antioch, CA. The proposed structure will display 14' x 48' advertisements, supported by a center-mounted length of steel tubing. The sign will be illuminated and powered by solar panels connected into an existing PG&E transformer. The advertising faces will be situated perpendicular to Highway 4 in the Commercial area adjacent to Century Boulevard. This project does not interfere with any existing signs, or require the elimination, modification, or reclassification of any buildings, trees, or structures. This project will not have a significant impact on the environment or the residents of the city. This project has been approved by the State of California's Outdoor Advertising Department.

2.0 Property Location Map – 4650 Delta Fair Blvd. | Antioch, CA 94509



2.1 Property Description

The property is located in a Commercial area on the south side of Highway 4 bordering the City of Pittsburg, CA. Surrounding uses are predominantly commercial, with open land likely to be developed as commercial/office. The property is currently used seasonally for pumpkin patch sales and Christmas tree lot sales. The property is undeveloped and currently zoned Commercial. The property is also situated adjacent to Los Medanos College and the Contra Costa Auto Auction.

2.2 Site Description

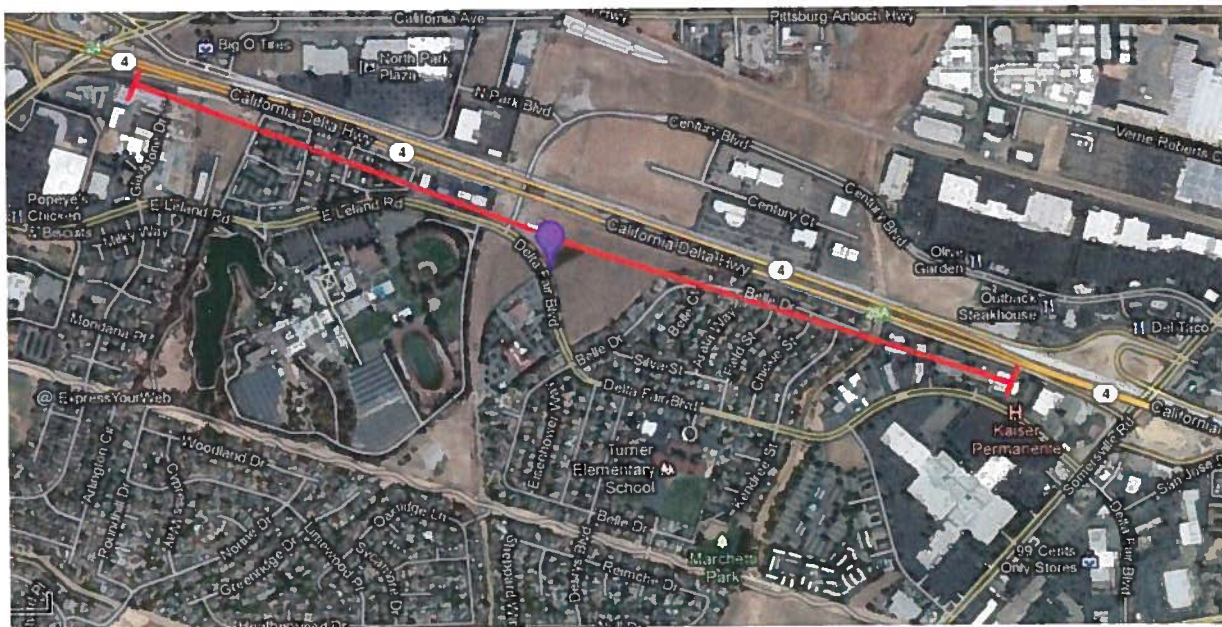
The southwest portion of the property was selected as the site location due to its proximity to highway 4 and ability to not alter or change the future development options of the existing property. The area is open and easily accessible right now, providing an ideal build site. Overhead electrical wires border the site location for easy electrical access. The project and building site will not impact current seasonal business operations or foreseeable future uses of the property. The ease of access to the build location will allow for the sign to be installed within 4 days.

2.3 Property Satellite Image with Site Designation*



**Date of satellite image unknown – Proposed sign drawn in purple, with property line shown in red.*

2.4 Distances from On/Off Ramps *



The proposed location is approximately 4,000 feet east of Loveridge Road and 5,000 feet west of Somersville Road. This exceeds the State of California's spacing requirement of 500 feet from the taper; the State of California's Outdoor Advertising Division has approved this location for highway safety and development of a new advertising display.

2.5 Site Photographs

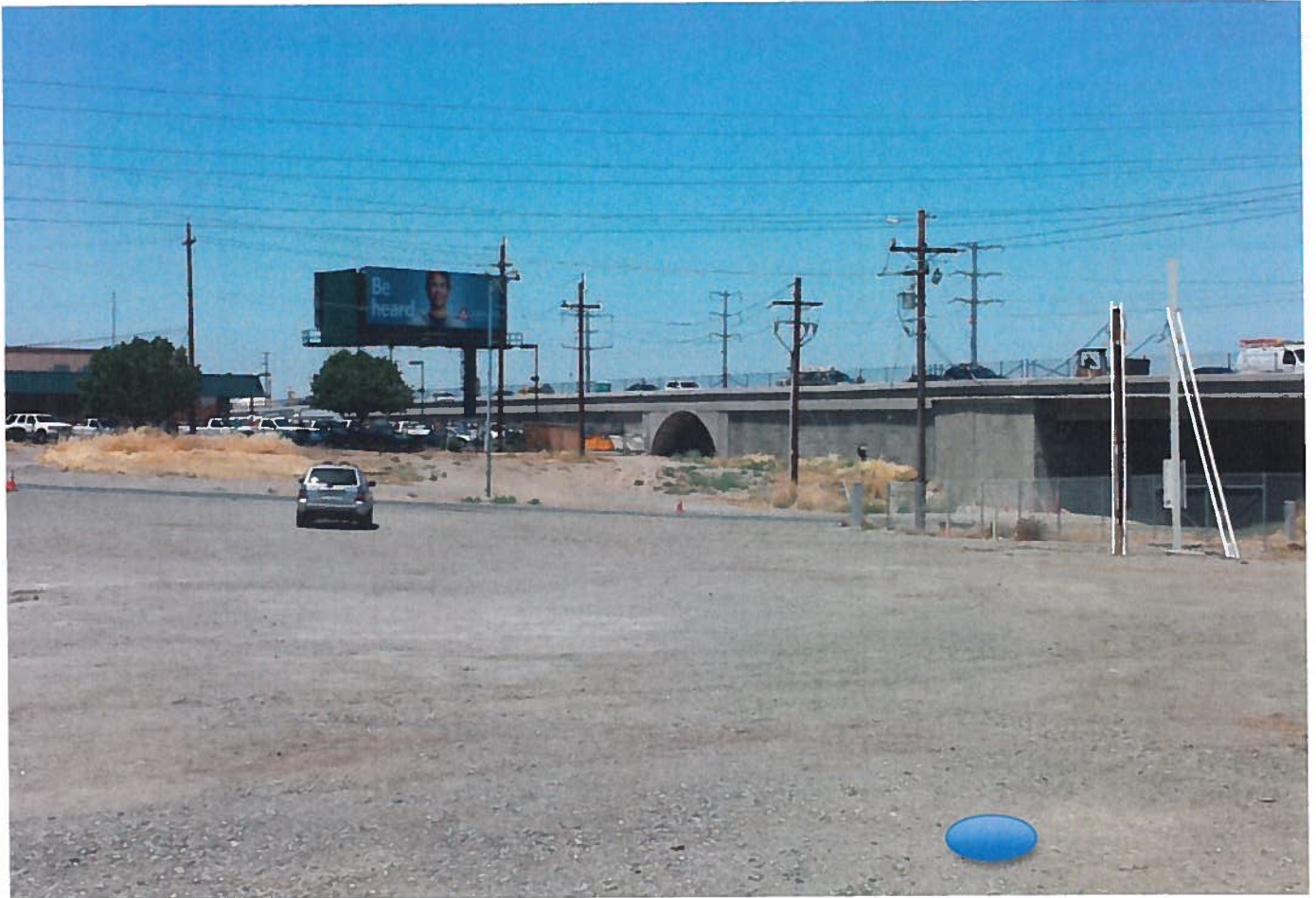


Photo 1, taken May 2013 – Ground level view facing West.



Photo 2, taken May 2013 – Ground level view facing South

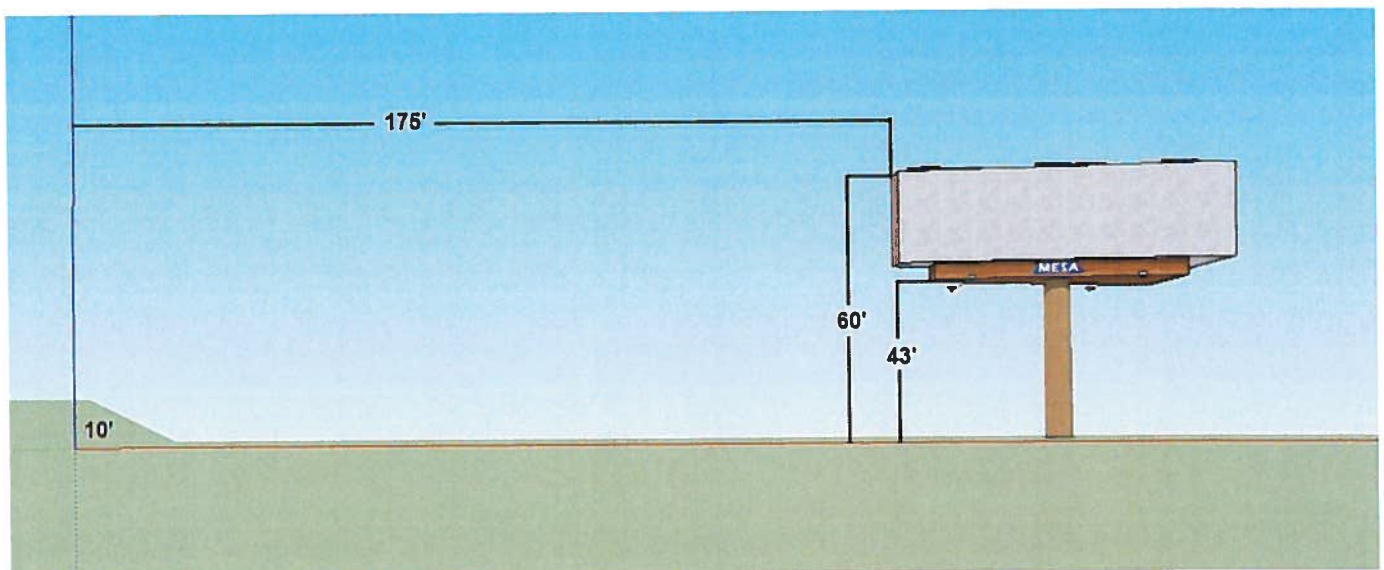


Photo 3, taken May 2013 – Ground level view facing North.



Photo 4, taken May 2013 – Ground level view facing East

2.6 Ground Level Cross Section



2.7 Photosimulations



Photosimulated view of the proposed sign heading east on Highway 4.



Photosimulated view of the proposed sign heading west on Highway 4.

3.0 Visual Impacts & Mitigations

Great care was taken in the selection of the property and design of site location to minimize impacts on the scenic view sheds of Antioch. Our proposed property is located outside of Caltrans designated "Scenic Highway" and "Landscaped Freeway" sections of the City. The property is located in a Commercial/Industrial area amongst view sheds that have already been developed into uses including shopping centers, auto dealers and industrial facilities.

3.1 Lighting Impacts

Our proposed SignVue LED lights use focused LED light that is glare resistant and will not impact the night sky views of the residents located approximately 900 feet to the east. See **4.2 Illumination**.

3.2 Graffiti Control

The catwalks on the sign will be located 43' above ground level at the base of the pole. We do not expect graffiti to be an issue at this height. We will vigilantly monitor graffiti on the sign and swap out impacted vinyls and paint over any graffiti that occurs on the structure.

3.3 Existing Business Impact

The sign will not impact the existing pumpkin patch and Christmas tree lot as the sign will be located behind the sales area that customers use.

4.0 Structure Description

The proposed structure consists of two 14' x 48' advertising display faces, supported by a center-mounted 43' column and an overall height of 60' with a 45 degree V. These design specifications provide a desirable aspect ratio for freeway viewing. The size and design are customized to fit the property and serve the traveling public. The structure will be composed of steel, and will arrive at the site pre-fabricated, primed, and painted. The structure will be cemented underground to provide a secure foundation and minimize the structure's footprint. All structural calculations will be signed and sealed by a registered professional engineer. The structure and installation will comply with all applicable building and electrical codes.

4.1 Scaled Elevations

See insert.

4.2 Illumination

Our display faces will be illuminated at night, which will be activated by a timing clock and photocell. The LED lights are rated to last 25 years and draw-limited power during use. A photocell will turn the lights on at dusk all year round. The LED lights incorporate the latest shading and focusing technology from Holophane and are glare and spillover resistant. The lights will not cause glare or impair night sky viewing for the residents located 900 feet to the east.

4.3 Solar Generation

The solar package will be tastefully designed and located within the open space of the proposed structure. The package will consist of (2) Kyocera solar panels, (1) inverter – connected to the grid, which will generate and supply power during the day. This design has been utilized in many of our new billboard projects throughout the State and is a comprehensive kit, ideally suited for locations similar to the one selected in Antioch.

4.4 Building Materials Plan

The signpost and advertising frame will be comprised entirely of factory primed and painted steel. Our construction schedule will be quick as the advertising frame can be assembled on the ground and installed with a large crane.

5.0 Non Profit and Community Support

Mesa Outdoor has offered on a time available basis, space to the Ad-Council agency, which provides non-profit support for various advertising campaigns, with the goal of enhancing awareness of common concerns within North America. The Ad-Council has supported countless ad campaigns since 1942 such as drunk driving, teen pregnancy and airborne illnesses. The new sign in Antioch will be a support conduit for existing and future non-profit ad campaigns. Mesa will additionally strive to work with community chamber of commerce, local non-profit agencies and community events.

5.1 Local Job Creation & Sustainability

We strive to use local trades to support our structure and have found the development of one sign has the ability to support multiple business owners. In addition to creating jobs, Mesa will also generate power through the solar component of the structure, providing green energy power to PG&E.

6.0 Why the selected property is the preferred site in the City

The property was selected for an off-premises outdoor advertising display because of its strategic position along Highway 4. The project does not obstruct scenic views; need re-classification, re-zoning, a variance or a permit to remove vegetation. This location has the potential to alert drivers commuting into the City and convey important messages on a daily basis. The design and location will have no adverse impact on local residents. The site was also favored due to its negligible impact on existing trees, shrubs, and vegetation, and its minimal interference with buildings, signs, and other business activities. In addition, we are confident that our method of providing exposure to the traveling public is the most economical and efficient medium.

6.1 State of California Regulations Compliance

The proposed location is compliant with all State of California Freeway Advertising Display regulations and has been approved for a new Freeway Advertising Display by the State's Department of Outdoor Advertising. State planning and safety regulations met include:

Display Location

- Must be outside the right of way of any highway.
- Must be outside of any stream, or drainage channel.
- There must be an existing business activity within 1000 feet of proposed display location on either side of the highway.
- Location of property where display is to be placed must be zoned industrial or commercial.
- Must have current property owner consent, in writing, to place the display at desired location.
- Must have written permission (building permit) from the local government having jurisdiction where the display is to be located.
- Location may not be adjacent to a landscaped section of a freeway.
- Location may not be adjacent to a scenic highway.
- If adjacent to a Bonus segment of an Interstate freeway, copy, size, and spacing is more restrictive.
- Display must be 500 feet from any other permitted display on same side of any highway that is a freeway.
- Display must be 300 feet from any other permitted display on same side of any primary highway that is not a freeway in an unincorporated area.
- Display must be 100 feet from any other permitted display on same side of any primary highway that is not a freeway and is within the limits of an incorporated city.
- Display must be 500 feet from an interchange; intersection at grade or safety roadside rest if the highway is a freeway and the location is outside the limits of an incorporated city and outside the limits of an urban area.
- An electronic changeable message center display must meet the above spacing requirements and be 1000 feet from any other off-premise electronic message center display.
- Maximum height for the advertising display area is, 25 feet in height and 60 feet in length, not to exceed an overall maximum of 1200 square feet.

Appendix A – State Approval

DEPARTMENT OF TRANSPORTATION
DIVISION OF TRAFFIC OPERATIONS
1120 N STREET, MS 36
P. O. BOX 942874
SACRAMENTO, CA 94274-0001
PHONE (916) 651-9327
FAX (916) 651-9359
www.dot.ca.gov/oda



*Flex your power!
Be energy efficient!*

April 6, 2012

Mesa Outdoor, LLC
Mike McCoy
582 Market Street #1508
San Francisco, CA 94104

Re: Permit No. OF04-0035 on the South side of 4 in Contra Costa County, 5150 feet West of Somersville Road

Dear Mr. McCoy,

Your application for an outdoor advertising permit in the above location has been approved. The official permit number is shown in the upper right hand corner of the enclosed copy of the permit application and will serve as the State permit for your display.

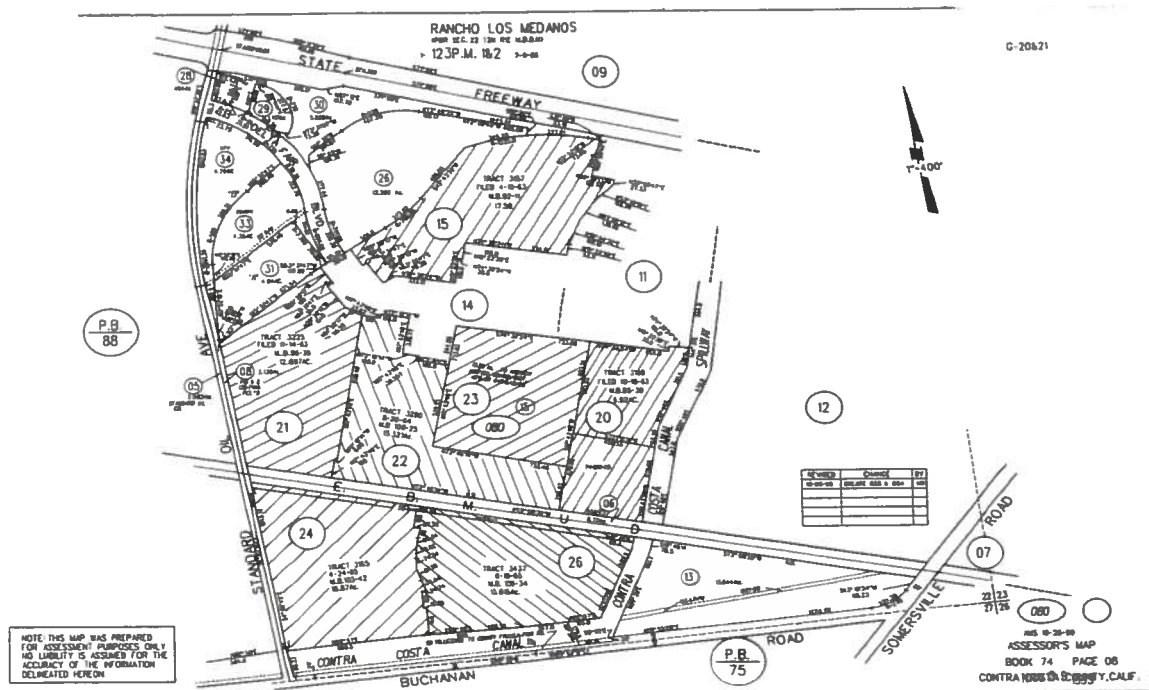
Your display has been assigned the following permit number: OF04-0035. The accompanying permit identification plate is enclosed to affix to your display.

If you have any questions, please do not hesitate to contact our office at (916) 651-9327.

Sincerely,

Danielle Crothers
Outdoor Advertising Program

Enclosures



**Appendix B – Assessor's Information****DELTA FAIR BLVD, ANTIOCH, CA 94509****Owner Information:**

Owner Name: **ANTIOCH CITY OF**
Mailing Address: **PO BOX 5007, ANTIOCH CA 94531-5007 B900 C/O PUBLIC WORKS DEPT**
Phone Number: Vesting Codes: **//**

Location Information:

Legal Description: **POR RO LOS MEDANOS**
County: **CONTRA COSTA, CA** APN: **074-080-029-7**
Census Tract / Block: **3050.00 / 3** Alternate APN:
Township-Range-Sect: Subdivision:
Legal Book/Page: Map Reference: **/ 574-J5**
Legal Lot: Tract #:
Legal Block: School District: **ANTIOCH**
Market Area: Munic/Township:
Neighbor Code:

Owner Transfer Information:

Recording/Sale Date: **10/28/1977 /** Deed Type: **DEED (REG)**
Sale Price: 1st Mtg Document #:
Document #: **8569-685**

Last Market Sale Information:

Recording/Sale Date: **/** 1st Mtg Amount/Type: **/**
Sale Price: 1st Mtg Int. Rate/Type: **/**
Sale Type: 1st Mtg Document #: **/**
Document #: 2nd Mtg Amount/Type: **/**
Deed Type: 2nd Mtg Int. Rate/Type: **/**
Transfer Document #: Price Per SqFt:
New Construction: Multi/Split Sale:

Title Company:

Lender:

Seller Name:

Prior Sale Information:

Prior Rec/Sale Date: **/** Prior Lender:
Prior Sale Price: Prior 1st Mtg Amt/Type: **/**
Prior Doc Number: Prior 1st Mtg Rate/Type: **/**
Prior Deed Type:

Property Characteristics:

Year Built / Eff: /	Total Rooms/Offices:	Garage Area:
Gross Area:	Total Restrooms:	Garage Capacity:
Building Area:	Roof Type:	Parking Spaces:
Tot Adj Area:	Roof Material:	Heat Type:
Above Grade:	Construction:	Air Cond:
# of Stories:	Foundation:	Pool:
Other Improvements:	Exterior wall:	Quality:
	Basement Area:	Condition:

Site Information:

Zoning:	Acres: 1.12	County Use: GOVERNMENT (79)
Lot Area: 48,657	Lot Width/Depth: x	State Use:
Land Use: PUBLIC (NEC)	Commercial Units:	Water Type:
Site Influence:	Sewer Type:	Building Class:

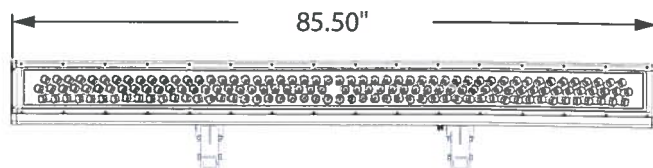
Tax Information:

Total Value: \$18,017	Assessed Year: 2011	Property Tax:
Land Value: \$18,017	Improved %:	Tax Area: 01135

UP TO 75% ENERGY SAVINGS



When Mounting From
Top of Billboard



Incredible 75,000 hrs

GENERAL DESCRIPTION

Neptun's Ad-Bulletin™ LED billboard fixtures combine architectural form and patented design to make it an excellent choice for retrofit or new billboard applications. The 150 PCS, High Output LED's, and custom engineered optics, provide highly uniform illumination of various billboard sizes. It can replace existing HID billboard fixtures up to 400W.

APPLICATION

- 36'W x 15'H Billboard Requires 2 Units
- 48'W x 15'H Billboard Requires 2 Units

STRUCTURE, MATERIALS, & FEATURES

- Heavy-gauge, die-cast aluminum housing with cooling fins.
- Corrosion resistant electrocoat gray finish (custom colors available).
- Slim, state of the art, low profile design for minimum wind load resistance.
- Heat and impact resistant tempered flat glass lens.
- Continuous silicone gasketing surrounds lens for IP67 weather tight seal.
- 1-1/2" I.D. Slip Fitter Accepts up to 1-1/4" Pipe or Tenon. (hardware included)
- Correlated Color Temperature of (5700°K) for greater visibility.
- High power factor, low THD driver.
- InstantON flicker-free Cold Start and Hot Re-Start.
- Up to 15 years Maintenance free operation.
- 5 Year Warranty on complete fixture. (LED's, Driver, & Housing)

ORDERING INFORMATION

Sample Number: LED-84175-UNV
Custom options and accessories available. Please consult factory

Source	Series	Wattage	Voltage
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
LED = LED	84 = Billboard Fixture	175 = 175 W	UNV = 120-277 VAC



CI

lightinnovations@work™

PRODUCT INFORMATION

Model No.	Description	Rated Watts	Input Watts	Initial Lumens	Universal Line Voltage (VAC)	Max Line Current (Amp)	THD	Power Factor	Weight
LED-84175-UNV	LED Billboard Fixture	175	177	13,600	120-277	1.53 - 0.66	<15%	>0.98	50 lbs

SPECIFICATIONS

• LED Driver	Constant Current	• Color Rendering Index (CRI)	>70
• Power Supply	350mA	• Minimum Starting Temperature	-40°C
• Start Method	InstantON	• Maximum Starting Temperature	50°C
• Hot Re-start	InstantON	• Lumens per Watt	> 80
• Universal Input Line Voltage	120-277 VAC	• Shock / Vibration Resistant	Yes
• Input Line Frequency	50/60 Hz	• Power Factor	> 0.98
• Ballast Off-State Draw	0 Watts	• Total Harmonic Distortion	< 15%
• Sound Rating	Class A	• Inrush Current Peak	< 10 Amp
• ANSI Surge Protection	Class A	• ETL Listed / UL Standard 1598	Yes
• LED / Driver System Life	75,000 Hrs.	• FCC Compliance	Part 18, Subp. C
• Lumen Maintenance @50,000Hrs	> 70%	• IP Rating	IP67
• Color Temperature	5,700°K	• Warranty	5 Year



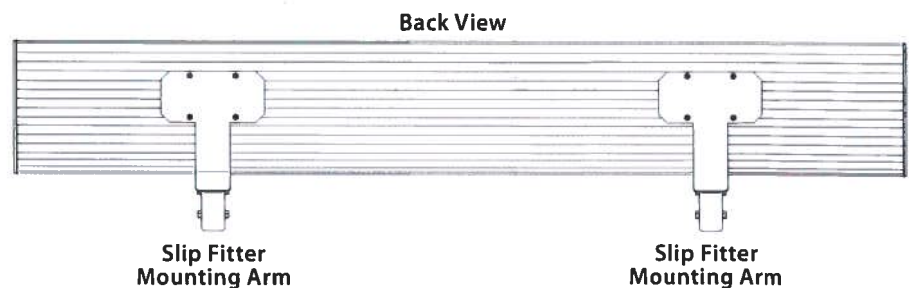
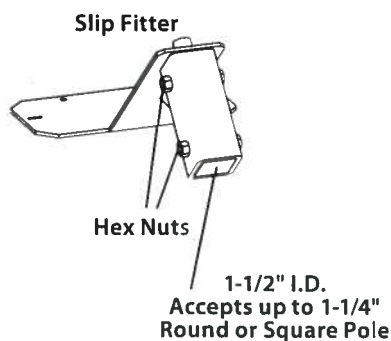
48' x 15' Billboard

(2) Ad-Bulletin Units

FOR BEST RESULTS

- Fixtures should be mounted at least 6 ft. from the surface of the board
- Fixtures should be mounted at least 1 ft. from the bottom or top of the board

MOUNTING OPTIONS



Neptun Light, Inc.
13950 Business Center Drive
Lake Forest, IL 60045
Fax: 847.735.8004

Neptun Light, Inc. reserves the right to change materials or modify the design of its product without notification as part of the company's continuing product improvement program.
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Spec. Rev. 8-2012

**STAFF REPORT TO THE PLANNING COMMISSION
FOR CONSIDERATION AT THE MEETING OF OCTOBER 16, 2013**

Prepared by: Mindy Gentry, Senior Planner *MA*
Date: October 10, 2013
Subject: Fortune Telling Ordinance – Z-13-06

RECOMMENDATION

The City of Antioch requests that the Planning Commission adopt the attached resolution initiating an amendment to Title 9 of the Municipal Code, "Planning and Zoning" and recommending that the City Council adopt an ordinance amending the zoning ordinance to allow fortune-tellers to be permitted by right in certain commercial zoning districts.

BACKGROUND

In July of 2007, the City received a letter from the law firm of Fleishman & Fisher threatening litigation on behalf of Ms. Debbie Merino in order to pursue fortunetelling activities without requiring a conditional use permit (Attachment "A"). The letter asserts fortunetelling is an activity that is fully protected under the free speech clauses of the Federal and State constitutions, particularly as practiced by the members of the Roma ethnic group commonly known as gypsies. The letter continues with the argument that the California Supreme Court has determined that a law that grants official discretion whether or not to permit this speech must meet the strict scrutiny test and is considered unconstitutional in this case. Lastly, the letter also asserts that the license fee, per Antioch Municipal Code Section 3-1.208, is invalid based on the lack of a link between the fee and costs of the licensing process.

The City Attorney's office responded to Fleishman & Fisher's letter by allowing Ms. Merino to temporarily locate her fortunetelling business without a use permit for a period of one year with an option to extend her business license on a yearly basis if the City did not consider a new or amended ordinance. Under this temporary approval, Ms. Merino would also be subject to the generally-required business license tax without being subject to a special fee or permit to engage in fortunetelling (Attachment "B"). During this one year period, City staff was to address the issues brought forth in the Fleishman & Fisher letter by bringing forward for City Council consideration a new ordinance or an amendment to the existing ordinance pertaining to fortunetelling. Since that time, Ms. Merino's interest in opening her fortunetelling business waned and the City experienced budgetary and staff cutbacks in order to address the letter from Fleishman & Fisher in a timely manner.

ENVIRONMENTAL

The proposed ordinance would merely be bringing the City's Zoning Code in compliance with State and Federal law as it pertains to freedom of speech. Further, the fortuneteller use has similar impacts as those uses already permitted by right, such as business and professional offices and general retail. For these reasons, adoption of the proposed ordinance is exempt from CEQA subject to the exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

PROJECT OVERVIEW

Staff believes that fortunetelling has similar land use impacts as office and general retail, which are uses that are permitted by right within the Municipal Code's Table of Land Use. Office uses are defined in the municipal code as an interior space used by a tenant such as an accountant, architect, attorney, chiropractor, civil engineer, surveyor, draftsman, collection agency, dentist, doctor, insurance agent, private detective, real estate agent, social worker, or similar individual or group. General retail is defined as establishments selling good or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

Currently, the City allows fortunetellers to operate in Neighborhood Commercial (C-2), Regional Commercial (C-3), Mixed Commercial-Residential (MCR), and Rivertown Commercial (RTC) with the issuance of a use permit. Given the legal issues surrounding the fortunetelling use and the constitutional protection, staff is recommending, via the attached ordinance, to change the Table to Land Use regulations to permit fortunetellers by right in the aforementioned zoning districts, but also adding the following districts: Planned Business Center (PBC), Commercial Office (C-O), and Convenience Commercial (C-1). The amendment to the zoning ordinance would address the current threat of litigation as well as any future threat in regards to the constitutional protections afforded fortunetelling and is consistent with actions that other cities have taken in the same situation.

As stated above, the letter from Fleishman & Fisher asserts the business license fee is invalid based on the lack of a link between the fee and the licensing process. A tax has the primary purpose of raising revenue, while a fee recoups the City's costs of providing a service from a beneficiary. Fortunetellers are not subject to any special fee or permit. Revisions to the City's business license ordinance regarding fortunetelling will be addressed with the update of that ordinance that is currently occurring.

ATTACHMENTS

- A July 16, 2007 letter from Fleishman & Fisher
- B July 25, 2007 letter from the City Attorney

RESOLUTION NO. 2013-**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
INITIATING AND RECOMMENDING AN AMENDMENT TO TITLE 9, "ZONING AND
PLANNING" OF THE ANTIOCH MUNICIPAL CODE RELATED TO
FORTUNETELLERS**

WHEREAS, the Planning Commission of the City of Antioch did receive an application from the **City of Antioch** requesting initiation and approval of an amendment to the Zoning Ordinance of the Antioch Municipal Code to permit fortunetellers by right in certain zoning districts (Z-13-06); 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 October 16, 2013, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary.; and

NOW, THEREFORE BE IT RESOLVED that the Planning Commission, after reviewing the staff report and considering testimony offered, does hereby initiate and recommend that the City Council **ADOPT** the attached ordinance amending the Antioch Municipal Code to permit fortunetellers by right in certain zoning districts (Z-13-06).

* * * * *

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 16th day of October, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tina Wehrmeister, Secretary to the
Planning Commission

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH AMENDING MUNICIPAL CODE TITLE 9 TO PERMIT FORTUNETELLING BY RIGHT IN CERTAIN COMMERICAL AND OFFICE ZONING DISTRICTS

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. The Planning Commission conducted a duly noticed public hearing on October 16, 2013 at which it adopted a resolution to initiate and recommend to the City Council that this ordinance regarding fortunetelling be adopted. The City Council held a duly noticed public hearing on _____ at which all interested persons were allowed to address the Council regarding adoption of this ordinance.

C. The California Supreme Court has determined that the practice of "fortunetelling" for fee or compensation constitutes constitutionally protected speech that cannot be completely prohibited, and municipal regulation of such activity is subject to heightened judicial scrutiny.

D. Fortunetelling has similar land use impacts as professional and medical office uses as well as general retail.

E. The City Council finds that the public necessity requires the proposed zone change; that the subject property is suitable to the use permitted in the proposed zone change; that said permitted use is not detrimental to the surrounding property; and that the proposed zone change is in conformance with the Antioch General Plan.

SECTION 2. Section 9-5.3803 Table of Land Use Regulations is hereby amended to permit fortunetelling by right in PBC, C-O, C-1, C-2, C-3, MCR, and RTC:

	RE	R-4	R-	R-		C-												
	RR	R-6	10	20	PBC	O	C-1	C-2	C-3	MCR	WF	OS	M-1	M-2	H	RTC	RTR-10	RTR-20
Fortuneteller's	--	--	--	--	P	P	P	P	P	P	--	--	--	--	--	P	--	--

SECTION 3. CEQA.

This Ordinance is subject to the CEQA exemption contained in CEQA Guideline section 15061 because it can be seen with certainty to have no possibility of a significant effect on the environment. The ordinance is merely bringing the City of Antioch Municipal Code in compliance with Federal and State law as it pertains to free speech.

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

FLEISHMAN & FISHER
LAWYERS

STANLEY FLEISHMAN (1920-1999)
BARRY A. FISHER*
DAVID GROSZ
MICHAEL B. WEISZ
HENRY W. McGEE, JR. J
WILLIAM M. KRAMER (1920-2004)

1875 CENTURY PARK EAST, SUITE 2130
LOS ANGELES, CALIFORNIA 90067
PHONE (310) 557-1077 FAX (310) 557-0770

Writer's e-mail address: bflsher557@aol.com

*PROFESSIONAL CORPORATIONS
& OF COUNSEL
CABLE ADDRESS: ARJUNA

July 16, 2007

Via Federal Express and fax (925) 779-7003

Lynn Tracy Nerland
City Attorney
City of Antioch
City Hall, 3d and H Streets
Antioch, CA 94509

Re: City of Antioch-Fortunetelling

Dear Ms. Nerland:

This office represents Debbie Merino. Ms. Merino wishes to engage in the activity commonly known as "fortunetelling" at her premises at 2220 A Street, Antioch, which I understand is in the C-2 zone. Pursuant to section 9-5.3803 of the Antioch Municipal Code, fortunetelling is not a permitted use anywhere in the City. Instead, it is prohibited everywhere in the city, except with a use permit (UP) in certain zones, including C-2. In addition, fortunetelling is subject to "a license fee based on the entire gross receipts as provided in § 3-1.201." Antioch, Cal., Mun. Code § 3-1.208.

As set out below, this scheme is unconstitutional. Fortunetelling is a fully protected activity under the free speech clauses of the federal and California constitutions. Discretionary permits like a UP cannot validly be applied in this instance. In addition, the financial exaction mentioned above does not survive First Amendment scrutiny.

I therefore request that the City agree to allow Ms. Merino to engage in fortunetelling at her premises, or at least, refrain from enforcing the scheme mentioned above while the City studies the issues raised in this letter. Please let me know by July 26, 2007, whether there is any chance this matter can be resolved without litigation.

In a case that I handled, the California Supreme Court held that fortunetelling constitutes protected speech. Spiritual Psychic Sci. Church of Truth v. City of Azusa, 39 Cal. 3d 501,

A1

Lynn Tracy Nerland
City Attorney
City of Antioch
July 16, 2007
Page 2 of 14

703 P.2d 1119, 217 Cal. Rptr. 225 (1985).¹ The federal courts have reached the same result. E.g., Argello v. City of Lincoln, 143 F.3d 1152, 1152-53 (8th Cir. 1998); Trimble v. City of New Iberia, 73 F. Supp. 2d 659, 667 (W.D. La. 1999); Rushman v. City of Milwaukee, 959 F. Supp. 1040, 1043-44 (E.D. Wis. 1997); Howell v. City of New Orleans, 844 F. Supp. 292, 294 (E.D. La. 1994). The Supreme Court in Azusa made clear that "any prohibition or regulation of fortune-telling must be given full scrutiny under the Constitution." 39 Cal. 3d at 512, 703 P.2d at 1125, 217 Cal. Rptr. at 231.

The law is clear, as emphasized in several federal and state cases in California, that expressive activities may not be made subject to discretionary permits like that imposed under the Antioch UP procedure. Accordingly, numerous California cities have agreed that UP's may not be validly applied to fortunetelling. I enclose with this letter materials from the cities of La Mirada, Rancho Cordova, Diamond Bar, Temecula and Ceres as exemplary of the actions cities have taken when these matters have been brought to their attention.

1. Background.

a. Historical background.

Ms. Merino is member of the religious and ethnic group called the Roma, popularly but incorrectly known as Gypsies.²

¹This firm has, in addition to Spiritual Psychic, litigated numerous other fortunetelling cases. Stevens v. Fountain Valley, No. SA CA 88-376 JSL (RWRx) (C.D. Cal. filed June 20, 1988) (challenging CUP and restrictive zoning); Merino v. City of Huntington Beach, No. CA 84-9646 R (C.D. Cal. filed Mar. 6, 1984); Adams v. City of Lakewood, No. 84-6404 AWT (Bx) (C.D. Cal. Oct. 1, 1984); Merino v. City of Hermosa Beach, No. CA 84-9646 AHS (Bx) (C.D. Cal. Dec. 19, 1984); Adams v. City of Downey, No. 85-2840 AWT (Bx) (C.D. Cal. Apr. 30, 1985). In all these cases, plaintiffs received attorney's fees, damages, or both from the defendant municipality.

²The term "Gypsies" is a widely used misnomer for members of a distinct ethnic group, derived from the erroneous notion that their ancestors came from Egypt. Linguistic research has traced the origins of this group to northern India. Their Indo-Aryan language, called Romani, is similar to Sanskrit, and their group's name in that language is Rom ("men" or "people"), derived

Lynn Tracy Nerland
City Attorney
City of Antioch
July 16, 2007
Page 3 of 14

The enactment of anti-fortunetelling laws historically follows the westward migration of the Roma. In accordance with the traditions of the Roma, Ms. Merino practices the ritual of drabarimos, often referred to in English-speaking countries as "fortunetelling."

The beliefs of the Roma posit that women have unique spiritual powers and precise religious responsibilities which include fortunetelling. The Romani people subscribe to a complex belief system in which fortunetelling is central to women's traditional roles. The practices--rooted in religious philosophies of India--are handed down from generation to generation. As with other family traditions, the ability to follow these practices is a way to reaffirm and reinforce ties to parents, grandparents and countless generations of ancestors--as well as a means of support.³ Among the Roma, only women practice

from the Sanskrit word for "man" or "husband." Ian Hancock, Gypsies, in Harvard Encyclopedia of American Ethnic Groups 440, 441 (Stephan Thernstrom ed., 1980). The Roma began a long, usually involuntary migration from India (possibly as refugees from war or famine) about 500 C.E. Id. at 440, 441. They have long been the victims of prejudice and repression. Their dark skin, strange language, and unfamiliar customs set them apart from the residents of the European countries through which they traveled; at best they have always been economic and social outcasts, and frequently their fate has been much worse. Ian Hancock, The Pariah Syndrome 13 (1987). The relatively few years that have passed since the Nazis exterminated some half a million Roma as part of the Final Solution have not significantly diminished their thousand-year-old tradition of remaining separate from the host society, rarely allowing outsiders insight into their culture, and prohibiting their own people from interacting with outsiders to any significant degree. Id. at 58-85.

³Fortunetelling has been identified by modern scholars as a form of folk healing which the Roma call drabarimos (or drabaripe in some dialects)--terms originating from the Romani word drab, meaning "medicine." Ruth Andersen, A Subtle Craft in Several Worlds: Performance and Participation in Romani Fortune-Telling 334 (1987) (unpublished dissertation, University of Pennsylvania) [hereinafter A Subtle Craft]. When the Roma left India at the beginning of their westward trek, their enforced nomadism prevented them from engaging in agriculture or other stable means of economic survival. The Romani art of fortunetelling was a

Lynn Tracy Nerland
City Attorney
City of Antioch
July 16, 2007
Page 4 of 14

fortunetelling, and it plays a unique role in their self-identification.⁴

b. Legal background.

The state supreme court in Spiritual Psychic rejected all arguments to the effect that fortunetelling was other than fully protected speech.

It held first that fortunetelling is speech, not commercial activity, since it "involves the communication of a message directly from the fortuneteller to the recipient," and "speech does not lose its protected character when it is engaged for profit." Id. at 508-09, 703 P.2d at 1122, 217 Cal. Rptr. at 228.

Nor is fortunetelling commercial speech. "The act of telling fortunes goes beyond the mere proposal of a transaction." Id. at 510, 703 P.2d at 1124, 217 Cal. Rptr. at 230. To the

uniquely portable and practical trade, requiring no equipment and no formal training. Drabarimos developed as a saleable form of folk healing in many countries over many centuries, offering a blend of palmistry (directly traceable to the Roma's Indian origin), herbal medicine, prayer, and common-sense advising and counseling. While its herbal medical practices have fallen into disuse in modern times, drabarimos as a whole has served the Roma well. Today they believe that the power to tell fortunes is God's blessing, intended to help them survive in a hostile world.

For obvious reasons, they also believe in themselves as resilient survivors who can and must make do with the simple skill God has given them: the gift of drabarimos.

⁴The question most often asked about a young "Gypsy" girl by friends and visitors is "Shai drabarel?" ("Can she tell fortunes?"). A Subtle Craft, supra note 3, at 102, 103. When she marries, her family will receive from the groom's family a sum of money commensurate with her fortunetelling abilities, to compensate her family for their loss of income. Id. at 107-08. Drabarimos has evolved into the natural pursuit and social responsibility of all maturing and mature females in Romani society, and contributes as much to the extended family's status and prestige in the larger Romani community as it does to the nuclear family's income. Id. at 78, 79.

Lynn Tracy Nerland
City Attorney
City of Antioch
July 16, 2007
Page 5 of 14

contrary, it is fully protected.

First, it is impossible to say that fortune-tellers impart no political message in their communications. In their vision of the future there may be a view of society as they perceive it may one day be. Such a communication conceivably could contain the spark of a political flame. Second, fortunetelling may fire the imagination and stimulate discussion of the future. That some--even a majority--may find this mode of communication distasteful, ridiculous or even corrupt is irrelevant to constitutional concerns.

Id. at 512, 703 P.2d at 1125, 217 Cal. Rptr. at 231.

Accordingly, "any prohibition or regulation of fortune-telling must be given full scrutiny under the Constitution." Id. (emphasis added). The prohibition at issue there could not survive that scrutiny, and it was therefore "unconstitutional under article I, § 2, of the California Constitution." Id. at 519, 703 P.2d at 1129, 217 Cal. Rptr. at 235.

The Eighth Circuit and other federal courts have applied a similar analysis to invalidate like ordinances under the First Amendment. In Argello, for example, because the ordinance was "a content-based regulation of speech," it could "be upheld only if it supported by a compelling state interest," and "[n]o such interest appears here." 143 F.3d at 1152-53.

2. The use-permit law cannot constitutionally be applied to protected activities, which include fortunetelling.

a. Standardless Licensing.

As noted above, fortunetelling is not permitted anywhere in the City except with a use permit. As a permit ordinance applicable to activities that constitute fully protected speech, the standards for issuance or denial of UP's fail constitutional muster.

For more than sixty years, the Supreme Court has remained steadfast to the principle that a law that grants a governmental official discretion to decide whether or not to permit speech protected by the First Amendment is unconstitutional on its face.

A5

Lynn Tracy Nerland
City Attorney
City of Antioch
July 16, 2007
Page 6 of 14

In the earliest of these cases, Chief Justice Hughes declared for a unanimous Court that ordinances of this kind "would restore the system of license and censorship in its baldest form." Lovell v. City of Griffin, 303 U.S. 444, 452 (1938). Much more recently, the Court repeated that, "[i]f the permit scheme 'involves appraisal of facts, the exercise of judgment, and the formation of an opinion,' Cantwell v. Connecticut, 310 U.S. 296, 305 (1940), by the licensing authority, 'the danger of censorship and abridgment of our precious First Amendment freedoms is too great' to be permitted. Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 553 (1975)." Forsyth County v. Nationalist Movement, 505 U.S. 123, 131 (1992). Where the statute imposes more than a "mere ministerial duty," Cantwell, 310 U.S. at 306, it is invalid. See also, e.g., City of Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 757 (1988); Hynes v. Mayor of Oradell, 425 U.S. 610, 613 (1976) (invalidating law that required canvasser "only to 'notify the Police Department, in writing, for identification only'"); Shuttlesworth v. City of Birmingham, 394 U.S. 147, 153 (1969); Gospel Missions of Am. v. Bennett, 951 F. Supp. 1429, 1440 (C.D. Cal. 1997).

The UP process is governed by article 27 of the Municipal Code. The Code vests officials with vast discretion in deciding whether or not to issue a UP. This is constitutionally intolerable in the First Amendment context.

The Code provides:

On the basis of the application, plans, materials, and testimony submitted, the Planning Commission or the Zoning Administrator shall find all of the following:

. . . .

(a) That the granting of such use permit will not be detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity;

(b) That the use applied for at the location indicated is properly one for which a use permit is authorized;

(c) That the site for the proposed use is adequate in size and shape to accommodate such

Lynn Tracy Nerland
City Attorney
City of Antioch
July 16, 2007
Page 7 of 14

use, and all yard spaces, walls, fences, parking, loading, landscaping, and other features required, to other uses in the neighborhood;

(d) That the site abuts streets and highways adequate in width and pavement type to carry the kind of traffic generated by the proposed use; and

(e) That the granting of such use permit will not adversely affect the comprehensive General Plan.

§ 9-5.2703(B)(1).

It provides further:

In approving a design review, use permit, administrative use permit or variance, the Planning Commission, Design Review Board, or the Zoning Administrator may impose reasonable conditions necessary to:

(A) Achieve the general purposes of this chapter and/or the specific purposes of the zoning district in which the site is located, and/or to make it consistent with the General Plan;

(B) Protect the public health, safety, and general welfare; and/or

(C) Ensure operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties and/or in the surrounding area.

§ 9-5.2704.

The federal courts in California, following earlier cases applying discretionary licensing doctrine to UP-type processes affecting speech, have regularly invalidated such ordinances. For example, in a case in which an Anaheim ordinance was challenged by a provider of "adult entertainment," the court held:

The Anaheim CUP ordinance vests the Planning Commission with the power to

A7

Lynn Tracy Nerland
City Attorney
City of Antioch
July 16, 2007
Page 8 of 14

decide who may or may not obtain a CUP. Because the Commission's decision-making is not guided by definite and objective standards, the CUP ordinance infringes the First Amendment rights of the permittee. The Commission's ability to make decisions based on ambiguous criteria such as the "general welfare" of the community effectively gives the Commission the power to make decisions on any basis at all, including an impermissible basis, such as content-based regulation of speech.

Dease v. City of Anaheim, 826 F. Supp. 336, 344 (C.D. Cal.),
attorney's fees awarded, 838 F. Supp. 1381 (C.D. Cal. 1993).
Accord, e.g., Mga Susa, Inc. v. County of Benton, 853 F. Supp.
1147, 1151-52 (D. Minn. 1994).

The principles stated in Dease are well established. Indeed, Dease has been repeatedly followed by other California federal courts. CR of Rialto, Inc. v. City of Rialto, 975 F. Supp. 1254, 1263-65 (C.D. Cal. 1997); 3570 E. Foothill Blvd., Inc. v. City of Pasadena, 912 F. Supp. 1268 (C.D. Cal. 1996); Santa Fe Springs Realty Corp. v. City of Westminster, 906 F. Supp. 1341 (C.D. Cal. 1995).

The same vices identified in Dease, East Foothill, and Santa Fe Springs inhere in the Antioch ordinance. It is plainly unconstitutional in the context, as here, of fully protected activity.

In the City of Westminster case, for instance, the court stated the general principle: "A CUP scheme qualifies as a prior restraint because it essentially requires the permittee to obtain the government's permission or approval before engaging in an act of First Amendment protected speech." 906 F. Supp. at 1363-64. It held that the Westminster CUP ordinance before it contained criteria that were "vague and ambiguous," and that, therefore, "the ordinance fails to effectively limit the discretion vested in the licensing official." Id. at 1365.

The Court specifically held that several provisions of section 17.57.160 of the Municipal Code failed this test and were thus invalid. These included:

- (1) that the proposed site is "adequate in size and

A8

Lynn Tracy Nerland
City Attorney
City of Antioch
July 16, 2007
Page 9 of 14

shape" to accommodate the yards, walls, fences . . . ;

(2) that the requested use at the proposed location will not "adversely affect" the use of a church, temple . . . ;

(3) that the requested use at the proposed location is "sufficiently buffered" in relation to residentially zoned areas . . . ; and

(4) that the exterior appearance of the structure will not be "inconsistent with" the external appearance of commercial structures. . . .

906 F. Supp. at 1365 (ellipses in the original). The court also invalidated the following additional or amended criteria: (a) that the proposed use is "consistent with the Westminster General Plan, any other applicable adopted plan of the City, or any applicable adopted or any applicable adopted plan of any other governmental agency"; (b) that the proposed use is "adequately served by highways or streets of sufficient width and improved as necessary to carry the kind or quality of traffic that such use would generate"; and (c) that the proposed site is "adequately served by other public and private service facilities as are required." Id. at 1366

Antioch's section 9-5.2703(B)(1) contains criteria that are substantively indistinguishable from those struck down in the cited cases. It equally "contain(s) ambiguous criteria that fail to effectively limit the discretion vested in the licensing officials," 906 F. Supp. at 1366. Each of the Antioch criteria "involves the appraisal of facts, the exercise of judgment, and the formation of an opinion," Cantwell, 310 U.S. at 305, and therefore cannot constitutionally be used to license speech-protected activity.

Over the years a number of cities in California have been contacted regarding issues such as that presented here. Cities have either agreed not to enforce CUP ordinances against fortunetelling or have amended them so as not to impinge on fortunetelling. One such instance is that of the City of Temecula, the relevant materials for which are enclosed.

Following advice from the City Attorney, Peter M. Thorson, who also represented Azusa in the Spiritual Psychic case, Temecula stated its intention to amend its code "to treat fortune telling businesses as permitted uses in Commercial, Office and

Lynn Tracy Nerland
City Attorney
City of Antioch
July 16, 2007
Page 10 of 14

Business Park Zoning Districts," eliminating the former requirement of a CUP. The staff pointed out that "fortune telling and similar uses do not have any special uniqueness or impacts, other than those generally caused by any other office or professional service uses on the surrounding areas." Temecula also stated its intention to repeal a code section requiring fortunetellers to obtain a "special permit" from the City Manager. The Community Development Director stated:

According to the City Attorney, the courts have ruled that fortune telling, and related activities, are protected free speech activities under the First Amendment and that broad requirements affecting First Amendment activities without specific procedures and detailed criteria for issuing the permit have been held invalid.

The two ordinances would repeal the special provisions affecting persons engaged in fortune telling.

Moreover, Mr. Thorson's letter to us dated December 13, 1996, states:

Pending the effective date of the new ordinance, the Council has also instructed staff not to enforce the conditional use permit requirements for fortunetelling and to consider it a permitted use under Title 17, Zoning, of the Temecula Municipal Code.

Similarly, the City of Ceres "determined that the City's current constitutional use permit requirements and regulatory permitting process regarding fortunetelling activities do not meet Federal or State free speech constitutional standards." (Letter of 8/4/97 from Michael L. Lyons, City Attorney, City of Ceres, to Barry A. Fisher (attached).) The City said that, "[e]ffective immediately," it "will not be enforcing its conditional use permit requirements for fortunetelling activities, nor will it enforce the regulatory provisions contained in Chapter 9.32 of the Ceres Municipal Code." (Id.) Further, the City stated that it would "commence proceedings to repeal the existing regulatory provisions" and "to delete the constitutional use permit requirement for fortunetelling and allow fortunetelling or a permitted use in its Commercial, Administrative, Professional,

Lynn Tracy Nerland
City Attorney
City of Antioch
July 16, 2007
Page 11 of 14

and Highway commercial zoning districts." (Id.)

I am also including more recent letters from the City Attorneys of La Mirada (D. Craig Fox), Diamond Bar (Michael Jenkins), and Rancho Cordova (Meyers, Nave, Riback, Silver & Wilson) by which those cities also agreed not to apply CUP requirements to fortunetelling. Mr. Fox's letter notes: "[W]e agree that the City's current Conditional Use Permit ('CUP') requirement for fortunetelling activities do [sic] not meet federal or state constitutional standards."

b. Lack of Procedural Safeguards.

When protected activities are subjected to a license requirement, the statutory provisions must also incorporate the procedural safeguards delineated in Freedman v. Md., 380 U.S. 51 (1965). See, e.g., Riley v. Nat'l Fed'n of the Blind, 487 U.S. 781, 802 (1988) (Such a "regulation must provide that the licensor 'will, within a specified brief period, either issue a license or go to court.'" (quoting Freedman, 380 U.S. at 59). If the law does not include these safeguards, it is "void on its face." Leflore v. Robinson, 434 F.2d 933, 948 (5th Cir. 1970), vacated on other grounds, 446 F.2d 715 (5th Cir. 1971).⁵ See

⁵A licensing law must satisfy seven criteria: (1) The burden of proof must rest on the government both to justify particular facts necessary to sustain the restraint. See Freedman, 380 U.S. at 38. (2) The license must be granted or denied within a specified, brief period of time. See id. at 59. (3) The licensing administrator must either issue a license or go to court to restrain unlicensed speech; mere denial cannot create a legal bar to expression. See, e.g., Blount v. Rizzi, 402 U.S. 419, 421 (1971). (4) No ex parte court order is valid if an adversary hearing on the question of interim relief is practicable. See Carroll v. President of Princess Anne, 393 U.S. 175, 181-83 (1968). (5) "Any restraint imposed in advance of a final judicial determination on the merits must be . . . limited to preservation of the status quo for the shortest fixed period compatible with sound judicial resolution." Freedman, 380 U.S. at 59. (6) There must be a "prompt final judicial decision" reviewing any "interim and possibly erroneous denial of a license." Freedman, 380 U.S. at 59. (7) If a prior restraint is ordered by a court, the state must either stay the order pending its appeal or provide immediate appellate review. See National Socialist Party of Am. v. Village of Skokie, 432 U.S. 43, 44 (1977) (per curiam).

Lynn Tracy Nerland
City Attorney
City of Antioch
July 16, 2007
Page 12 of 14

Gospel Missions, 951 F. Supp. at 1447.

The Freedman safeguards apply to CUP's in the First Amendment area. E.g., Mga Susa, 853 F. Supp. at 1153. As in that case, the CUP ordinance here fails to meet these exacting constitutional criteria.

3. The license fee is invalid.

Fortunetelling is subject to "a license fee based on the entire gross receipts as provided in § 3-1.201." Antioch, Cal., Mun. Code § 3-1.208. This exaction is invalid.

Like the license tax invalidated in Murdock v. Pennsylvania, 319 U.S. 105 (1943), Antioch's license fee requirement, imposed

as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment . . . restrains in advance those constitutional liberties . . . and inevitably tends to suppress their exercise . . . On [its] face [it is] a restriction of the free exercise of those freedoms which are protected by the First Amendment.

Id. at 114. "Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way." Id. at 111.

Here, it has not been demonstrated that the fees are strictly necessary for the reimbursement of the actual expenses of any licensing scheme, and certainly not for any lawful portions of it. They are accordingly invalid.

For example, then-District Judge Wardlaw (now of the Ninth Circuit) held unconstitutional a Los Angeles ordinance that required professional fundraisers to pay a \$55 fee and post a \$5,000 bond. Gospel Missions of Am. v. Bennett, 951 F. Supp. 1429 (C.D. Cal. 1997). The court held that these requirements "directly restrain protected speech and are not narrowly tailored to meet the substantial interest asserted by the City." Id. at 1447. The city, the court said, and "not demonstrated a link between the fee and the bond and the costs of the licensing process." Id. The ordinance was therefore "unconstitutional on its face." Id.

Other courts have reached similar results. See e.g. S.

A12

Lynn Tracy Nerland
City Attorney
City of Antioch
July 16, 2007
Page 13 of 14

Conn. Newspapers v. Town of Greenwich, 11 Media L. Rep. (BNA) 1051 (D. Conn. 1984); E. Conn. Citizens Action Group v. Powers, 723 F.2d 1050, 1056 (2d Cir. 1983) (invalidating requirement that demonstrators obtain insurance policy to indemnify state against injuries and property damage).

For the reasons expressed in Murdock and reaffirmed recently in this district by Judge Wardlaw in Gospel Missions, the Antioch license fee is also invalid.

Conclusion.

Ms. Merino requests that the City agree that she may pursue fortunetelling activities at her site, without the CUP requirements mentioned above, or, alternatively, that such permit be granted. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976); accord, e.g., Foti v. City of Menlo Park, 146 F.3d 629, 643 (9th Cir. 1998); Collins v. Jordan, 110 F.3d 1363, 1372 (9th Cir. 1996).

If the City does not do so, we have been instructed to pursue all available steps, including litigation if necessary, to secure my client's rights. Should litigation ensue, the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988(b), provides that prevailing plaintiffs who vindicate First Amendment rights are routinely entitled to an award of attorney's fees. See, e.g., Carreras v. City of Anaheim, 768 F.2d 1039, 1050 (9th Cir. 1985) (\$100,000 in fees to this office after plaintiffs prevailed on state constitutional grounds). In one of this firm's recent fee proceedings, my late partner Stanley Fleishman was awarded fees by U.S. District Judge Hauk at the rate of \$428 per hour. Grogan v. United States Postal Serv., No. 97-5312-AAH

Lynn Tracy Nerland
City Attorney
City of Antioch
July 16, 2007
Page 14 of 14

(C.D. Cal. Apr. 13, 1999).

Please let me know by July 26, 2007, whether there is any
chance this matter can be resolved without litigation.

Sincerely yours,



Barry A. Fisher

Enclosures (sent via e-mail only)

A14

ATTACHMENT "B"

OFFICE OF THE CITY ATTORNEY

P.O. Box 5007, Antioch, CA 94531-5007



www.ci.antioch.ca.us

(925) 779-7015

Fax (925) 779-7003

AUG 16 2007

July 25, 2007

By regular mail and fax (310)557-0770

Barry A. Fisher
Fleishman & Fisher
1875 Century Park East, Suite 2130
Los Angeles, CA 90067

Re: Debbie Merino's Request for a Fortunetelling Business at 2220 A Street

Dear Mr. Fisher:

As we discussed, the City of Antioch (the "City") has received your letter of July 16, 2007 regarding constitutional issues related to your client's desire to locate her fortunetelling business at a site located at 2220 A Street, Antioch without obtaining a conditional use permit. The City is willing to permit your client to operate such a business without complying with the City's zoning requirements, on the following terms:

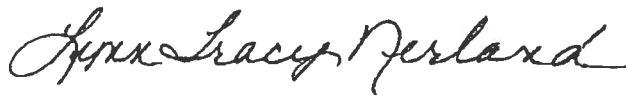
1. The City will allow Ms. Merino to locate her fortunetelling business at 2220 A Street, Antioch, California on a temporary basis for a period of one year.
2. Ms. Merino shall obtain a business license, pay the generally-required business license tax pursuant to the formula in Section 3-1.201 of the Antioch Municipal Code, and otherwise comply with the general requirements of the Municipal Code (e.g. maintain the use and property free of nuisances, etc.). Ms. Merino will not be subject to any special fee or permit to engage in fortunetelling.
3. At such time as the City adopts a new ordinance or amends the existing ordinance regarding fortunetelling businesses, Ms. Merino shall comply with the new ordinance. If at that time, Ms. Merino feels the new ordinance is invalid, she may pursue any legal remedies.
4. If the City does not change the zoning at the 2220 A Street location by adopting a new zoning ordinance or amending the existing zoning ordinance within the specified one year period, this authorization to operate at this site shall be extended for a period of one year upon obtaining a valid renewal of the business license pursuant to the provisions under Chapter 1 of Title 3 of the Antioch Municipal Code, and shall continue to be extended from year to year on

B1

the same basis until such time that the City decides to adopt a new zoning ordinance or modifies the existing zoning ordinance affecting the fortunetelling use at 2220 A Street.

If these terms meet with your approval, please sign this letter and have your client sign this letter below where indicated, and return it to me.

Sincerely,

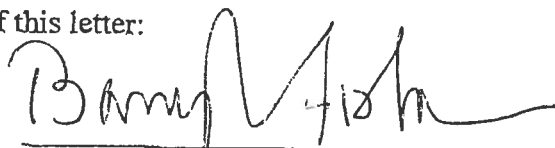


Lynn Tracy Nerland
City Attorney

We have read, understand and agree to the terms of this letter:

Dated: _____


8/16/07



Barry A. Fisher
Fleishman & Fisher

Dated: _____


8/16/07



Debbie Merino

cc: Jim Jakel, City Manager
Joe Brandt, Director of Community Development
Tina Wehrmeister, Deputy Director of Community Development
Jim Hyde, Chief of Police
Dawn Merchant, Finance Director

**STAFF REPORT TO THE PLANNING COMMISSION
FOR CONSIDERATION AT THE MEETING OF OCTOBER 16, 2013**

Prepared by: Tina Wehrmeister, Community Development Director 
Date: October 10, 2013
Subject: Ordinance Establishing Zoning Regulations for Computer Gaming and Internet Access Businesses

RECOMMENDATION

It is recommended that the Planning Commission approve the attached resolution recommending that the City Council adopt the ordinance (Exhibit A to the resolution) establishing zoning regulations for Computer Gaming and Internet Access Businesses within the City of Antioch.

BACKGROUND

On February 28, 2012 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 Computer Gaming and Internet Access Businesses. The City Council extended the moratorium on April 10, 2012 and on January 22, 2013. The staff reports for these meetings and Ordinance 2061-C-S are included as Attachment "A" and provide more details regarding the issues and need to establish zoning regulations to address public safety, health and welfare issues raised by Computer Gaming and Internet Access Businesses. The moratorium allowed the two existing businesses to continue operating at their existing locations if they complied with the new licensing requirements.

Attachment "B" is a memorandum from the Antioch Police Department summarizing calls for service at internet access businesses which were previously in operation but are now closed (with the existing moratorium in place, the City does not currently have a new licensed computer gaming and internet access business in operation). At one location, calls for service increased 56% over a 6 ½ month period. At the second location, calls for service also increased significantly. The nature of the calls for service at both locations include but are not limited to miscellaneous disturbances, narcotic arrests, drug dealing, man with a gun, warrant arrests, felony assault, recovering a stolen car, burglary, selling stolen property, suspicious subjects, loitering, an intoxicated subject threatening to kill the reporting party, employee theft, disgruntled ex-employee, physical fight, and brandishing a knife.

In addition to the issues associated with calls for service and impacts to the Police Department, a law enforcement advisory was published by the State Department of Justice indicating that these types of business models may constitute illegal gambling (see Attachment "C"). The advisory stops short of making a definitive decision that sweepstakes style games are illegal and the Department of Justice is currently in litigation regarding enforcement action on such businesses elsewhere in the State. Therefore, it is advisable for local jurisdictions to enact ordinances that would mitigate potential negative impacts associated with computer gaming and internet access businesses. The City Council already enacted a licensing ordinance (see Attachment "D") which addresses operational issues. This ordinance will be updated when the proposed zoning ordinance is heard by Council (Planning Commission recommendation is not required for the licensing ordinance since it is not a part of the zoning code).

PROPOSED ZONING ORDINANCE

The proposed ordinance (attached as an exhibit to the resolution) formally codifies the definitions of Computer Gaming and Internet Access Businesses and Public Use or Internet Learning Centers. The ordinance also amends the required parking section (9-5.1703.1) in order to reference the need for a parking study. The most substantive additions to the Code are included in Section 4 and 5 of the proposed ordinance and are discussed below:

- Section 9-5.203 defines computer gaming and internet access businesses as an establishment that provides 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. Public use or internet learning centers, such as libraries or nonprofit educational facilities, are exempt from this definition.
- Section 9-5.3803, Table of Land Use Regulations, would be amended to list Computer Gaming and Internet Access Businesses and require a Use Permit in the Regional Commercial Zone (C-3). Computer Gaming and Internet Access Businesses are commercial in nature but due to potential impacts described in the previous staff reports included under Attachment A, 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 "E")
- Section 9-5.3835(A) proposes additional locational criteria for Computer Gaming and Internet Access Businesses.
 - They must front an arterial street. This criterion is proposed because of the significant loitering issues associated with the two former businesses in town and as reported by other jurisdictions. 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 unchecked loitering which could have a detrimental impact on adjoining businesses.

- A 500 foot buffer-zone is proposed to prevent an over-concentration of Computer Gaming and Internet Access Businesses or other establishments which typically generate high volumes of Police Department calls for services, such as liquor stores and tobacco retailers 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 ordinance.
- A parking study is required with each Use Permit application. Computer Gaming and Internet Access Businesses are a new business model and it is not clear how they will impact existing parking lots. Staff received complaints about the previously licensed businesses using available parking spaces for a very long period of time, barring other stores' customers from finding convenient parking spots. Including a parking study with the use permit application would allow the Planning Commission to consider mitigating conditions such as timed parking stalls, designated parking, valet or shared parking, just to name a few.

ATTACHMENTS

- A. Ordinance 2061-C-S and January 22, 2013 City Council staff report which contains February 28, 2012 and April 10, 2012 staff reports as attachments.
- B. Memorandum from the Antioch Police Department regarding calls for service at then existing Computer Gaming and Internet Access Businesses
- C. Department of Justice Advisory
- D. Computer Gaming and Internet Access Licensing Ordinance (Antioch Municipal Code Title 5, Chapter 11)
- E. C-3 Zone location map

RESOLUTION NO. 2013-**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE
ESTABLISHING ZONING REGULATIONS FOR COMPUTER GAMING
AND INTERNET ACCESS BUSINESSES**

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 Computer Gaming and Internet Access Businesses (Z-12-02); 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 October 16, 2013, 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 Computer Gaming and Internet Access Businesses (Z-12-02).

* * * * *

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 16th day of October, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tina Wehrmeister, Secretary to the
Planning Commission

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH DEFINING AND ESTABLISHING ZONING REGULATIONS FOR COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

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 January 22, 2013, the City Council adopted Ordinance No. 2061-C-S extending a moratorium on Computer Gaming and Internet Access Businesses pursuant to findings regarding a current and immediate threat to the public health, safety and welfare from the effects and impacts of Computer Gaming and Internet Access Businesses, including but not limited to increase in crime (robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism and property damage and loitering); increase in juvenile truancy; decreased parking availability due to the extended time that patrons of these uses stay at the businesses; and other similar effects on property values and the quality of life in Antioch. The findings in Ordinance No. 2061-C-S are incorporated into this ordinance.

C. The Planning Commission conducted a duly noticed public hearing on October 16, 2013 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 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 Computer Gaming and Internet Access Businesses only in the Commercial C-3 zoning district and to impose requirements regarding access, parking, 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:

COMPUTER GAMING AND INTERNET ACCESS BUSINESS. An establishment that provides 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. An establishment that provides computer access which is operated by the city, 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 3. Section 9-5.1703.1 Off Street Parking Requirements By Use is hereby amended to add the following to the Commercial/Retail/Office list, alphabetically, with no other amendments to this Section:

<i>Use Classification</i>	<i>Off-Street Parking Spaces</i>
Computer Gaming and Internet Access Business	As specified by use permit and required parking study (9-5.3835)

SECTION 4. Section 9-5.3803 Table of Land Use Regulations is hereby amended to add the following to require a Use Permit for Computer Gaming and Internet Access Businesses in the C-3 zone (Regional Commercial) and to not permit the use in other zoning districts, with no other amendments to this section:

	R	R-	R																
	E	4	-																
	R	R-	1	R-	PB	C	C-	C-	C-	M	W	O	M-	M-	RT	RTR-	RTR-		
	R	6	0	20	C	-0	1	2	3	CR	F	S	1	2	H	C	10	20	
Computer Gaming & Internet Access	--	--	--	--	--	--	--	--	--	U	--	--	--	--	--	--	--	--	--
(§9-5.3835)																			

SECTION 5. Section 9-5.3835 is hereby rescinded and reenacted as follows:

9-5.3835 COMPUTER GAMING AND INTERNET ACCESS 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 front an arterial street as defined in the General Plan.
 - (2) No Computer Gaming and Internet Access Business shall be operated within a radius of 500 feet from any other Computer Gaming and Internet Access Business; any school, public park, playground, recreational center, day care center, or other similar use; any tobacco retailer or smoke shop; any on- or off-sale liquor establishment excluding those exempted in 9-5.3831(B); or any card room.
- (B) A parking study shall be required and considered with a Use Permit application for a Computer Gaming and Internet Access Business. The study shall be contracted by the Community Development Department at the applicant's expense and shall include but not be limited to an analysis of potential impacts to available parking and impacts of extended duration parking.
- (C) A separate license is required to operate a Computer Gaming and Internet Access Business under Title 5, Chapter 11 of the Municipal Code and shall be a condition of the Use Permit.

SECTION 6. 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 7. 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 8. 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 "A"

ORDINANCE NO. 2061-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 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 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.

8. At 2962 Delta Fair Boulevard, there have been a total of twenty five (25) calls for service in approx 6 ½ months. There were no calls for service from September 2012 to the end of this calendar year, which coincides with the business closure. During the previous year (February 16, 2011 – February 15, 2012) the Internet Room generated sixteen (16) calls for service for an entire year. The calls for service in the 6 ½ months of 2012 from, February to September, increased 56%. The nature of the calls for service at the Internet Room included, but were not limited to: miscellaneous disturbances, suspicious subjects, loitering, an intoxicated subject threatening to kill the reporting party, a stolen car, employee theft, disgruntled ex-employee, physical fight and brandishing a knife.
9. At the Cot on the Web located at 2333A/2331B Buchanan Road there have been a total of thirty one (31) calls for service from February 16, 2012 until December 31, 2012. There were two (2) additional calls for service generated by a neighboring business that involved Cot on the Web. During the previous reporting period of approx 5 ½ months, September 1, 2011 to February 15, 2012, there were a total of (6) calls for service. The nature of the calls for service at Cot on the Web have included, but were not limited to: miscellaneous disturbances, narcotic arrests, drug dealing, man with a gun, warrant arrests, felony assault, recovering a stolen car, burglary, and selling stolen property.

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 5 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.

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 January 22, 2013 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 one existing Computer Gaming and Internet Access Businesses may continue to operate at its current location: 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 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

A4

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 15061(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 (one year) 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.

A5

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.

* * * * *

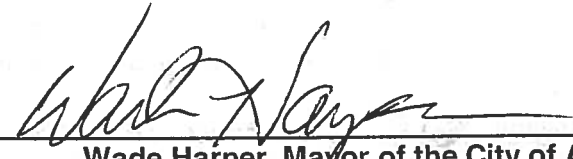
I HEREBY CERTIFY that the foregoing Ordinance was introduced and adopted as an urgency ordinance pursuant to the terms of California Government Code Section 65858 at a regular meeting of the City Council of the City of Antioch on the 22nd day of January, 2013, by the following vote:

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

NOES: None

ABSENT: None

ABSTAIN: None



Wade Harper, Mayor of the City of Antioch

ATTEST:


for Christine Davis
Arne Simonsen, City Clerk of the City of Antioch

**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF JANUARY 22, 2013**

Prepared by: Tina Wehrmeister, Community Development Director *tw*
Reviewed by: Jim Jakel, City Manager
Lynn Tracy Nerland, City Attorney
Date: January 10, 2013
Subject: Extension of an 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

RECOMMENDATION

It is recommended that the City Council adopt the attached interim urgency zoning ordinance extending the prohibition of 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 one year and declaring the urgency thereof (four-fifths (4/5th) vote required).

BACKGROUND / DISCUSSION

On February 28, 2012 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 Computer Gaming and Internet Access Businesses. The City Council extended the moratorium on April 10, 2012 for a period of 10 month and 15 days as provided by State law. The staff reports for these meetings are included as Attachment "A" and provide more details regarding the issue and the urgent need for a temporary moratorium to address public safety, health and welfare issues raised by these Computer Gaming and Internet Access Businesses (as defined in the ordinance).

Pursuant to Government Code Section 65858 this moratorium may be extended for one additional year, 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.

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 5 of the Antioch Municipal Code (Attachment "B") regarding licensing procedures and certain operational regulations for Computer Gaming and Internet Access Businesses, the current provisions do not fully take into account the impacts related to the location, concentration and manner of construction, establishment and operation of these uses, 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.

A7

Attachment "C" is a memorandum from the Antioch Police Department summarizing calls for service at the existing internet access businesses (one business closed in September 2012). At one location, calls for service increased 56% over a 6 ½ month period. At the second location, calls for service also increased significantly. The nature of the calls for service at both locations include but are not limited to miscellaneous disturbances, narcotic arrests, drug dealing, man with a gun, warrant arrests, felony assault, recovering a stolen car, burglary, selling stolen property, suspicious subjects, loitering, an intoxicated subject threatening to kill the reporting party, employee theft, disgruntled ex-employee, physical fight, and brandishing a knife.

In addition to the issues associated with calls for service and impacts to the Police Department, a recent law enforcement advisory was published by the State Department of Justice indicating that these types of business models may constitute illegal gambling (see Attachment "D").

For all of these reasons, staff is recommending that the moratorium on new internet access businesses be extended.

Proper noticing procedures were followed in advance of this item being placed on the agenda and the agenda report was available to interested parties 10 days in advance of the meeting.

FISCAL IMPACT

There is no direct fiscal impact with the adoption of the proposed urgency ordinance. However, it is expected that limiting the number of Computer Gaming and Internet Access Businesses will reduce the drain on police services, while considering appropriate zoning regulations related to these uses. There will be staff time expended to prepare the zoning ordinance addressing Computer Gaming and Internet Access 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 Computer Gaming and Internet Access Businesses.

ATTACHMENTS

- A: February 28, 2012 and April 10, 2012 staff reports
- B: Ordinance No. 2054-C-S
- C: Antioch Police Department memorandum dated January 8, 2013
- D: Department of Justice, Bureau of Gambling Control advisory, December 5, 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 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 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 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.

8. At 2962 Delta Fair Boulevard, there have been a total of twenty five (25) calls for service in approx 6 ½ months. There were no calls for service from September 2012 to the end of this calendar year, which coincides with the business closure. During the previous year (February 16, 2011 – February 15, 2012) the Internet Room generated sixteen (16) calls for service for an entire year. The calls for service in the 6 ½ months of 2012 from, February to September, increased 56%. The nature of the calls for service at the Internet Room included, but were not limited to: miscellaneous disturbances, suspicious subjects, loitering, an intoxicated subject threatening to kill the reporting party, a stolen car, employee theft, disgruntled ex-employee, physical fight and brandishing a knife.
9. At the Cot on the Web located at 2333A/2331B Buchanan Road there have been a total of thirty one (31) calls for service from February 16, 2012 until December 31, 2012. There were two (2) additional calls for service generated by a neighboring business that involved Cot on the Web. During the previous reporting period of approx 5 ½ months, September 1, 2011 to February 15, 2012, there were a total of (6) calls for service. The nature of the calls for service at Cot on the Web have included, but were not limited to: miscellaneous disturbances, narcotic arrests, drug dealing, man with a gun, warrant arrests, felony assault, recovering a stolen car, burglary, and selling stolen property.

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 5 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.

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 January 22, 2013 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 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 15061(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 (one year) 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.

ORDINANCE NO.

Page 6

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 January, 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 APRIL 10, 2012

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

Date: April 5, 2012

Subject: Adoption of an Urgency Ordinance Extending a Temporary Moratorium on the issuance of permits, licenses or approvals for construction, establishment or operation of Computer Gaming and Internet Access Businesses

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 Computer Gaming and Internet Access Businesses 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 10 months and 15 days and declaring the urgency to do so (four-fifths vote).

BACKGROUND / DISCUSSION

On February 28, 2012 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 Computer Gaming and Internet Access 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 Computer Gaming and Internet Access Businesses (as defined in the ordinance).

Pursuant to Government Code Section 65858 this 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.

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 5 of the Antioch Municipal Code (Attachment "B") regarding licensing procedures and certain operational regulations for Computer Gaming and Internet Access Businesses, the current provisions do not fully take into account the impacts related to the location, concentration and manner of construction, establishment and operation of these uses, 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.

Due to staffing levels, the complexity of the issues to be studied and the ongoing public safety, health and welfare issues raised by Computer Gaming and Internet Access businesses, it is recommended that the moratorium be extended for 10 months and 15 days. Any further

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extension would require an additional noticed public hearing. Proper noticing procedures were followed in advance of this item being placed on the agenda.

Staff recommends that expansion of the use (e.g. more computer terminals) not be allowed so as to not increase the potential for conflicts with land use regulations under consideration, but that expansion of space to allow compliance with the licensing procedures and regulations in Title 5 of the Antioch Municipal Code be allowed, such as if more space is needed to create an indoor waiting area in order to decrease loitering outside of these businesses.

FISCAL IMPACT

There is no direct fiscal impact with the adoption of the proposed urgency ordinance. However, it is expected that limiting the number of Computer Gaming and Internet Access Businesses will reduce the drain on police services, while considering appropriate zoning regulations related to these uses. There will be staff time expended to prepare the zoning ordinance addressing Computer Gaming and Internet Access 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 Computer Gaming and Internet Access Businesses.

ATTACHMENTS

- A. February 28, 2012 staff report
- B. Ordinance No. 2054-C-S Adding Chapter 11 to Title 5 to the Antioch Municipal Code

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 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

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

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.

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

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.

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:

NOES:

ABSENT:

ABSTAIN:

James D. Davis, Mayor of the City of Antioch


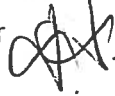
ATTEST:

Denise Skaggs, City Clerk of the City of Antioch

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ATTACHMENT "A"

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

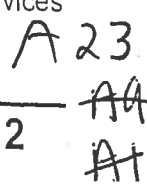
It is recommended that the City Council:

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

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;

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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 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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At

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

A65 ~~A51~~
D+

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

A66 A52

ATTACHMENT "E"

CITY OF ANTIOCH BUSINESS LICENSE APPLICATION



DUE BY:
BUSINESS NO: 005779
CLASS CODE:

INSTRUCTIONS

Hold License Cert 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: FEB 16 2011		Expir. Date	
Purchase Date:		Receipt No: 406542	
Planning Dept: [signature]		Bldg Dept: [signature]	
Zoning: C2		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 [Signature] Date 2-14-2011</p>			

A67 A52
E

CITY OF ANTIOCH BUSINESS LICENSE RENEWAL



DOE BY
BUSINESS NO. 300473
CLASS CODE 1

INSTRUCTIONS			
1. MAILING NAME & ADDRESS 15 Internet Cafe Antioch, CA 94501		2. BUSINESS NAME 15 Internet Cafe	
3. BUSINESS ADDRESS 1656 A St		4. BUSINESS CITY, ST, ZIP Antioch CA 94501	
5. PHONE 925 522 0801	6. EMERGENCY PHONE 925	7. E-MAIL ADDRESS Aventia@netnet.net	
8. BUSINESS DESCRIPTION Internet Cafe		9. COMMUNITY CODE	
10. FEED ID	11. STATE ID	12. SELLER'S PERMIT	13. HOME OCCUPATION
14. OWNER #1 TYPE (Sole Proprietorship/Partnership/Corp/LLC)		15. CERTIFICATION NO.	16. NUMBER OF EMPLOYEES
17. OWNER #1 NAME T. J. Simon		18. OWNER #2 NAME	
19. OWNER #1 ADDRESS (NO P.O. BOXES - STATE REQUIREMENT)		20. OWNER #2 ADDRESS (NO P.O. BOXES - STATE REQUIREMENT)	
21. OWNER #1 CITY, ST, ZIP Antioch CA 94501		22. OWNER #2 CITY, ST, ZIP	
23. OWNER #1 HOME PHONE 925		24. OWNER #2 HOME PHONE	
25. OWNER #1 SSN		26. OWNER #2 SSN	
27. OWNER #1 DL		28. OWNER #2 DL	
29. CONTACT NAME T. J. Simon		30. CONTACT PHONE 925	
31. LICENSE TYPE (Official/Category)		32. INTERNET ADDRESS	
33. GROSS RECEIPTS	34. NUMBER OF CARD TABLES	35. NUMBER OF VEHICLES	
36. LICENSE FEE	37. RENTAL FEE	38. APPLICATION FEE	
39. TOTAL AMOUNT DUE (Combining 36, 37, 38)		40. DATE BUSINESS TERMINATED (IF OUT OF BUSINESS)	
OFFICE USE ONLY			
Effective Date	Expiry Date 4/30/11	Planning Dept.	Inspector
Printed Name	4121391	Zone	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>T. J. Simon</u> Date: <u>4/16/11</u></p>			

A68 A54

**CITY OF ANTIOCH
BUSINESS LICENSE
DELINQUENCY NOTICE**



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

INSTRUCTIONS

3rd Notice

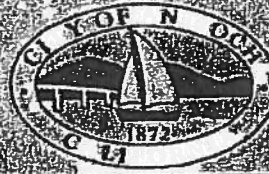
Please review the complete form and make corrections to this side. Complete lines 30, 31, 32, 33 and 34.
Use schedule on reverse side to calculate fees.

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 [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 Patricia 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 Arnold		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 Patricia 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>			

A69 A55 E2

CITY OF ANTIOCH BUSINESS LICENSE APPLICATION



DUE BY:
 BUSINESS NO: 3006114
 CLASS: C

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 925-401-8832	6. ALT. PHONE 925- [REDACTED]	7. CELL PHONE 925- [REDACTED]	8. FAX NUMBER
9. EMAIL ADDRESS Aeventh@earthlink.net		10. BUSINESS DESCRIPTION Fax copy print internet	
11. FED. ID#	12. STATE ID#	13. SELLER'S PERMIT#	14. HOME OCCUPATION#
15. OWNER #1 (Sole Proprietorship, Partnership, CORP, Trust) [REDACTED]		16. CERTIFICATION NO.	
17. OWNER #1 NAME Patricia Simmons		18. OWNER #2 NAME	
19. OWNER #1 ADDRESS (NO PO BOXES, STATE REQUIREMENT) [REDACTED]		20. OWNER #2 ADDRESS (NO PO BOXES, STATE REQUIREMENT)	
21. OWNER #1 CITY, ST, ZIP Antioch, CA 94501		22. OWNER #2 CITY, ST, ZIP	
23. OWNER #1 HOME PHONE 925- [REDACTED]		24. OWNER #2 HOME PHONE	
25. OWNER #1 SSN	26. OWNER #1 DL	27. OWNER #2 SSN	28. OWNER #2 DL
29. CONTACT NAME Patricia Simmons		30. CONTACT PHONE	
31. LICENSE TYPE (Office Use only)	32. INTERNET ADDRESS		
33. GROSS RECEIPTS	34. NUMBER OF CARD TABLES	35. NUMBER OF VEHICLES	36. STICKER FEE (\$5/VEHICLE)
37. LICENSE FEE	38. PENALTY	39. APPLICATION FEE	
40. TOTAL AMOUNT DUE (combine lines 31, 32 & 33)		41. DATE BUSINESS TERMINATED (IF OUT OF BUSINESS)	
OFFICE USE ONLY			
Effective Date	Expiry Date	Planning Dept. Initials	Business Dept. Initials
Purchase Date: SEP 29 2011	Receipt No: 450689	Zone: C-3	Health Dept. Initials

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

Date

A70
EE

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					
MSDS	7	21			200.00%
SUSC	7	16			128.57%
ATMC	7	19			171.43%
DRUN	0	3			
FINF	0	11			
LOIT	0	5			
Super Wine					
DISPO CLASS					
ATMC	9	14			55.56%
AUTT	0	2			
MSDS	7	21			200.00%
SUSC	3	12			300.00%

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A57
A44

ADDRESS	BUSINESS	Before Internet Café		Internet Café		After Internet Café	
		2/1/09-8/30/09	2009	2/1/10-8/30/10	2010	2009 - 2010	2/1/11-8/30/11
						2011	%Change
A ST	Totals	157	240	52.87%	158	-34.17%	
1800	Gas of America	29	59	103.45%	40	-32.20%	
1806	Juarez	7	8	14.29%	9	12.50%	
1808		1	0	-100.00%	1	nc	
1818	Grocery Outlet	49	50	2.04%	31	-38.00%	
1826		0	1	nc	0	-100.00%	
1828		4	0	-100.00%	4	nc	
1836	Internet Café	0		nc	0	-100.00%	
1840	Gold Star	1	9	800.00%	2	-77.78%	
1844		0	0	nc	2	nc	
1848	Quick Check	2	5	150.00%	1	-80.00%	
1852		3	1	-66.67%	1	0.00%	
1860	Lamothe Cleaners	3	9	200.00%	7	-22.22%	
1864		1	1	0.00%	0	-100.00%	
1868	Delta Vaccum	1	5	400.00%	3	-40.00%	
1870	CCC Fed Credit Union	4	1	-75.00%	1	0.00%	
1872	Berrys	1	0	-100.00%			
1884	Thai Cuisine	0	2	nc	1	-50.00%	
1888	Cheers	0	4	nc	4	0.00%	
1890	Rock Bottom Records	6	9	50.00%	5	-44.44%	
1892	Minute Man Press	1	0	-100.00%	1	nc	
1894	STARBUCKS	29	1	-96.55%	2	100.00%	
1896	STARBUCKS	15	48	220.00%	43	-10.42%	

A72 1758

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%	

A74 ADD

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

A75 A41
AKZ / 1
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

EVENT#	RCV TIME	CLASS	DISPO	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	HSOO		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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A77 A63
 Page 2 of 2

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 "CHECKS" 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		

EVENT#	RCV TIME	CLASS	DISPO	CASE#	SYNOPSIS
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] VEH ON FIRE CUSTOMER INSIDE THE BUSN - NO ONE IN THE VEH / UNK WHAT HAPPENED.. XFERRED TO FIRE - ENR
11026661	3/25/11 1:59	FIRE	FDIC		
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 CADI
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	DISPO	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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 Page 3 of 4

CALLS FOR SERVICE

1836 A ST

2/1/10 - 8/30/10

PRINTED:2/16/2012

EVENT#	RCV TIME	CLASS	DISPO	CASE#	SYNOPSIS
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

Report is based on unaudited CAD/RMS data at time of report generation.

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A81 AG7
Page 1 of 1

<u>EVENT#</u>	<u>RCV TIME</u>	<u>CLASS</u>	<u>DISPO</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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Report is based on unaudited CAD/RMS data at time of report generation.

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A83 AL4
Page 1 of 1

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 a 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 web 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.

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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.

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.

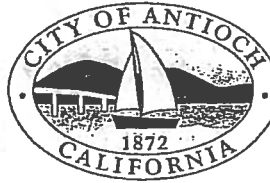
Sincerely,

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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J1



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

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F7



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

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A75
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

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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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February 6, 2012

Page 2

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.

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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
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279 FRONT STREET
DANVILLE, CA 94526
PHONE (925) 837-0585

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90-2267-1211

2/6/2012

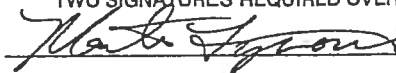
1035.

PAY Fifty & No/100 Dollars

50.00

TO THE
ORDER
OF
City of Antioch

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



AUTHORIZED SIGNATURE

⑈ 103546 ⑈ 1:1211226761: 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

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

TRAN: 132.0000 Other Sv Chg Copies
APPEAL FOR LOT ON THE WEB
Other Service Chars 50.0000

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 Wehmerster 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

Thank
you

Patricia Simmons

T's internet cafe

925-209-8332

RECEIVED

JAN 12 2012

CITY OF ANTIOCH
CITY CLERK

CITY OF ANTIOCH
925-779-7055

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

TRAN: 132.0000 Other Sv Chg-Copies
PATRICIA SIMMONS
Other Service Chrg 50.00CR

TENDERED: 60.00 CASH
APPLIED: 50.00-

CHANGE: 10.00

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ATTACHMENT "B"

ORDINANCE NO. 2054-C-S

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.

1. **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 and as further described in attachments to the staff report: 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 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.

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 § 5-11.20 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,

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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 generate criminal activities, present unnecessary criminal opportunities, or 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 subsection 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 five (5) 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 2:40. During each employee's working hours, the employee shall wear a badge identifying the business and the employee's 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 Chief of Police may require security guards to 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 Chief of Police may require security guards to 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 Rooms. Any individual computer use area within the business shall be visible from 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 computer use area. Further, no one shall maintain any individual viewing area in any configuration unless the entire interior wherein the computer that is being used is visible to staff and customers. No doors are permitted on an individual viewing area. No partially or fully enclosed individual viewing areas or partially or fully concealed 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

section 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 § 5-11.20. 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 the 13th day of March, 2012, by the following vote:

AYES: Council Members Rocha, Agopian and Mayor Pro Tem Harper

NOES: Council Member Kalinowski

ABSENT: Mayor Davis

ABSTAIN: None

/s/ WADE HARPER

Mayor Pro Tem of the City of Antioch

ATTEST:

/s/ DENISE SKAGGS

Denise Skaggs, City Clerk of the City of Antioch

ATTACHMENT "B"

ORDINANCE NO. 2054-C-S

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.

1. 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 and as further described in attachments to the staff report: 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 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.

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 § 5-11.20 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 generate criminal activities, present unnecessary criminal opportunities, or 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 subsection 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 five (5) 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 2:40. During each employee's working hours, the employee shall wear a badge identifying the business and the employee's 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 Chief of Police may require security guards to 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 Chief of Police may require security guards to 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 Rooms. Any individual computer use area within the business shall be visible from 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 computer use area. Further, no one shall maintain any individual viewing area in any configuration unless the entire interior wherein the computer that is being used is visible to staff and customers. No doors are permitted on an individual viewing area. No partially or fully enclosed individual viewing areas or partially or fully concealed 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 transverse 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

section 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 § 5-11.20. 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.

* * * * *

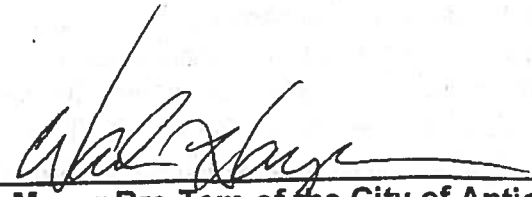
I HEREBY CERTIFY that the foregoing Ordinance was introduced on 28th day of February, 2012 and adopted at a regular meeting of the City Council of the City of Antioch on the 13th day of March, 2012, by the following vote:

AYES: Council Members Rocha, Agopian and Mayor Pro Tem Harper

NOES: Council Member Kalinowski

ABSENT: Mayor Davis

ABSTAIN: None



Mayor Pro Tem of the City of Antioch

ATTEST:



for Denise Skaggs, City Clerk of the City of Antioch



ATTACHMENT "C"

ANTIOCH POLICE DEPARTMENT INTER-OFFICE MEMORANDUM

TO: Tina Wehrmeister, Community Development Director
FROM: Stephen J. McConnell, Captain, Field Services Division
DATE: January 8, 2013
SUBJECT: **Internet Café's – Calls for Service**

BACKGROUND INFORMATION

As requested the Police Department recently culled "Calls for Service" data related to the two Internet Cafés (Internet Room & Cot on the Web) that have been operating in the City. As you know the Internet Room ceased operating on or about September 15, 2012. The time frame we used when searching for the calls for service started on February 16, 2012 and ended on December 31, 2012. The February 16th start date was chosen because it was a day after the previous "Calls for Service" report ended.

INTERNET ROOM

At the Internet Room, there have been a total of twenty five (25) calls for service in approx 6 ½ months. There were no calls for service from September to the end of this calendar year, which coincides with their closure. During the previous year (February 16, 2011 – February 15, 2012) the Internet Room generated sixteen (16) calls for service for an entire year. The calls for service in the 6 ½ months of 2012 increased just over 56% over the number of calls for service for all of last year.

The nature of the calls for service at the Internet Room included, but was not limited to: miscellaneous disturbances, suspicious subjects, loitering, an intoxicated subject threatening to kill the reporting party, a stolen car, employee theft, disgruntled ex-employee, physical fight and brandishing a knife.

COT ON THE WEB

At the Cot on the Web there have been a total of thirty one (31) calls for service from February 16, 2012 until December 31, 2012. There were two (2) additional calls for service generated by a neighboring business that involved Cot on the Web. During the previous reporting period of approx 5 ½ months, September 1, 2011 to February 15, 2012, there were a total of (6) calls for service.

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The nature of the calls for service at the Cot on the Web have included, but were not limited to: miscellaneous disturbances, narcotic arrests, drug dealing, man with a gun, warrant arrests, felony assault, recovering a stolen car, burglary, and selling stolen property.

FINDING

It is the Police Department's opinion that the type and volume of the calls for service at these two businesses have caused a burden to an understaffed Police Department; the calls have and do create a public nuisance and otherwise pose a threat to public health, safety and the welfare of the community at large.

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ATTACHMENT "D"



BUREAU OF GAMBLING CONTROL

KAMALA D. HARRIS
Attorney General

WAYNE J. QUINT JR.
Bureau Chief

NUMBER 11

LAW ENFORCEMENT ADVISORY

DECEMBER 5, 2012

Internet Cafés

With increasing frequency, so-called "Internet cafés" that sell Internet time or phone cards in conjunction with a "promotional sweepstakes," are operating throughout California. The "sweepstakes aspect" of the Internet cafés permits customers to play gambling-themed games on computers to win cash prizes. The Bureau of Gambling Control (Bureau) considers Internet cafés that offer these types of sweepstakes to be illegal gambling operations.

Method of Operation:

In general, Internet cafés are located in storefront strip malls, though they can also be standalone establishments. Numerous computer terminals or stations are located inside each Internet café. Customers generally purchase Internet time or phone time using a magnetic striped card provided by the Internet café. After making a purchase of Internet time or phone time, customers swipe the magnetic card through a card reader at a computer terminal or station inside the Internet café to play gambling-themed games. Along with the Internet time or phone time, customers receive sweepstakes "entries" or "credits" based upon the amount spent (e.g., 100 sweepstakes entries for \$1.00 of Internet time purchased). The sweepstakes entries are displayed on the computer screens as "credits." The customer then has the option to select one of several gambling-themed games and makes bets with the credits. Customers who win prizes can cash in any winnings, or use the winnings to purchase additional internet time and sweepstakes entries. Cash prizes ranging from \$1.00 to as much as \$4,000 are paid out daily. Customers may be able to receive and play 100 credits per 24-hour period for free, but must purchase Internet time or phone card time to obtain additional sweepstakes credits to play the games once they have played the free credits.

In addition to the onsite computers, a server running the sweepstakes software will typically be present, although a remote location server might also be used. The software operates and controls the game play and pay outs at the computer terminals and maintains customer information. The software is most often provided by out-of-state companies and is designed with the intent of circumventing state gambling laws. It can reasonably be anticipated that this software will be continuously modified to avoid detection and analysis in an attempt to prevent prosecution.

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Existing Law:

Computers that offer the sweepstakes generally described above are illegal "slot machine[s] or device[s]" prohibited by Penal Code section 330b, subdivision (d). (See also *People ex rel. Lockyer v. Pacific Gaming Technologies* (2000) 82 Cal.App.4th 699 [a vending machine dispensing pre-paid telephone cards with "a sweepstakes feature" and prizes determined by a pre-set computer program is an unlawful gambling device under Penal Code section 330b].) Penal Code section 330a, subdivision (a), describes as prohibited "any slot or card machine, contrivance, appliance or mechanical device" on "which money or other valuable thing is staked or hazarded." (See also Pen. Code, § 330.1.) Business and Professions Code sections 17200, et seq., and 17500, et seq., provide for civil penalties and other remedies against these Internet café operations for unlawful business practices and false advertising. Penal Code section 335a states, "Any and all money seized in or in connection with such machine or device shall, immediately after such a machine or device has been so destroyed, be paid into the treasury of the city or county." The operator may sue for recovery of the devices within 30 days after issuance of the notice of intended destruction under Penal Code section 335a.

Assistance:

The Bureau will assist California law enforcement agencies working toward prosecution or pursuing civil or administrative actions in connection with Internet café gambling operations. Assistance may encompass advice, Bureau personnel and equipment, search and arrest warrant examples, and other experienced assistance with enforcement operations. The local law enforcement agency will retain the lead role and be responsible for evidence retention, seizure of funds, and prosecution, or civil or administrative action against the establishment.

This advisory is for informational purposes only and is not intended to be legal advice.

For more information regarding this advisory, contact the California Department of Justice, Bureau of Gambling Control at (916)227-3584

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**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF JANUARY 22, 2013**

Prepared by: Tina Wehrmeister, Community Development Director *W*
Date: January 22, 2013
Subject: **Agenda Item 3: *Supplemental Report:*** Extension of an 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

RECOMMENDATION

It is recommended that the City Council:

1. Make a motion to read the ordinance by title only; and
2. Make a motion to adopt the attached revised interim urgency zoning ordinance extending the prohibition of 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 one year and declaring the urgency thereof (four-fifths (4/5th) vote required).

BACKGROUND / DISCUSSION

The ordinance has been revised from the one provided with the original staff report to indicate that there is only one existing computer gaming and internet access business that will be allowed to continue operating: Cot on the Web at 2333 Buchanan Road. The Internet Room at 2962 Delta Fair Boulevard closed since the initial interim urgency zoning ordinance was adopted.

The revisions are shown in strikeout text to Section 3.A of the proposed ordinance (page 4) with the struck-out text to be deleted in the final version.

ATTACHMENTS

Proposed revised interim urgency zoning ordinance extending the prohibition of 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.

A130

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 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 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

A131

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 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.

8. At 2962 Delta Fair Boulevard, there have been a total of twenty five (25) calls for service in approx 6 ½ months. There were no calls for service from September 2012 to the end of this calendar year, which coincides with the business closure. During the previous year (February 16, 2011 – February 15, 2012) the Internet Room generated sixteen (16) calls for service for an entire year. The calls for service in the 6 ½ months of 2012 from, February to September, increased 56%. The nature of the calls for service at the Internet Room included, but were not limited to: miscellaneous disturbances, suspicious subjects, loitering, an intoxicated subject threatening to kill the reporting party, a stolen car, employee theft, disgruntled ex-employee, physical fight and brandishing a knife.
9. At the Cot on the Web located at 2333A/2331B Buchanan Road there have been a total of thirty one (31) calls for service from February 16, 2012 until December 31, 2012. There were two (2) additional calls for service generated by a neighboring business that involved Cot on the Web. During the previous reporting period of approx 5 ½ months, September 1, 2011 to February 15, 2012, there were a total of (6) calls for service. The nature of the calls for service at Cot on the Web have included, but were not limited to: miscellaneous disturbances, narcotic arrests, drug dealing, man with a gun, warrant arrests, felony assault, recovering a stolen car, burglary, and selling stolen property.

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 5 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.

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 January 22, 2013 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~~ one existing Computer Gaming and Internet Access Businesses may continue to operate at ~~their~~ its 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 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 15061(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 (one year) 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 January, 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"

ANTIOCH POLICE DEPARTMENT INTER-OFFICE MEMORANDUM

TO: Tine Wehrmeister, Community Development Director
FROM: Stephen J. McConnell, Captain, Field Services Division
DATE: January 8, 2013
SUBJECT: **Internet Café's – Calls for Service**

BACKGROUND INFORMATION

As requested the Police Department recently culled "Calls for Service" data related to the two Internet Cafés (Internet Room & Cot on the Web) that have been operating in the City. As you know the Internet Room ceased operating on or about September 15, 2012. The time frame we used when searching for the calls for service started on February 16, 2012 and ended on December 31, 2012. The February 16th start date was chosen because it was a day after the previous "Calls for Service" report ended.

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The nature of the calls for service at the Internet Room included, but was not limited to: miscellaneous disturbances, suspicious subjects, loitering, an intoxicated subject threatening to kill the reporting party, a stolen car, employee theft, disgruntled ex-employee, physical fight and brandishing a knife.

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FINDING

It is the Police Department's opinion that the type and volume of the calls for service at these two businesses have caused a burden to an understaffed Police Department; the calls have and do create a public nuisance and otherwise pose a threat to public health, safety and the welfare of the community at large.

ATTACHMENT "C"



BUREAU OF GAMBLING CONTROL

KAMALA D. HARRIS
Attorney General

WAYNE J. QUINT JR.
Bureau Chief

NUMBER 11

LAW ENFORCEMENT ADVISORY

DECEMBER 5, 2012

Internet Cafés

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In addition to the onsite computers, a server running the sweepstakes software will typically be present, although a remote location server might also be used. The software operates and controls the game play and pay outs at the computer terminals and maintains customer information. The software is most often provided by out-of-state companies and is designed with the intent of circumventing state gambling laws. It can reasonably be anticipated that this software will be continuously modified to avoid detection and analysis in an attempt to prevent prosecution.

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This advisory is for informational purposes only and is not intended to be legal advice.

For more information regarding this advisory, contact the California Department of Justice, Bureau of Gambling Control at (916)227-3584

ATTACHMENT "D"

Antioch, CA Code of Ordinances

CHAPTER 11: COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

Section

5-11.01 Purpose

5-11.02 Definitions

5-11.10 Computer gaming and internet access business – License required

5-11.11 Term of license

5-11.12 Renewal of license

5-11.20 License application and issuance

5-11.30 Transfer of license

5-11.40 Alterations to computer gaming and internet access business

5-11.50 License revocation

5-11.60 Operational standards and regulations

5-11.70 Abatement of nuisance

5-11.80 Penalty

5-11.90 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.

(Ord. 2053-C-S, passed 2-28-12; Am. Ord. 2054-C-S, passed 3-13-12)

§ 5-11.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMPUTER GAMING AND INTERNET ACCESS BUSINESS. An establishment that provides more than four 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 BUSINESS. An establishment that provides computer access which is operated by the city, 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.

(Ord. 2053-C-S, passed 2-28-12; Am. Ord. 2054-C-S, passed 3-13-12)

§ 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.

(Ord. 2053-C-S, passed 2-28-12; Am. Ord. 2054-C-S, passed 3-13-12) Penalty, see § 5-11.80

§ 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.

(Ord. 2053-C-S, passed 2-28-12; Am. Ord. 2054-C-S, passed 3-13-12)

§ 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 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 § 5-11.20 of this chapter and shall be processed in accordance with the provisions of this chapter.

(Ord. 2053-C-S, passed 2-28-12; Am. Ord. 2054-C-S, passed 3-13-12)

§ 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;

D3

(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 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 division (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 division (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 business days of such change.

(F) The Community Development Director shall have a reasonable time, not to exceed 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 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 generate criminal activities, present unnecessary criminal opportunities, or 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 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 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 division (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 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 § 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 days after mailing.

(2) The decision of the Community Development Director may be appealed by filing a written notice requesting a hearing within ten 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 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 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 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 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 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.

(Ord. 2053-C-S, passed 2-28-12; Am. Ord. 2054-C-S, passed 3-13-12)

§ 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.

(Ord. 2053-C-S, passed 2-28-12; Am. Ord. 2054-C-S, passed 3-13-12)

§ 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 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.

(Ord. 2053-C-S, passed 2-28-12; Am. Ord. 2054-C-S, passed 3-13-12) Penalty, see § 5-11.80

§ 5-11.50 LICENSE REVOCATION.

06

(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 § 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 days after mailing.

(C) If a request for hearing is filed within ten calendar days from the notice provided in division (B) of this section above, the city shall conduct an appeal hearing as provided in § 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.

(Ord. 2053-C-S, passed 2-28-12; Am. Ord. 2054-C-S, passed 3-13-12)

§ 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 city 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 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 five seats shall be provided for customers waiting to use a computer. The number of seats shall be increased by one for every five additional computers beyond 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 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 2:40. During each employee's working hours, the employee shall wear a badge identifying the business and the employee's name. Security personnel indicated in division (I) of this 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 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 Chief of Police may require security guards to 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 Chief of Police may require security guards to 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 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 § 9-5.203 of this code, is prohibited unless specifically permitted under §§ 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 rooms.* Any individual computer use area within the business shall be visible from 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 computer use area. Further, no one shall maintain any individual viewing area in any configuration unless the entire interior wherein the computer that is being used is visible to staff and customers. No doors are permitted on an individual viewing area. No partially or fully enclosed individual viewing areas or partially or fully concealed 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 24 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 30 square feet of floor area per computer of the floor area that is dedicated to the placement of computers for rent or charge.

(Ord. 2053-C-S, passed 2-28-12; Am. Ord. 2054-C-S, passed 3-13-12) Penalty, see § 5-11.80

§ 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 enjoinder 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.

(Ord. 2053-C-S, passed 2-28-12; Am. Ord. 2054-C-S, passed 3-13-12)

§ 5-11.80 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 § 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 therefor as provided in this section.

(Ord. 2053-C-S, passed 2-28-12; Am. Ord. 2054-C-S, passed 3-13-12)

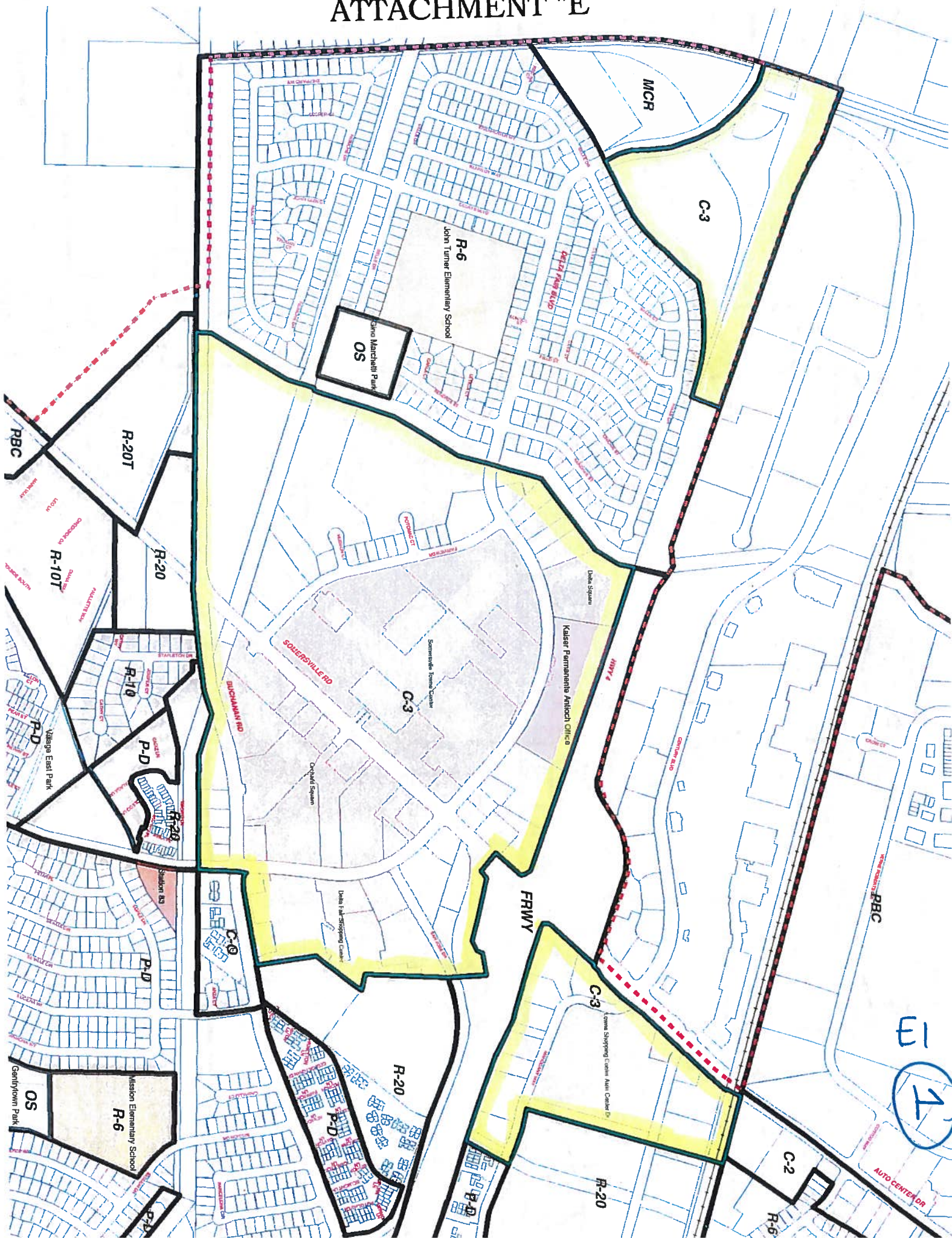
§ 5-11.90 LICENSE FEES.

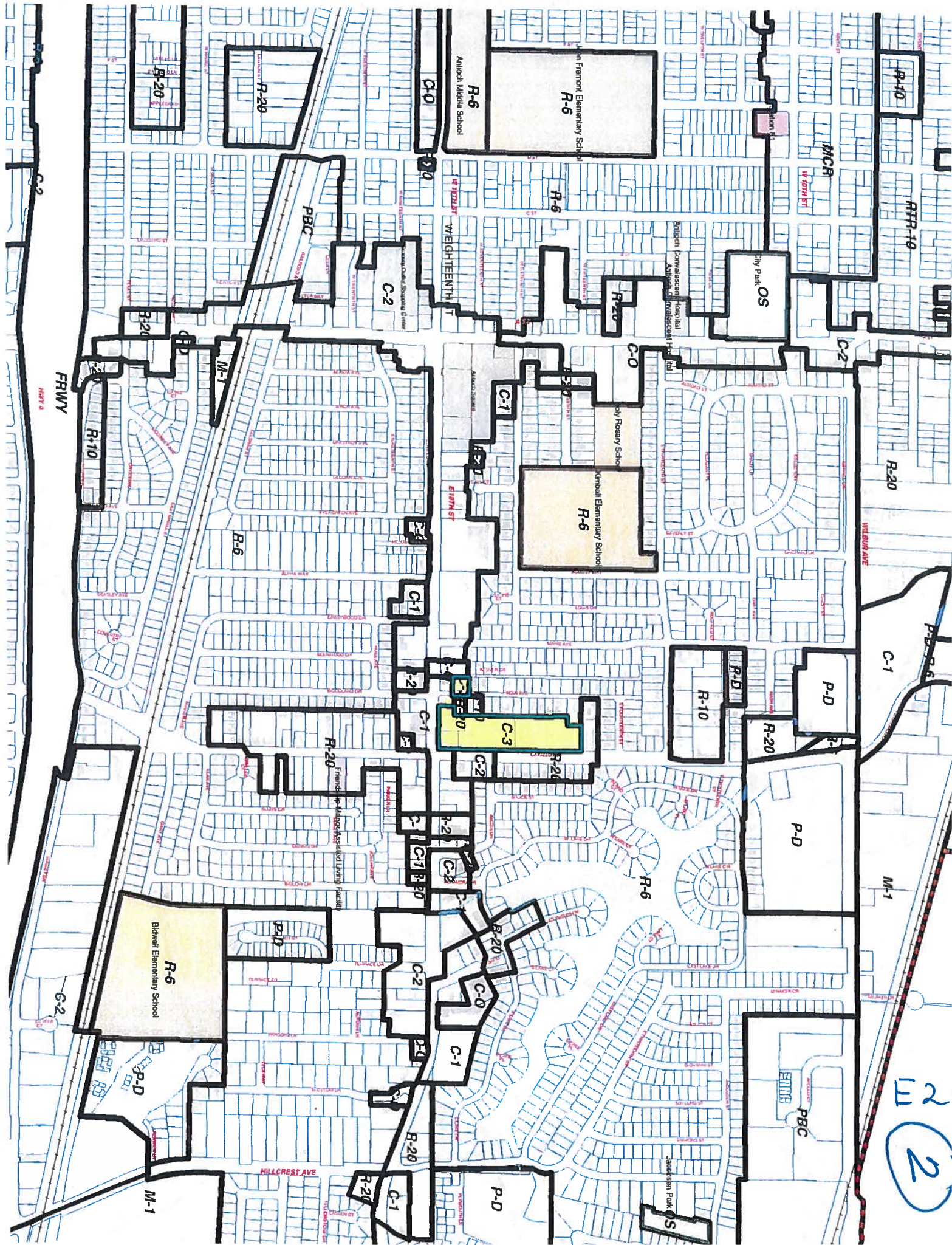
The City Council shall, by resolution, set a fee for application for a computer gaming and internet access business license. Until such fee is set, the application fee shall be the minimum fee currently established for the application extension fee in the city's master fee schedule.

(Ord. 2053-C-S, passed 2-28-12; Am. Ord. 2054-C-S, passed 3-13-12)

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**STAFF REPORT TO THE PLANNING COMMISSION
FOR CONSIDERATION AT THE MEETING OF OCTOBER 16, 2013**

Prepared by: Mindy Gentry, Senior Planner *at*

Date: October 8, 2013

Subject: Election of Chair

RECOMMENDATION

It is recommended that the Planning Commission nominate and elect a Chair.