

CITY COUNCIL

Pedro "Pete" M. Sanchez, Mayor
Lori Wilson, Mayor Pro-Tem
Jane Day
Michael J. Hudson
Michael A. Segala



CITY COUNCIL MEETING

First and Third Tuesday
Every Month

A G E N D A

SPECIAL MEETING OF THE SUISUN CITY COUNCIL

AND

SUISUN CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY,

TUESDAY, DECEMBER 17, 2013

6:00 P.M.

SUISUN CITY COUNCIL CHAMBERS -- 701 CIVIC CENTER BOULEVARD -- SUISUN CITY, CALIFORNIA

TELECONFERENCE NOTICE

Pursuant to Government Code Section 54953, Subdivision (b), the following Council/Successor Agency/Housing Authority meeting will include teleconference participation by Councilmember Jane Day from: 301 Morgan Street, Suisun City, CA 94585. This Notice and Agenda will be posted at the teleconference location.

ROLL CALL

Council/Board Members

PUBLIC COMMENT

(Requests by citizens to discuss any matter under our jurisdiction other than an item posted on this agenda per California Government Code §54954.3 allowing 3 minutes to each speaker).

CONFLICT OF INTEREST NOTIFICATION

(Any items on this agenda that might be a conflict of interest to any Councilmembers / Boardmembers should be identified at this time.)

CLOSED SESSION

Pursuant to California Government Code section 54950 the Suisun City Council will hold a Closed Session for the purpose of:

Joint City Council / Suisun City Council Acting as Successor Agency

1. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Name of Case: City of Suisun City v. State of California, Department of Finance, et al; Case #34-2013-00146458.

CONVENE OPEN SESSION

Announcement of Actions Taken, if any, in Closed Session.

ADJOURNMENT

DEPARTMENTS: AREA CODE (707)

ADMINISTRATION 421-7300 ■ PLANNING 421-7335 ■ BUILDING 421-7310 ■ FINANCE 421-7320
FIRE 425-9133 ■ RECREATION & COMMUNITY SERVICES 421-7200 ■ POLICE 421-7373 ■ PUBLIC WORKS 421-7340
SUCCESSOR AGENCY 421-7309 FAX 421-7366

A complete packet of information containing staff reports and exhibits related to each item for the open session of this meeting, and provided to the City Council, are available for public review at least 72 hours prior to a Council /Agency/Authority Meeting at Suisun City Hall 701 Civic Center Blvd., Suisun City. Agenda related writings or documents provided to a majority of the Council/Board/Commissioners less than 72 hours prior to a Council/Agency/Authority meeting related to an agenda item for the open session of this meeting will be made available for public inspection during normal business hours. An agenda packet is also located at the entrance to the Council Chambers during the meeting for public review. The City may charge photocopying charges for requested copies of such documents. Assistive listening devices may be obtained at the meeting

PLEASE NOTE:

1. The City Council/Agency/Authority hopes to conclude its public business by 11:00 P.M. Ordinarily, no new items will be taken up after the 11:00 P.M. cutoff and any items remaining will be agendized for the next meeting. The agendas have been prepared with the hope that all items scheduled will be discussed within the time allowed.
2. Suisun City is committed to providing full access to these proceedings; individuals with special needs may call 421-7300.
3. Agendas are posted at least 72 hours in advance of regular meetings at Suisun City Hall, 701 Civic Center Boulevard, Suisun City, CA. Agendas may be posted at other Suisun City locations including the Suisun City Fire Station, 621 Pintail Drive, Suisun City, CA, and the Suisun City Senior Center, 318 Merganser Drive, Suisun City, CA.

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First and Third Tuesday
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A G E N D A

REGULAR MEETING OF THE SUISUN CITY COUNCIL

SUISUN CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY, AND HOUSING AUTHORITY

TUESDAY, DECEMBER 17, 2013

7:00 P.M.

SUISUN CITY COUNCIL CHAMBERS -- 701 CIVIC CENTER BOULEVARD -- SUISUN CITY, CALIFORNIA

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(Next Ord. No. – 725)

(Next City Council Res. No. 2013 – 72)

Next Suisun City Council Acting as Successor Agency Res. No. SA2013 – 04)

(Next Housing Authority Res. No. HA2013 – 04)

ROLL CALL

Council / Board Members

Pledge of Allegiance

Invocation by Pastor Zalde Espinoza, Blessed Baptist Church

PUBLIC COMMENT

(Requests by citizens to discuss any matter under our jurisdiction other than an item posted on this agenda per California Government Code §54954.3 allowing 3 minutes to each speaker).

REPORTS: (Informational items only.)

1. Mayor/Council -Chair/Boardmembers
2. City Manager/Executive Director/Staff

CONFLICT OF INTEREST NOTIFICATION

(Any items on this agenda that might be a conflict of interest to any Councilmembers / Boardmembers should be identified at this time.)

DEPARTMENTS: AREA CODE (707)

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PRESENTATIONS/APPOINTMENTS

(Presentations, Awards, Proclamations, Appointments).

3. Introduction and Swearing-in of new Suisun City Police Officer Alejandro Maravilla.
4. Presentation by Sam Derting, Suisun Police and Fire Boosters, Inc., Donation to Police and Fire Departments.
5. Presentation of Proclamation to the Suisun City Community Services Foundation in Recognition of their Donation to Underwrite the 2013 Christmas at the Waterfront.

CONSENT CALENDAR**City Council**

6. Council Adoption of Resolution No. 2013 - __: Authorizing the City Manager to Enter into a Joint Use Agreement with the Fairfield-Suisun Unified School District. – (Jessop).
7. Council Adoption of Resolution No. 2013 - __: Adopting Certain Findings and the Policy Directives to Implement the Sales and Use of Safe and Sane Fireworks as Allowed by Title 8, Chapter 8.04 of the Suisun City Code – (O'Brien).
8. Council Adoption of Resolution No. 2013-__: Adopting the 4th Amendment to the Annual Appropriation Resolution No. 2013-31 to Appropriate \$22,000 to Provide Enhanced Information Technology (IT) Services to the Police Department – (Kasperson).

Joint City Council / Suisun City Council Acting as Successor Agency

9. Council/Agency Approval of the November 2013 Payroll Warrants in the amount of \$557,590.76. Council/Agency Approval of the November 2013 Payable Warrants in the amount of \$781,324.36 – (Finance).

Joint City Council / Suisun City Council Acting as Successor Agency / Housing Authority

10. Council/Agency Approval of the Minutes of the Regular and/or Special Meetings of the Suisun City Council, Suisun City Council Acting as Successor Agency, and Housing Authority held on December 3, 2013 – (Hobson).

GENERAL BUSINESS**City Council**

11. Council Discussion and Direction regarding Membership in the Fairfield Suisun Chamber of Commerce - (Anderson).
12. Council Discussion and Direction regarding the Potential Adoption of a Comprehensive Gaming Ordinance – (Taylor).

PUBLIC HEARINGS**City Council**

13. PUBLIC HEARING

Council Consideration of a Simplified Approach to Designating One-Way Streets – (Dadisho).

- a Council Consideration, Waive Reading and Introduction of Ordinance No. __: Amending Chapter 10.16 of Title 10 of the Suisun City Municipal Code Relating to the Parking, Moving, Operation and Travel of Vehicles on One-Way Streets.

b Council Adoption of Resolution No. 2013-___: Designating One-Way Streets.

14. PUBLIC HEARING

Council Ordinance Adoption of Ordinance No. 724: Amending Chapter 15.04 of Title 15 of the Suisun City Municipal Code, Which Adopts by Reference the 2013 California Building Code, the 2013 California Residential Code, the 2013 California Electrical Code, the 2013 California Plumbing Code, the 2013 California Mechanical Code, the 2013 California Fire Code, the 2013 California Building Standards Administrative Code, the 2013 California Green Building Standards Code and the 2013 California Reference Standards Code – (Introduced and Reading Waived on November 19, 2013) – (Kasperson).

Suisun City Council Acting as Successor Agency

15. PUBLIC HEARING (Continued to January 7, 2014)

Amending the Main Street West Disposition and Development Agreement (DDA) – (Garben).

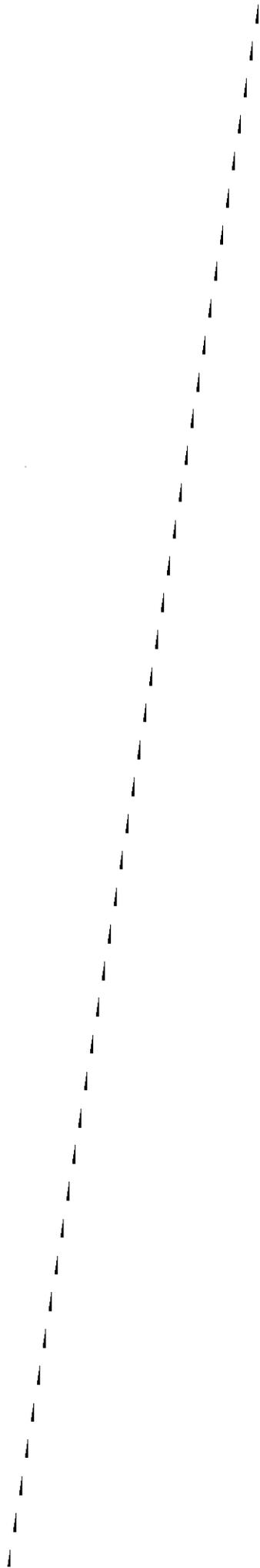
a. Agency Adoption of Resolution No. SA 2013-___: Approving and Authorizing the Execution of the Fourth amendment to other Disposition and Development Agreement with Main Street West Partners, LLC.

ADJOURNMENT

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Office of the Mayor

Suisun City, California

Proclamation



WHEREAS, the Suisun City Community Services Foundation (SCCSF) was established in 2012 to develop and fund service projects, activities, and special events in support of the City of Suisun City; and

WHEREAS, SCCSF provides sponsorship for programs that foster a sense of community, brings awareness to the benefits of living in the community, and generates tourism such as: The Waterfront Jazz Series, Saturday Night at the Movies, Independence Day Celebration, and Christmas at the Waterfront; and

WHEREAS, SCCSF strives to bring together the public and private sectors within our community to ensure that many beloved annual events and other unique opportunities continue to be part of the Suisun City quality of life.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Pete Sanchez, by virtue of the authority vested in me as Mayor of the City of Suisun City, do hereby commend and recognize the Suisun City Community Services Foundation for helping to preserve community events in the City of Suisun City, and urge all residents to join with us in expressing our gratitude and participating in community events.

In witness whereof I have hereunto set my hand and caused this seal to be affixed.

ATTEST: _____

DATE: _____

AGENDA TRANSMITTAL

MEETING DATE: December 17, 2013

CITY AGENDA ITEM: Adoption of Council Resolution No. 2013-__ : Authorizing the City Manager to Enter into a Joint Use Agreement with the Fairfield-Suisun Unified School District.

FISCAL IMPACT: There would be no fiscal impact due to the approval of this Resolution.

BACKGROUND: The City's Recreation & Community Services Department and the Fairfield-Suisun Unified School District (FSUSD) have been sharing facilities for a variety of recreational programs and other functions through a Joint Use Agreement. In order to continue this mutually beneficial relationship, the Joint Use Agreement must be reviewed.

STAFF REPORT: Staff members from each of the organizations have met annually to review the use and permitting processes. The agreement gives each entity first priority use of the facilities which are made available at no cost during normal or stated operational times. For activities involving additional staffing, after normal hours or damages attributable to use by the other party, cost-recovery fees are imposed. The agreement provides for quarterly scheduled meetings to review requests and to update schedules. The term of the agreement renewal would be five years. The FSUSD Board signed the renewal on November 5, 2013.

RECOMMENDATION: It is recommended that the City Council adopt Resolution No. 2013-__ : Authorizing the City Manager to Enter into a Joint Use Agreement with the Fairfield-Suisun Unified School District.

ATTACHMENTS:

- 1. Resolution No. 2013-__ : Authorizing the City Manager to Enter into a Joint Use Agreement with the Fairfield-Suisun Unified School District.

PREPARED BY: Mick Jessop, Recreation & Community Services Director
REVIEWED/APPROVED BY: Suzanne Bragdon, City Manager

For


RESOLUTION NO. 2013 -

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY
AUTHORIZING THE CITY MANAGER TO ENTER INTO A JOINT USE
AGREEMENT WITH THE FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT**

WHEREAS, the City of Suisun City utilizes school district facilities for recreational and community activities; and

WHEREAS, the Fairfield-Suisun Unified School District wishes to utilize City facilities for school activities, events and programs; and

WHEREAS, the school district has successfully entered into a similar agreement with the City of Suisun City in the past; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Suisun City hereby authorizes the City Manager to enter into a joint use agreement with the Fairfield-Suisun Unified School District.

PASSED AND ADOPTED at a regular meeting of the Suisun City Council, duly noticed and held on Tuesday the 17th day of December 2013 by the following vote:

AYES:	Councilmembers:	_____
NOES:	Councilmembers:	_____
ABSENT:	Councilmembers:	_____
ABSTAIN:	Councilmembers:	_____

WITNESS my hand and the seal of said City this 17th day of December 2013.

Linda Hobson, City Clerk

**JOINT USE AGREEMENT BETWEEN FAIRFIELD-SUISUN UNIFIED DISTRICT AND
THE CITY OF SUISUN CITY
(Joint Use of Recreational Facilities)**

THIS JOINT USE AGREEMENT ("Agreement") is made and entered into this 10th day of October, 2013 ("Effective Date"), by and between Fairfield-Suisun Unified School District, a California public school district ("District") and the City of Suisun City, a municipal corporation of the State of California ("City"). The District and City may be referred to herein collectively as the "Parties" or individually as a "Party".

RECITALS

- A. WHEREAS, District is the owner of certain recreational real property and facilities as set forth in Exhibit "A," ("District Recreational Facilities" or "District Sites"); and
- B. WHEREAS, the City is the owner of certain recreational real property and facilities as set forth in Exhibit "C" located within the City of Suisun City ("City Recreational Facilities" or "City Sites"); and
- C. WHEREAS, the provisions of Education Code sections 10900 through 10914.5, inclusive, (the "Community Recreation Act") authorize and empowers cities and public school districts to cooperate with one another for the purpose of authorizing, promoting and conducting programs of public services which will contribute to the attainment of general recreational and educational objectives for children and adults of the state, and to enter into agreements with each other for such purposes; and
- D. WHEREAS, the District and City's joint use of the recreational facilities located on the District and City Sites are in the vital and best interests of the residents of the City and of the District students, and of their health, safety, and welfare, and are in accordance with the public purposes and provisions of applicable federal, State and local law.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this agreement, the Parties agree as follows:

1. **TERM OF AGREEMENT.** The "Term" of this Agreement shall be for five (5) years commencing on Effective Date, and shall remain in effect until **October 10, 2018**, unless terminated earlier pursuant to the termination provisions set forth in this Agreement.
2. **JOINT USE OF RECREATIONAL FACILITIES.**
 - 2.1. **District Recreational Facilities:**
 - 2.1.1. **District Use.** The District's use of the buildings, grounds, equipment or recreational facilities ("District Recreational Facilities") located on the District Sites for any purpose shall take precedence and priority over the City's or any other person's or entity's use.
 - 2.1.2. "District's Use" includes use of the District Recreational Facilities, without limitation:
 - 2.1.2.1. Use during any time when school is in session, including Summer School;
 - 2.1.2.2. Use during any time that has been scheduled in advance by the various school principals or other school officers for classes, activities, exercises, or functions; and

- 2.1.2.3. Use during any time when the District has permitted another person or entity to use the District Recreational Facilities for specific event(s) or activity(ies).
- 2.1.3. The District Recreational Facilities set forth in Exhibit "A" shall be reviewed and updated on an annual basis during the Term.
- 2.1.4. City's Use. The City may use the District Recreational Facilities when such use does not conflict with the District's Use.
- 2.1.4.1. Use Fees. City shall pay the use fee set forth in Exhibit "B" ("Use Fee") for use of District Recreational Facilities. The Use Fee shall be based on the staff required to be present at the District Recreational Facilities during City use or the actual cost incurred by District related to City's use of the Recreational Facilities.
- 2.1.4.2. City's use of the District Recreational Facilities shall be pursuant to the Civic Center Act (Education Code section 38130 et seq.) and District's existing rules and regulations pertaining to the use of the District Recreational Facilities ("District Use Rules"), as may be amended from time to time.
- 2.1.4.3. City shall provide ensure adequate supervision of any activity conducted on District Recreational Facilities during City's use.
- 2.1.4.4. District shall furnish and supply City the expendable materials, supplies and equipment generally made available by District to the general public for use by City at District's Recreational Facilities.
- 2.1.4.5. Accident/Incident Report. The City shall submit a written accident/incident reports to the District of any accident or incident that occurs on the District Recreational Facilities during City's use. Accident/injury reports shall be submitted to the District's principal at the School Site the Recreational Facilities are located on and to the District Office of Risk Management.
- 2.1.4.6. Concussion or head injury during City Athletic Activity. City shall comply and require any person, group or entity using the District Recreational Facilities pursuant to City's authority hereunder, to comply with Education Code section 49475 regarding the removal of any athletic participant suspected of sustaining a concussion or head injury during use of District Recreational Facilities.
- 2.1.5. Closure of District Recreational Facilities. The Parties recognize that the District Recreational Facilities may need to be closed from time to time in the interest of public safety or for repairs and maintenance. District shall notify the City of any conditions necessitating a closure of the District Recreational Facilities or any portion thereof.
- 2.2. City Recreational Facilities:
- 2.2.1. City Use. The City's use of the buildings, grounds, equipment or recreational facilities ("City Recreational Facilities") located on the City Sites for any purpose shall take precedence and priority over the District's or any other person's or entity's use. "City's Use" includes use of the City Recreational Facilities, without limitation:
- 2.2.1.1. Use during any time when the City has permitted another person or entity to use the City Recreational Facilities for specific event(s) or activity(ies).
- 2.2.2. The City Recreational Facilities set forth in Exhibit "C" shall be reviewed and updated on an annual basis during the Term.

- 2.2.3. **District's Use.** The District may use the City Recreational Facilities when such use does not conflict with the City's Use.
- 2.2.3.1. **Use Fees.** District shall pay the use fee set forth in Exhibit "D" ("Use Fee") for use of City Recreational Facilities. The Use Fee shall be based on the staff required to be present at the City Recreational Facilities during District use or the actual cost incurred by City related to District's use of the Recreational Facilities.
- 2.2.3.2. District's use of the City's Recreational Facilities shall be pursuant to the City's existing rules, ordinances and regulations pertaining to the use of the City's Recreational Facilities ("City Use Rules"), as may be amended from time to time.
- 2.2.3.3. District shall provide ensure adequate supervision of any activity conducted on City Recreational Facilities during District's use.
- 2.2.3.4. City shall furnish and supply District the expendable materials, supplies and equipment generally made available by City to the general public for use by District at City's Recreational Facilities.
- 2.2.3.5. **Accident/Incident Report.** The District shall submit a written accident/incident reports to the City of any accident or incident that occurs on the City Recreational Facilities during District's use. Accident/injury reports shall be submitted to the City's City Manager and to the City's Risk Manager.
- 2.2.4. **Closure of City Recreational Facilities.** The Parties recognize that the City Recreational Facilities may need to be closed from time to time in the interest of public safety or for repairs and maintenance. City shall notify the District of any conditions necessitating a closure of the City Recreational Facilities or any portion thereof.
- 2.3. **Use.** Designated District and City staff shall coordinate for each Party's respective use of the Parties' Recreational Facilities. The Joint Use Agreement Facilities Usage Application shall be used and is attached hereto as Exhibit "F".
- 2.3.1. In scheduling the use of DISTRICT facilities, DISTRICT sponsored events and programs shall have first priority, CITY sponsored events and programs shall have second priority, and any other events by other organizations (including City co-sponsored groups which are not covered by this Agreement) or individuals shall have priority thereafter.
- 2.3.2. In scheduling the use of CITY facilities, CITY sponsored events and programs shall have first priority, DISTRICT sponsored events and programs shall have second priority, and any other events by other organizations (including auxiliary organizations of the DISTRICT which are not covered by this Agreement) or individuals shall have priority thereafter.
- 2.3.3. Each Party shall designate one contact person to maintain records pursuant to this Agreement. Each Party shall provide notice to the other of the person designated by that Party as the contact person. Each Party shall notify the other in the event the Party's contact person changes. Such notification shall be in the same manner provided in this Agreement in the section entitled "Notices."
- 2.3.4. Except in the event of an emergency, the Parties shall provide at least ten (10) business days prior notice of a cancellation of a Party's scheduled use. The Party cancelling the

other Party's use shall make good faith and reasonable efforts to provide alternative available recreational space to the Party's whose use is cancelled.

- 2.3.5. Except in the event of an emergency, the Parties shall provide each other at least ten (10) business days prior notice of a Party's intent to cancel a scheduled use of the other Party's Recreational Facilities. If a Party fails to provide prior notice or fails to use the other Party's recreational facilities when scheduled, that Party shall be charged the Use Fee set use had occurred.

3. **MAINTENANCE.**

3.1. **City Maintenance.** City agrees to provide, as its own cost and expense, any and all maintenance for the City Recreational Facilities. Maintenance to be provided by City shall be staffed by City's equipment and ball fields personnel, be consistent with the normal maintenance levels as applied to other comparable City open space and park areas and shall insure safe and healthful use. Maintenance to be provided by City shall also include payment by City, as its own cost and expense, any and all utility costs, including without limitation, electricity, water, and refuse removal costs.

3.2. **District Maintenance.** District agrees to provide, as its own cost and expense, any and all maintenance for the District Recreational Facilities. Maintenance to be provided by District shall be consistent with the normal maintenance levels as applied to other comparable District schools and shall insure safe and healthful use. Maintenance to be provided by District shall also include payment by District, as its own cost and expense, any and all utility costs, including without limitation, electricity, water, and refuse removal costs.

4. **POST EVENT EVALUATION AND REPAIRS.** The Parties agree that each Party shall be responsible for any damage, injuries, or harm caused by use of the other Party's Recreational Facilities. The Party whose recreational facilities were used and damaged shall notify the other Party in writing, indicating any damage caused and cost, if any, for necessary repairs. The Post Evaluation Form (Exhibit "E") can be used to provide such information to the other Party following that Party's use of the recreational facilities. Additionally, the Party completing the Post Event Evaluation Form shall provide a bill for damages to the other Party.

4.1. The Party using the other Party's Recreational Facilities shall repair, or cause to be repaired, or will reimburse the Party that owns the Recreational Facilities for the cost of repairing damage done to the Recreational Facilities of the other Party, other than ordinary wear and tear items.

4.2. Any dispute regarding the responsibility for damages shall be resolved pursuant to the dispute resolution procedures indicated herein.

5. **INDEMNIFICATION.**

5.1. **Indemnification of District.** To the furthest extent permitted by California law, City shall protect, defend, indemnify and hold harmless District, and its officers, agents, representatives, consultants, employees, trustees and volunteers ("District's Indemnified Parties") from any and all demands, liabilities, losses, damages, injury, claims, suits, and actions ("Claims against the City") of any kind, nature or description, including, but not limited to, personal injury, death, property damage, and consultants' and/or attorneys' fees and costs, directly or indirectly arising out of, connecting with or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the City in conjunction with this Agreement except to the extent that the Claims against the City are not caused by the negligence or willful misconduct of the District's Indemnified Parties. The District shall have the right to accept or reject any legal representation that City proposes to defend the District's Indemnified Parties.

- 5.2. **Indemnification of City.** To the furthest extent permitted by California law, District shall protect, defend, indemnify and hold harmless City, and its officers, agents, representatives, consultants, employees, trustees and volunteers ("City's Indemnified Parties") from any and all demands, liabilities, losses, damages, injury, claims, suites and actions ("Claims against the District") of any kind, nature or description, including, but not limited to, personal injury, death, property damage, and consultants' and/or attorneys' fees and costs, directly or indirectly arising out of, connecting with or resulting from the performance the Agreement or from any activity, work, or thing done, permitted, or suffered by the District in conjunction with this Agreement to the extent that the Claims against the District are not caused by the negligence or willful misconduct of the City's Indemnified Parties. The City shall have the right to accept or reject any legal representation that District proposes to defend the City's indemnified Parties.
6. **INSURANCE.** Each Party shall, during the Term, maintain in force the policies set forth in Exhibit "G". All policies, endorsements, certificates shall be subject to approval by the other Party's Risk Manager as to form and content. The insurance requirements are subject to amendment or waiver if so approved in writing by both Parties. Each Party agrees to provide the other Party with a copy of said policies, certificates and/or endorsements upon execution of this Agreement.
7. **TERMINATION.** City or District may terminate this Agreement at any time by written notice of election to terminate delivered to the other Party at least sixty (60) days in advance of the effective termination date elected.
8. **NOTICES.** All notices required or permitted to be given under this agreement shall be in writing and personally delivered or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

CITY
 City of Suisun City
 611 Village Drive
 Suisun City, CA 94585
 Telephone: (707) 421-7200

DISTRICT
 Fairfield-Suisun Unified School District
 2490 Hilborn Road
 Fairfield, CA 94534
 Attn: Director of Facilities
 Telephone: (707) 399-5002

Notice shall be deemed effective on the date personally delivered or, if mailed, three days after deposit in the mail. Notice transmitted by facsimile shall be deemed effective on the following business day. Notice provided by overnight delivery shall be deemed effective the next business day after delivery by the overnight delivery service. The Parties may change their respective addresses for purposes of delivering notices by sending notice of such change pursuant to this paragraph.

9. **ASSIGNMENT.** Neither Party shall assign its rights, duties or privileges under this Agreement, nor shall either Party attempt to confer any of its rights, duties or privileges under this Agreement on any third Party, without the written consent of the other Party.
10. **NON-DISCRIMINATION.** Neither Party shall employ any discriminatory practices in its performance hereunder, including its employment practices, on the basis of sex, race, color, religion, national origin, ancestry, age, sexual orientation, or physical or mental disability.
11. **INDEPENDENT CONTRACTOR STATUS.** This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.
12. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

13. **VERIFICATION OF QUALIFICATIONS.** Each Party shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with each Party's duties or obligations pursuant to this Agreement or the use of the Recreational Facilities.
14. **FINGERPRINTING AND CRIMINAL BACKGROUND INVESTIGATIONS.** Each Party shall ensure compliance with the fingerprinting requirements of Education Code section 10911.5 for all employees, staff, and/or contractors who could have direct contact with minors, regardless of whether such individuals are paid or unpaid.
15. **DISPUTE RESOLUTION.** If a dispute arises that is related, in any way, to this, the Parties agree to attempt first to resolve the dispute through negotiations. If negotiations are unsuccessful, the Parties agree to mediate the dispute prior to initiating legal action.
16. **CALIFORNIA LAW.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Solano County, California.
17. **PROHIBITED ACTIVITIES.** Use of tobacco products, intoxicants, or narcotics is prohibited in or about the Party's Recreational Facilities. Profane language, quarreling, fighting, and/or gambling is also prohibited.
18. **WAIVER.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
19. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.
20. **AMENDMENTS.** Amendments to the terms and conditions of this Agreement shall be requested in writing by the Party desiring the revision, and any amendment to the Agreement shall only be effective upon the mutual agreement in writing of both Parties hereto.
21. **COUNTERPARTS.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
22. **CAPTIONS.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intentions of the Parties hereto.
23. **SEVERABILITY.** Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.
24. **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
25. **APPROVAL.** The Parties agree that this Agreement shall not be binding on the Parties until the Agreement is approved by the District's Board of Education and the City Council.

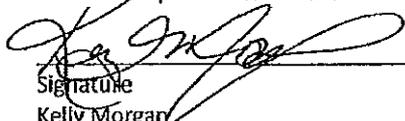
IN WITNESS WHEREOF, this Agreement has been duly approved by Parties on the day and year hereinabove written.

CITY OF SUISUN CITY
A municipal corporation

Signature
Suzanne Bragdon
City Manager

Date: _____

FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT
A California public school district



Signature
Kelly Morgan
Assistant Superintendent of Business Services

Date: 11/5/13

EXHIBIT A

Fairfield-Suisun Unified School District Facilities
Available for Use by City of Suisun per the Joint Use Agreement

School	Phone	C	P	M/U	G	VSF	JVSF	VBF	JVBF	Café	T	SP	F	CR	L	O
Armijo High	438-3366	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Fairfield High	438-3015	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rodriguez High	863-7950	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Matt Garcia Learning Center (Civic Center Dr.)	424-9400	✓	✓	✓									✓	✓		✓
Adult School (Bransford)	421-4155	✓	✓	✓						✓			✓	✓	✓	✓
Crystal	421-5800	✓	✓	✓						✓			✓	✓	✓	✓
Sem Yeto (Dover Site)	421-4271	✓	✓	✓						✓			✓	✓	✓	✓
Grange	438-1900	✓	✓	✓						✓			✓	✓	✓	✓
Public Safety Academy (Amy Blanc)	421-3933	✓	✓	✓						✓			✓	✓	✓	✓
Anna Kyle	421-4105	✓	✓	✓						✓			✓	✓	✓	✓
B. Gale Wilson	421-4225	✓	✓	✓						✓			✓	✓	✓	✓
Cleo Gordon	421-4125	✓	✓	✓						✓			✓	✓	✓	✓
Cordelia Hills	864-1905	✓	✓	✓						✓			✓	✓	✓	✓
Crescent	435-2771	✓	✓	✓						✓			✓	✓	✓	✓
Dan O. Root II	421-4240	✓	✓	✓						✓			✓	✓	✓	✓
David Weir	399-3300	✓	✓	✓						✓			✓	✓	✓	✓
E. Ruth Sheldon	421-4150	✓	✓	✓						✓			✓	✓	✓	✓
Fairview	421-4165	✓	✓	✓						✓			✓	✓	✓	✓
Green Valley	646-7000	✓	✓	✓						✓			✓	✓	✓	✓
H. Glenn Richardson	420-2300	✓	✓	✓						✓			✓	✓	✓	✓
K.I. Jones	421-4195	✓	✓	✓						✓			✓	✓	✓	✓
Laurel Creek	421-4291	✓	✓	✓						✓			✓	✓	✓	✓
Nelda Mundy	863-7920	✓	✓	✓						✓			✓	✓	✓	✓
Oakbrook	863-7930	✓	✓	✓						✓			✓	✓	✓	✓
Rolling Hills	399-9566	✓	✓	✓						✓			✓	✓	✓	✓
Suisun	421-4210	✓	✓	✓						✓			✓	✓	✓	✓
Suisun Valley	421-4338	✓	✓	✓						✓			✓	✓	✓	✓
Tolenas	421-4350	✓	✓	✓						✓			✓	✓	✓	✓

C = Classrooms

P = Playground/Soccer Field

M/U = Multiple Purpose Room

G = Gymnasium

VSB = Varsity Softball Field

JVSB = Junior Varsity Softball Field

VBF = Varsity Baseball Field

JVBF = Junior Varsity Baseball Field

Café = Cafeteria

T = Tennis Courts

SP = Swimming Pool

F = Field

CR = Conference Room

L = Library

O = Outside Basketball Courts

EXHIBIT B

District Charges

DISTRICT charges shall be according to the following schedule unless revised by resolution of the Fairfield-Suisun Unified School District.

Stadium Lights at Armijo, Fairfield & Rodriguez High Schools	\$52/hr
Custodial Personnel (per staff member)	\$45/hr
Cafeteria Worker (per staff member)	\$31/hr
Campus Monitors (per staff member)	\$23/hr

The use of the swimming pool(s) shall only be the itemized charges below when they are over and above the normal scheduled use of the swimming pool(s).

Swimming Pool Heating and Chemicals (when pool would be shut down)	
Fairfield High School Pool	\$670/day
Armijo High School Pool	\$505/day
Pool Maintenance	\$39/hr

Exhibit C

CITY FACILITIES	Usages	Requirements
Joseph A. Nelson Community Center		
Banquet Room	Large Gatherings	School Supervision
Meeting Room A	Meetings	School Supervision
Meeting Room B	Meetings	School Supervision
Meeting Room C	Meetings	School Supervision
Combination of Meeting Rooms	Large Gathering	School Supervision
Classroom 1	Meetings	School Supervision
Corridor	Art Shows, displays	Set-up, take down
Senior Center		
Banquet Room	Small gatherings	School Supervision
Meeting Room	Meetings	School Supervision
Both Rooms combined	Medium gatherings	School Supervision
Lambrecht Sports Complex		
Softball Fields 1 & 2	Youth/Adult Softball	School Supervision
Concession Building	Youth/Adult Softball	School Supervision
City Hall		
Council Chambers	Meetings	School Supervision
City Hall Rotunda	Displays	Set-up- take down
Municipal Boat Launch		
Launch Ramp	Launch boats	School Supervision
Picnic Area	Gatherings	School Supervision
Parking Lot	Events	School Supervision
Heritage Park		
Ball field	Softball, Baseball under 15 only	School Supervision
Picnic Area	Gatherings	School Supervision
Open Park Area	Events, Sports	School Supervision
City Hall Waterfront Park		
Old Town Plaza		
Stage		
Park		
Sheldon Plaza		
Park Area		
Hall Park		
Open Park Area		
Picnic Area		
Goepf Park		
Open Park Area		

Exhibit D

MASTER FEE SCHEDULE

Section 4: Recreation & Community Services

Fee Description	Current Fee 19-Jun-12	Proposed Fee 1-Jul-13
SENIOR CENTER		
Large Room 2000 sq.ft. (40 x 50)		
Rate per hour, (3 hour minimum)	\$ 88.00	\$ 90.00
Kitchen Fee, per hour (3 hour minimum)	\$ 17.00	\$ 20.00
Deposit	\$ 400.00	\$ 400.00
Small Room, 750 sq.ft. (34 x 22) No Kitchen		
Rate per hour, (3 hour minimum)	\$ 40.00	\$ 40.00
Deposit	\$ 200.00	\$ 200.00
Both Rooms		
Rate per hour, (3 hour minimum)	\$ 105.00	\$ 110.00
Kitchen Fee, per hour	\$ 17.00	\$ 20.00
Deposit	\$ 400.00	\$ 400.00
CITY HALL COUNCIL CHAMBERS / ROTUNDA		
Rate per hour, (3 hour minimum)	\$ 115.00	\$ 115.00
Deposit (No Kitchen)	\$ 300.00	\$ 300.00
COURTYARD AT HARBOR SQUARE		
Rate per hour, (2 hour minimum)	\$ 110.00	\$ 110.00
Includes 2 staff for 1st 50 persons, additional fee for every 50 persons, per hour, includes use of Courtyard Restrooms	\$ 22.00	\$ 22.00
Gas Fee for any use of Fireplace 1 Hour Before Sunset, per hour	\$ 6.00	\$ 6.00
Deposit	\$ 200.00	\$ 200.00
OLD TOWN PLAZA & SHELDON PLAZA		
Rate per hour, (2 hour minimum)	\$ 88.00	\$ 88.00
P/A System Deposit	\$ 250.00	\$ 250.00
P/A System - Rent	\$ 75.00	\$ 75.00
Includes 1 staff for 1st 100 persons, additional fee for every 50 persons	\$ 22.00	\$ 22.00
Deposit	\$ 200.00	\$ 200.00
TRAIN STATION PLAZA		
Rate per hour, 2 hour minimum	\$ 65.00	\$ 65.00
Deposit	\$ 200.00	\$ 200.00
Rate per hour for staff for Events requiring or requesting staff monitoring	\$ -	\$ 22.00
PARK USE FEES		
Rate per hour, (2 hour minimum)	\$ 30.00	\$ 30.00
Rate per hour for staff for Events requiring or requesting staff monitoring	\$ 22.00	\$ 22.00
Deposit	\$ 100.00	\$ 100.00
BALLFIELD - RENTAL		
Other than tournament - field only - 2 hours only	\$ 30.00	\$ 30.00
Other than tournament - field with lights-2 hours only	\$ 55.00	\$ 55.00
LAMBRECHT/HERITAGE		
Tournament-Per Field, Per Day	\$ 110.00	\$ 110.00
Tournament- for 2 hours only (bases included)	\$ 40.00	\$ 40.00
Site Attendant Required/Per Hour	\$ 22.00	\$ 22.00
Prep per field, per prep - required every 4 games	\$ 30.00	\$ 30.00
Light Use Fee - Per Field/Per Hour	\$ 35.00	\$ 35.00
Scoreboard Use	\$ 25.00	\$ 25.00

MASTER FEE SCHEDULE

Section 4) Recreation & Community Services

Fee Description	Current Fee 19-Jun-12	Proposed Fee 1-Jul-13
LEAGUE USE		
Per Hour, with attendant, (3 hour minimum)	\$ 25.00	\$ 25.00
Without attendant, (2 hour game)	\$ 12.00	\$ 12.00
Light Use Fee - w/o attendant (2 hour game)	\$ 45.00	\$ 45.00
Light Use Fee with attendant- Per Field/Per Hour	\$ 35.00	\$ 35.00
MARINA		
	1-Sep-11	1-Sep-11
Overnight Guest Berthing, per night (72 hour limit)	\$ 15.00	\$ 15.00
Commercial Use of Docks and Boat Launch (other than as provided by with City)	10% of Gross Receipts	10% of Gross Receipts
BOAT LAUNCH		
Parking fee, per 24 hours	\$ 5.00	\$ 5.00
Parking fee, annual pass	\$ 90.00	\$ 90.00
Parking fee, monthly pass	\$ 50.00	\$ 50.00
MONTHLY SLIP RENTAL RATES		
SLIP SIZE		
28 feet	\$ 160.00	\$ 160.00
34 feet	\$ 194.00	\$ 194.00
40 feet	\$ 228.00	\$ 228.00
46 feet	\$ 263.00	\$ 263.00
50 feet	\$ 285.00	\$ 285.00
JOE NELSON COMMUNITY CENTER		
	1-Jul-11	Proposed Fee 7/1/2013
BANQUET ROOM WITHOUT KITCHEN		
Weekday Rates Class A (non-profit) - per hour	\$ 120.00	\$ 120.00
Weekday Rates Class B (private & for-profit) - per hour	\$ 130.00	\$ 130.00
Weekend Rates - per hour	\$ 150.00	\$ 150.00
Deposit	\$ 400.00	\$ 400.00
BANQUET ROOM WITH KITCHEN		
Weekday Rates Class A (non-profit) - per hour	\$ 130.00	\$ 130.00
Weekday Rates Class B (private & for-profit) - per hour	\$ 140.00	\$ 140.00
Weekend Rates - per hour	\$ 170.00	\$ 170.00
Deposit	\$ 400.00	\$ 400.00
MEETING ROOM A Deposit		
Weekday Rates Class A (non-profit) - per hour	\$ 33.00	\$ 33.00
Weekday Rates Class B (private & for-profit) - per hour	\$ 55.00	\$ 55.00
Weekend Rates - per hour	\$ 83.00	\$ 83.00
Deposit	\$ 200.00	\$ 200.00
MEETING ROOM B		
Weekday Rates Class A (non-profit) - per hour	\$ 40.00	\$ 40.00
Weekday Rates Class B (private & for-profit) - per hour	\$ 60.00	\$ 60.00
Weekend Rates - per hour	\$ 88.00	\$ 88.00
Deposit	\$ 200.00	\$ 200.00

MASTER FEE SCHEDULE

Section 4: Recreation & Community Services

Fee Description	Current Fee 19-Jun-12	Proposed Fee 1-Jul-13
MEETING ROOM C	1-Jul-11	Proposed Fee 7/1/2013
Weekday Rates Class A (non-profit) - per hour	\$ 30.00	\$ 30.00
Weekday Rates Class B (private & for-profit) - per hour	\$ 50.00	\$ 50.00
Weekend Rates - per hour	\$ 70.00	\$ 70.00
Deposit	\$ 200.00	\$ 200.00
MEETING ROOMS - MULTIPLE		
Weekend Multi-room Rate, any 2 rooms	\$ 105.00	\$ 105.00
Weekend Multi-room Rate, any 3 rooms	\$ 125.00	\$ 125.00
Deposit	\$ 400.00	\$ 400.00
CLASSROOM I		
Weekday Rates Class A (non-profit) - per hour	\$ 30.00	\$ 30.00
Weekday Rates Class B (private & for-profit) - per hour	\$ 50.00	\$ 50.00
Weekend Rates - per hour	\$ 80.00	\$ 80.00
Deposit	\$ 200.00	\$ 200.00
KITCHEN (WITH MEETING ROOM) RENT		
Weekday Rates Class A (non-profit) - per hour	\$ 40.00	\$ 40.00
Weekday Rates Class B (private & for-profit) - per hour	\$ 45.00	\$ 45.00
Weekend Rates - per hour	N/A	N/A
Charge to add additional tables	\$ 25.00	\$ 25.00
KITCHEN (WITHOUT MEETING ROOM) RENT		
Normal Business Hours - per hour	\$ -	\$ 45.00
Non-Business Hours (2 Hour Minimum) - per hour	\$ -	\$ 70.00
Deposit	\$ 200.00	\$ 200.00

Exhibit E

Fairfield-Suisun Unified School District and City of Suisun
Joint Use Agreement

Post-Event Evaluation Form

- This form should be filled out at the conclusion of a long-term usage or if there are property damages to the site after the function.
- Send the completed form to the DIRECTOR or SUPERINTENDENT, or their designated representatives.

Facility user: _____ Date of usage: _____

Site: _____ Area of usage at the site: _____

Type of Activity: _____

- Were all rules and regulations followed? Yes No
- Were the laws of the city and state followed by the facility users? Yes No
- Was the site left in a clean and orderly condition? Yes No
- Did the facility users borrow or use any equipment? Yes No
- Was the equipment returned in acceptable condition? Yes No

Comments: (Positive or problems encountered)

Damages:

Please describe the damage in as much detail as possible. If this section is filled out, send the original to the DIRECTOR OR SUPERINTENDENT, or their designated representatives.

We would rather not have this facility user use our facility again.

Facility Evaluator: _____ Date: _____

Exhibit F

Joint Use Agreement Facilities Usage Application

Fairfield-Suisun Unified School District / City Of Suisun

Requests for usage should be submitted 30 days prior to the quarterly meeting dates specified in the Joint Use and Development Agreement.

Date: The (Check one) [] Fairfield-Suisun Unified School District [] City of Suisun hereby submits this request to use the facility area.

Day of Week: (Mo/Day/Yr)

Time: Beginning [] AM [] PM Ending [] AM [] PM

Event:

Projected Attendance

Requesting Organization/Program:

Name of Contact Person: Telephone:

Equipment and Set-Up Request:

Person on Site Responsible for Program: Telephone:

For Office Use Only
Route to the following for information:
Fairfield-Suisun Unified School District
[] School Master Scheduler
[] Athletic Director
[] Custodian/Facilities
[] Principal
[] Maintenance Staff (Assistant Director of M & O)
[] District Office (Director, Administrative Services)
City of Suisun
[] City Master Scheduler
[] Facilities Staff
[] City Master Scheduler
Comments
FEE INFORMATION: As established by the Joint Usage Agreement, the following is an estimate of fees for use of the will be \$
Established fees are listed in the Joint Use and Development Agreement. The requesting organization will be billed at the end of the scheduled usage by City staff for City facilities and by the Fairfield-Suisun Unified School District Office for School facilities

School District / City of Suisun Approval:

Name: Title: Telephone:
Comments:

EXHIBIT "G"

INSURANCE

Each Party, at its sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services or use of the Recreational Facilities hereunder by the Parties, their agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage described in Insurance Services Office Form Number GL 0002 (Ed. 01/96) covering Commercial General Liability together with Insurance Services Office Form Number GL 0404 covering Broad Form Comprehensive General Liability; or that described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 (Ed. 01/96), including X.C.U. (Explosion, Collapse and Underground) coverage.
2. The coverage described in Insurance Services Office Form Number CA 0001 (Ed. 12/93) covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "non-owned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and

B. Minimum Limits of Insurance

Each Party shall maintain limits no less than:

1. Commercial General Liability: \$3,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident.
4. Builder's Risk: Completed value of the project. No deductible shall exceed \$100,000.

C. Deductibles and Self-Insured Retentions

Any Party's deductibles or self-insured retentions must be declared, and approved by the other Party's Risk Manager.

D. Other Insurance Provisions

Each policy shall contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverage

Joint Use Agreement Facilities Usage Application
Multiple Day Usage Schedule

Contact Person/Group Day of the Week Date (m/d/y) Start Time End Time

9/12/13

a. The other Party, its officers, employees, agents and contractors are to be covered as additional insureds. Coverage shall contain no special limitations on the scope of protection afforded to the other Party, its officers, employees, agents and contractors.

b. Any failure to comply with reporting provisions of the policies by either Party shall not affect coverage provided to the other Party, its officers, employees, agents, or contractors.

c. Each policy shall state that the policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverage

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to the other Party.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to the other Party.

F. Verification of Coverage

Each Party shall furnish the other Party with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in by each PARTY:

CITY OF SUISUN CITY
Risk Manager

FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT
Risk Manager

AGENDA TRANSMITTAL

MEETING DATE: December 17, 2013

CITY AGENDA ITEM: City Council Adoption of Resolution No. 2013-___: Adopting Certain Findings and the Policy Directives to Implement the Sales and Use of Safe and Sane Fireworks as Allowed by Title 8, Chapter 8.04 of the Suisun City Code.

FISCAL IMPACT: Failure to approve the proposed resolution could result in the loss of approximately \$60,000 to fund the 2015 Fourth of July Celebration, as well as \$25,000 to enforce the sale of Safe and Sane fireworks.

BACKGROUND: To insure that future Safe and Sane fireworks sales periods may be approved without the need for technical changes every year to Title 8, Chapter 8.04 – (“Fireworks.” To permit the sales of “Safe and Sane Fireworks”; and, regulate other fireworks related activities) certain dates, times, and specifics are to be specified in a City Council Resolution.

STAFF REPORT: That attached Resolution provides the applicable dates for applying the Fireworks Ordinance to the 2014 Season. These include the following:

- The due date for accepting applications will be February 4, 2014.
 - The date for the lottery will be February 19, 2014.
 - The date for execution of the fireworks wholesaler distribution agreement will be April 4, 2014.
 - The date for submission of the public education plan will be May 30, 2014.
-

STAFF RECOMMENDATION: It is recommended that the City Council adopt Resolution No. 2013-___: Adopting Certain Findings and the Policy Directives to Implement the Sales and Use of Safe and Sane Fireworks as Allowed by Title 8, Chapter 8.04 of the Suisun City Code.

ATTACHMENTS:

1. Resolution 2013-___: Adopting Certain Findings and the Policy Directives to Implement the Sales and Use of Safe and Sane Fireworks as Allowed by Title 8, Chapter 8.04 of the Suisun City Code.

PREPARED BY:

REVIEWED/APPROVED BY:

Michael O'Brien, Fire Chief
Suzanne Bragdon, City Manager

MOP
CB

RESOLUTION NO. 2013-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY
ADOPTING CERTAIN FINDINGS AND THE POLICY DIRECTIVES TO
IMPLEMENT THE SALES AND USE OF SAFE AND SANE FIREWORKS AS
ALLOWED BY TITLE 8, CHAPTER 8.04 OF THE SUISUN CITY CODE**

WHEREAS, the Suisun City Code has been amended to permit the sales of Safe and Sane Fireworks, and to regulate other fireworks-related activities; and

WHEREAS, the sale of Safe and Sane Fireworks has benefitted the City of Suisun City by providing local Nonprofit Organizations who work for the benefit of the community with an opportunity to raise funds; and

WHEREAS, the City Council deems it necessary to adopt Certain Findings for the sale and use of Safe and Sane Fireworks; and

WHEREAS, the City Council deems it necessary to adopt Policy Directives for the sales and use of Safe and Sane Fireworks.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Suisun City hereby finds that Fireworks stands are categorically exempt from the California Environmental Quality Act ("CEQA") under CEQA Guidelines section 15311 as minor accessory structures appurtenant to existing commercial, industrial, or institutional facilities; and

BE IT FURTHER RESOLVED that the City Council of the City of Suisun City hereby adopts the following Policy Directives:

1. **Number of permits.** Three (3) Fireworks Sales Permits will be made available for the sale of Safe and Sane Fireworks in the City of Suisun City.
2. **Locations of fireworks stands.** Fireworks stand locations will be approved by the City Manager.
3. **Fireworks stands.** Fireworks stands may be put in place by the permittee no earlier than 8:00 a.m. on June 20.

Signs for fireworks sales shall be displayed no earlier than seven days (June 21) before the approved start of sales, June 28, and must be removed four (4) days after the fireworks sales period ends. (July 8)

All unsold fireworks and accompanying litter shall be cleared from the location by 5:00 p.m. two (2) days after the fireworks sales period ends, (July 6).

The fireworks stand shall be removed from the temporary location by 12:00 p.m. on July 10.

4. **Permissible hours of use.** It shall be unlawful to discharge any "Safe and Sane Fireworks" except during the hours of 9:00 am to 10:00 pm June 28 through July 6.

5. **Permissible hours of sale.** Dates and Hours of the sale of "Safe and Sane Fireworks" shall begin no earlier than 12:00 noon on June 28 and shall not continue after 9:00 pm on July 4 of the same year. Sale of fireworks shall be permitted only from 12:00 noon to 9:00 pm on June 28 and from 9:00 am to 9:00 pm daily June 29 through July 3, and 9:00 am to 9:00 pm on July 4.

6. **Filing Application for Firework sales on July 4th.** Applications will be accepted from January 1, until February 4, 2014, until 5:00 pm.

7. **Permittee selection process.** The process for selection of permittees to hold and use Fireworks Sales Permits shall be consistent with the following policy directives:

a. Only Qualified Applicants, as that term is defined in section 8.04.010 of the Municipal Code, shall be eligible to submit an application for a permit. Applicants are qualified on the basis of the following criteria:

- i. Organizations that have proved they are qualified by documentation of charitable nonprofit status with the State and IRS 501 3c. The organization bylaws or Articles of incorporation shall state organized for a charitable, educational, religious, or scientific purposes, and, a nonprofit organization.
- ii. Charitable organizations "Primarily Serving Suisun City Residents and Businesses," as that phrase is defined in the Municipal Code, and are organized primarily to benefit youth, schools, veterans, or local businesses in Suisun City shall be given preference in the first lottery drawing.
- iii. The organization has at least 10 members that will staff the booth and a plan to keep the booth open for the full sales period.
- iv. Organizations with less than 10 members shall produce an agreement with another nonprofit organization for a joint application.

b. The lottery shall take place at a time, place, and manner determined by the Fire Chief in accordance with the administrative rules and procedures adopted by the Fire Chief. In 2013, the lottery will be held on February 19, 2014, at 10:00 am in the Council Chambers.

- i. If three or less organizations with the above preference apply, these organizations will be drawn in a lottery to determine selection for available permits.
- ii. The choice of fireworks stand sites will be drawn separately after the permits have been determined.

ii. After the authorized number of permits has been awarded, the remaining qualified applicants shall be drawn in a second lottery as alternates. Each alternate, according to the order drawn, shall be offered a permit if one of the original permittees cannot meet the requirements of this Chapter or if a permittee voluntarily surrenders its permit.

8. Fireworks Wholesaler—Distribution agreement.

a. All fireworks wholesalers who seek to do business in the city and supply and contract with applicants for fireworks booth permits in the city shall enter into and execute a fireworks wholesaler distribution agreement with the city no later than April 4, 2014.

9. Fireworks Wholesaler Public Education Plan.

a. Each fireworks distributor/wholesaler supplying one or more nonprofit organizations who are permittees under this chapter, shall submit a public education plan to the city by no later than 5:00 pm on May 30, 2014.

7. **City Manager to administer fireworks program.** The City Manager is hereby directed to administer the Suisun City Fireworks Program; the City Council of the City of Suisun City authorizes the City Manager to execute any and all necessary documents pertaining to implementation of the Sales and the Use of Safe and Sane Fireworks in the City Suisun City.

PASSED AND ADOPTED at a regular meeting of the Suisun City Council, duly noticed and held on Tuesday the 17th day of December 2013 by the following vote:

AYES:	Councilmembers:	_____
NOES:	Councilmembers:	_____
ABSENT:	Councilmembers:	_____
ABSTAIN:	Councilmembers:	_____

WITNESS my hand and the seal of said City this 17th day of December 2013.

Linda Hobson, CMC
City Clerk

AGENDA TRANSMITTAL

MEETING DATE: December 17, 2013

CITY AGENDA ITEM: Council Adoption of Resolution No. 2013-__: Adopting the 4th Amendment to the Annual Appropriation Resolution No. 2013-31 to Appropriate \$22,000 to Provide Enhanced Information Technology (IT) Services to the Police Department.

FISCAL IMPACT: The recommendation is to move \$15,000 from the Organizational Contingency to augment the \$7,000 in payroll savings to increase the payment from PD to the IT Division to accommodate the loss of Sergeant White's IT services to PD.

BACKGROUND: The City IT Division maintains all computer servers, network topology, printers, workstations, telephones, etc. for all departments within the City. While employed by the City, Police Sergeant Andrew White had helped the IT Division with the maintenance of these items for the PD. Sergeant White had a high level of general computer knowledge and personal expertise with PD specific applications. Sergeant White has now left employment with the City. Therefore the work that he did to assist the IT Division with PD computer services must now be absorbed back into the IT Division.

STAFF REPORT: Due to the departure of Sergeant White, the IT Division must now absorb the work that he did within the Police Department in support of the very technical computer applications and systems in use in PD. The IT Systems Administrator will now be responsible for approximately an additional 30 workstations, 12 laptops in cars, 10 printers, 7 servers, 14 IP phones and other equipment. This will increase his workload and require that he receive some additional training. Additionally, the IT operations in PD require 24/7 support.

To provide time for staff to analyze the impacts of these changes and develop a permanent solution, a two-part temporary plan has been developed. First, a temporary part-time IT Intern will be hired to help the IT Administrator deal with the additional workload. Secondly, a support contract will be entered into with Cohero. This is the firm where Mr. White now works, and where he is one of its partners. Cohero will provide afterhours support for critical systems and will be a technical resource for the City's IT Administrator. Both proposed actions are within the authority of the City Manager. Since the replacement Police Sergeant has been hired at a lower step than Mr. White had achieved, there will be about \$7,000 in payroll savings in PD's budget. The recommendation is to move \$15,000 from Organizational Contingency to augment the \$7,000 in payroll savings to increase the payment from PD to the IT Division to accommodate the two actions listed above.

RECOMMENDATION: It is recommended that the City Council adopt Resolution No. 2013-__: Adopting the 4th Amendment to the Annual Appropriation Resolution No. 2013-31 to Appropriate \$22,000 to Provide Enhanced Information Technology (IT) Services to the Police Department.

PREPARED BY:

REVIEWED/APPROVED BY:

Amanda Dum, Management Analyst I 

Daniel Kasperson, Building & Public Works Director 

31

 Suzanne Bragdon, City Manager 

ATTACHMENTS:

1. Resolution No. 2013-___: Adopting the 4th Amendment to the Annual Appropriation Resolution No. 2013-31 to Appropriate \$22,000 to Provide Enhanced Information Technology (IT) Services to the Police Department.

RESOLUTION NO. 2013-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY
ADOPTING THE 4TH AMENDMENT TO THE ANNUAL APPROPRIATION
RESOLUTION NO. 2013-31 TO APPROPRIATE \$22,000 TO PROVIDE ENHANCED
INFORMATION TECHNOLOGY (IT) SERVICES TO THE POLICE DEPARTMENT**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUISUN CITY:

THAT Section 010 of Part III of the Annual Appropriation Resolution No. 2012-53 be and is hereby amended as follows:

		<u>Increase/ (Decrease)</u>
TO:	POLICE DEPARTMENT Police Administration, Police Support Services, Code Enforcement, Police Operations	\$ 15,000
TO:	NON-DEPARTMENTAL DEPARTMENT Organizational Reserve	\$ <u>(15,000)</u>
	TOTAL Section 010	<u>\$ -</u>

THAT Section 710 of Part III of the Annual Appropriation Resolution No. 2012-53 be and is hereby amended as follows:

		<u>Increase/ (Decrease)</u>
TO:	BUILDING & PUBLIC WORKS DEPARTMENT Information Technology, Capital Replacement Reserve	\$ <u>22,000</u>
	TOTAL Section 710	<u>\$ 22,000</u>

THAT account titles and numbers requiring adjustment by this Resolution are as follows:

	<u>Sources</u>	<u>Uses</u>
<u>General Fund</u>		
Appropriations:		
A/C No. 010-98155-1990 Organizational Contingency	\$ -	\$ (15,000)
A/C No. 010-90110-2350 Regular Salary	\$ -	\$ (7,000)
A/C No. 010-92140-2350 IT Interdepartmental Charges	<u>\$ -</u>	<u>\$ 22,000</u>
Total General Fund	<u>\$ -</u>	<u>\$ -</u>

Computer Network Maintenance Fund

Revenues:

A/C No. 710-78140-3320	IT Support	\$ 22,000	\$ -
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Appropriations:

A/C No. 710-90120-3320	Temporary Wages	\$ -	\$ 10,000
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A/C No. 710-91140-3320	Other Professional Services	\$ -	\$ 12,000
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Total Computer Network Maint. Fund		<u>\$ 22,000</u>	<u>\$ 22,000</u>
------------------------------------	--	------------------	------------------

THAT the purpose is to appropriate funds for the replacement of IT services formerly provided by Sgt. White.

ADOPTED AND PASSED at a regular meeting of the City Council of the City of Suisun City duly held on the 17th day of December, 2013 by the following vote:

AYES:	COUNCILMEMBERS
NOES:	COUNCILMEMBERS
ABSENT:	COUNCILMEMBERS
ABSTAIN:	COUNCILMEMBERS

WITNESS my hand and seal of the said City this 17th day of December 2013.

Linda Hobson, CMC
City Clerk

MINUTES

REGULAR MEETING OF THE SUISUN CITY COUNCIL

SUISUN CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY,

AND HOUSING AUTHORITY

TUESDAY, DECEMBER 3, 2013

7:00 P.M.

SUISUN CITY COUNCIL CHAMBERS -- 701 CIVIC CENTER BOULEVARD -- SUISUN CITY, CALIFORNIA

TELECONFERENCE NOTICE

Pursuant to Government Code Section 54953, Subdivision (b), the following Council/Successor Agency/Housing Authority meeting will include teleconference participation by Councilmember Jane Day from: 301 Morgan Street, Suisun City, CA 94585. This Notice and Agenda will be posted at the teleconference location.

(Next Ord. No. -- 725)

(Next City Council Res. No. 2013 -- 69)

Next Suisun City Council Acting as Successor Agency Res. No. SA2013 -- 04)

(Next Housing Authority Res. No. HA2013 -- 04)

ROLL CALL

Mayor Sanchez called the City Council to order at 7:00 PM with Council / Board Members Day (by teleconference), Hudson, Segala, Wilson, and Sanchez.

Pledge of Allegiance was led by Council / Board Member Wilson.

Invocation was given by City Manager Bragdon.

PUBLIC COMMENT

(Requests by citizens to discuss any matter under our jurisdiction other than an item posted on this agenda per California Government Code §54954.3 allowing 3 minutes to each speaker).

George Duke expressed concern about a ticket he received for parking his trailer on his property.

Debra Tavey, CEO of Fairfield-Suisun Chamber of Commerce, gave an update of Chamber activities emphasizing Suisun City businesses and reported on receiving a grant to assist young people to prepare for working.

REPORTS: (Informational items only.)

1. Mayor/Council -Chair/Boardmembers

Chamber Membership -- (Councilmember Segala) Council / Board Member Segala thanked Ms Tavey and Steve Lesser, Chairman of the Chamber Board and recommends the City join the Chamber.

Council / Board Member Day encouraged everyone to attend Christmas in Old Town celebration.

2. City Manager/Executive Director/Staff

CONFLICT OF INTEREST NOTIFICATION - None

(Any items on this agenda that might be a conflict of interest to any Councilmembers / Boardmembers should be identified at this time.)

PRESENTATIONS/APPOINTMENTS

(Presentations, Awards, Proclamations, Appointments).

3. Introduction and Swearing-in of new Suisun City Police Sergeant Jeff Henderson.

Police Chief Dadisho introduced Officer Henderson and City Clerk Hobson gave the oath of office.

CONSENT CALENDAR

City Council

4. Council Adoption of Resolution No. 2013 - 69: Authorizing the City Manager to Recruit and Appoint two Communications & Records Technician (CRT's) I/II – (Dadisho).

5. Council Adoption of Resolution No. 2013 - 70: Approving a Side Letter with the Suisun City Employees' Association (SCEA) to Extend the Memorandum of Understanding (MOU) to June 30, 2014 – (Anderson).

Joint City Council / Suisun City Council Acting as Successor Agency / Housing Authority

6. Council/Agency Approval of the Minutes of the Regular and/or Special Meetings of the Suisun City Council, Suisun City Council Acting as Successor Agency, and Housing Authority held on November 19, 2013 – (Hobson).

Council Member Wilson asked that Item 5 be pulled and also amended Minutes Item 5 to state she presented the Proclamation to Officer Aiello.

Motioned by Council / Board Member Wilson and seconded by Council / Board Member Segala to approve Consent Calendar Items 4 and 6 as amended, motion passed unanimously by the following roll call vote:

AYES: Council / Board Member Wilson, Segala Day, Hudson, Segala, Sanchez

NOES: Council / Board Member None

Motioned by Council / Board Member Wilson and seconded by Council / Board Member Segala to approve Consent Calendar Item 5 passed by the following roll call vote:

AYES: Council / Board Member Wilson, Segala, Day, Hudson, Sanchez

NOES: Council / Board Member None

GENERAL BUSINESS

City Council

7. Council Adoption of Resolution No. 2013-71: Updating Gaming Restrictions in Suisun City Municipal Code Section 15.10.160 F- (Wooden).

Motioned by Council Wilson and seconded by Mayor Sanchez to adopt Council Resolution No. 2013-71. Motion passed unanimously by the following roll call vote:

AYES: Council / Board Member Wilson, Sanchez, Day, Hudson, Segala

NOES: Council / Board Member None

PUBLIC HEARINGS

Suisun City Council Acting as Successor Agency

8. PUBLIC HEARING - (Continued from November 19, 2013)
Amending the Main Street West Disposition and Development Agreement (DDA) – (Garben).
- a. Agency Adoption of Resolution No. SA 2013-____: Approving and Authorizing the Execution of the Fourth Amendment to other Disposition and Development Agreement with Main Street West Partners, LLC.

Mayor Sanchez continued the public hearing to January 7, 2014.

ADJOURNMENT

There being no further business, Mayor Sanchez adjourned the Council at 8:05 PM.

Linda Hobson, CMC
City Clerk

AGENDA TRANSMITTAL

MEETING DATE: December 17, 2013

CITY AGENDA ITEM: Discussion and Direction regarding Membership in the Fairfield Suisun Chamber of Commerce.

FISCAL IMPACT: None at this time.

BACKGROUND: In 2011, the City Council directed staff to discontinue the City's membership in the Fairfield Suisun Chamber of Commerce. At that time, the City was paying \$1,000 per year from the General Fund. When the Council majority directed staff to discontinue paying, two Councilmembers expressed concerns and chose to personally pay dues for the City. That support has been funded at the level of \$460 per year; which included the Business Level Membership at \$420, as well as the 110% Club at \$40.

At the December 3, 2013 Council meeting, a majority of the Council expressed an interest in having the City begin paying for its membership again. Staff was asked to prepare an item for Council discussion and direction.

STAFF REPORT: Attachment 1 is a copy of the Chamber's Membership rates and associated benefits. Some of the additional benefits associated with the higher levels of membership appear that they might be more attractive to the private sector than to the public sector, but staff is seeking the Council's feedback about what level of membership participation, if any, the Council deems appropriate for the City.

The City of Fairfield participates at the \$5,000 President's Club membership level. Additionally, Chamber membership is a prerequisite to participation in Travis Regional Armed Forces Committee (TRAFC).

RECOMMENDATION: It is recommended that the City Council:

1. Receive a staff presentation on the options available; and
2. Provide staff with any direction.

ATTACHMENTS:

1. Fairfield-Suisun Chamber of Commerce Membership Rates.

PREPARED BY:

Ronald C. Anderson, Jr., Assistant City Manager

REVIEWED/APPROVED BY:

Suzanne Bragdon, City Manager

Fairfield-Suisun Chamber of Commerce Membership Rates

Thank you for your interest in the Fairfield-Suisun Chamber! Today, your business has the opportunity to join over 600 others who are currently enjoying the benefits of Chamber membership, from hot deals to nearly limitless exposure on our website. The Chamber is committed to promoting the business community and the entire area for the betterment of all!

Upon orientation as a Fairfield-Suisun Chamber of Commerce member, you will receive a plaque and decal sticker to display in your lobby. You will be announced on our website, have exposure in the latest upcoming quarterly magazine, The Voice, and have a table at a mixer of your choice all as a new member of the Chamber. Remember you are welcome to use your one free eSheet for your marketing announcement anytime during your first year. If you need help with the design, be sure to contact the Chamber who specializes in marketing for you! Take advantage of the opportunity to place your brochures and business cards in the Fairfield-Suisun Chamber lobby.

We will then hope you engage in our monthly mixers and your free ribbon-cutting; as well as our main committees! Our government, legislative, and business development opportunities are available to you as a member. At the Fairfield-Suisun Chamber we encourage members to participate in our hot deal which enhance member-2-member discounts and referrals.

All this with our Business Level Membership for only \$420*

We welcome you as a new member and are thrilled to share your business information throughout the community!

Business Level Package PLUS:	Chairman Club \$10,000	Presidents Club \$7,500	Directors Club \$5,000	Diamond Club \$3,000	Premier Club \$2,000	Citation Club \$1,000
Entry to Business After Hours at no cost	X	X	X	X	X	X
Up to five industry listings on website	X	X	X	X	X	X
Sponsor recognition in The Voice for Business	X	X	X	X	X	X
Premier listings on Chamber website	X	X	X	X	X	X
Six "Lunch and Learn" at no charge	3	3	3	3	2	1
Company's name displayed at all events	X	X	X	X	X	X
Increased Access to decision makers	X	X	X	X	X	X
Company name listed in every programs	X	X	X	X	X	X
Event Credits	\$1,800	\$1,500	\$1,200	\$1,000	\$500	\$250
Advertising lobby/online credits (excluding online banner ads)	\$250	\$250	\$200	\$150	\$150	
Enhanced listing on the web site	X	X	X	X	X	
Certificate of Origin at no additional cost	X	X	X	X		
Access to Chamber mailing labels	X	X	X	X		
Tee Signs at Golf Event	X	X	X	X		
Showcase listing in online membership directory	X	X	X			
Special recognition from Podium at selected events	X	X	X			
Free Room Rental (terms apply)	X	X	X			
Company logo or Company name on eVoice for Business	X	X	X			
Company logo on Business Service Directory on website	X	X				
Special Engraved glass membership recognition piece	X	X				
Lunch with President (on request)	X	X				
Special VIP seating at all major events	X	X				
Featured Testimonial Campaign	X					
Event Sponsor signage	X					
Personal Invite to I-80 Corridor/Capital events	X					
Lobby banner exposure	X					
Telephone hold advertising	X					
Flyer insert into Chamber membership packets	X					



*Non-profit Organizations receive membership at \$320

*2nd membership location at \$235

AGENDA TRANSMITTAL

MEETING DATE: December 17, 2013

CITY AGENDA ITEM: Council Discussion and Direction regarding the Potential Adoption of a Comprehensive Gaming Ordinance.

FISCAL IMPACT: It is estimated that it would cost between \$2,000 to \$10,000 in legal fees for the preparation of an ordinance, depending on its scope.

BACKGROUND: At the last City Council meeting on December 3, 2013, the City Council adopted a resolution to update its municipal code to conform to recent updates in gaming laws and regulations that the State has adopted concerning prohibited Internet sweepstakes gaming. In adopting that resolution, the City did not prohibit uses that are currently allowed by law and the City did not take any action to bar any Internet uses beyond those prohibited gaming uses per State law.

At the last meeting, the Council also directed that staff and the City Attorney bring back for discussion and direction the potential adoption of a comprehensive ordinance on gaming that includes specific prohibitions on Internet sweepstakes games. As one example of the type of ordinance that other local agencies have adopted, Councilmember Segala provided a copy of a Leon County, Florida Ordinance prohibiting Internet simulated gaming.

STAFF REPORT: The City Attorney and staff have analyzed the Leon County, Florida ordinance (Attachment 1) and other ordinances prohibiting business from operating Internet sweepstakes gaming (also known as simulated gaming) in California, including a proposed ordinance in the City of Hayward (Attachment 2) and an ordinance in the City of Dublin (Attachment 3).

The primary concern with regulating Internet cafés is that those types of businesses have been given protection by the courts under the First Amendment. This means that any regulation that impacts Internet cafés is evaluated under a very strict legal standard known as strict scrutiny, so that only the most narrowly tailored regulations are allowed under this strict legal standard.

For example, in *Vo v. City of Garden Grove* (2004) 115 Cal.App.4th 425, the Court of Appeal held that the City of Garden Grove's cyber cafés ordinance was unlawful in requiring a conditional use permit and providing wide discretion to staff to deny applications for cyber cafés.

Another legal issue is preemption. Suisun City is a general law city and it typically cannot regulate matters which the State has decided are regulated exclusively by State law. A charter city has greater latitude to regulate its own municipal affairs than a general law city and charter cities often adopt regulations that courts find are exempt from State preemption.

PREPARED BY:
REVIEWED/APPROVED BY:

Anthony R. Taylor, City Attorney
 Suzanne Bragdon, City Manager

Additionally, another legal issue is voter approval. Suisun City's Card Club ordinance was approved by the voters and that ordinance also expressly incorporates prohibitions in State law on other types of gaming beyond card games. Suisun City's Card Club ordinance provides, in pertinent part, that "the city council **by resolution** may adopt [updates to the code] to augment or clarify the regulations . . ." (emphasis added)

Elections Code Section 9217 provides, in pertinent part, that "[n]o ordinance that is either proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, *unless provision is otherwise made in the original ordinance.*" (emphasis added)

The above-referenced provision in the original Card Club ordinance allows for amendments by resolution. A vote of the people would likely be required if there is an overlap between what was approved by the voters in the Card Club ordinance and any comprehensive gaming ordinance that is adopted by the Council. That is a complex legal issue that we want the Council to be generally aware of that will be further evaluated based on the discussion and direction of the Council.

Leon County's Regulations on Internet Gaming

In reviewing Ordinance No 2011-13 (Attachment 1), regulating simulated gaming devices in Leon County, Florida, we noted that Leon County is a Charter County, which provides it with greater latitude to regulate Internet gaming within that County than a general law city like Suisun City. We are concerned that a court in California is less likely to uphold these types of regulations concerning a general law city.

Additionally, the Leon County ordinance contains a permitting process (Section 11-804) that allows for up to 10 permits for Internet gaming rather than banning all simulated gaming operations in Leon County.

While that ordinance is less restrictive than some ordinances which place a total ban on simulated gaming, we are nevertheless concerned that this permitting process in the Leon County ordinance is not narrowly tailored under *Vo v. City of Garden Grove, supra*, 115 Cal.App.4th 425. A court in California would likely not uphold the permitting requirement in the Leon County ordinance because Leon County did not adopt specific regulations limiting the scope of the discretion of its Chief Administrator to accept or reject permit applications.

Based on these two issues, we are concerned that the Leon County ordinance regulating simulated gaming would not be upheld by a court if adopted by the City.

City of Hayward's Ban on Simulated Gaming Devices in Internet Cafes.

We have also evaluated the proposed ordinance in the City of Hayward (Attachment 2). The City of Hayward is embroiled in federal litigation with current operators of cyber cafés in that city. The proposed ordinance attached hereto as Attachment 2 is an attempt by the City of

Hayward to address the concerns raised in that litigation. However, the proposed ordinance has not been approved by the Court at this time and whether or not the proposed ordinance in the City of Hayward will be upheld by the Court is presently unknown.

Unlike the Leon County Ordinance, the City of Hayward's proposed ordinance bans all simulated gaming devices in that city that are being used for commercial use. (Section 4-16.20)

The City of Hayward is a charter city, which gives it greater authority than a general law city to regulate municipal affairs. The City of Hayward has included Section 4-16.40 to address concerns about any conflict between its proposed simulated gaming ordinance and State law and made clear that State law controls over its ordinance in the event there is a conflict in State law and the terms of the City of Hayward's ordinance.

The main issue in the City of Hayward appears to be the application of the ordinance retroactively to current Internet cafes that claim to have vested rights to continue to operate. That issue is currently being litigated in the pending lawsuits involving the City of Hayward and existing cyber café operators. Since there are no Internet cafés currently operating in Suisun City, the issue of retroactivity and vested rights does not impact Suisun City.

Any person violating these municipal code provisions in the City of Hayward is guilty of a misdemeanor and their actions are deemed a public nuisance (Section 4-16.50).

Overall, we are concerned that the City of Hayward's proposed ordinance has not been approved by the Court and could be subject of further litigation before we know for certain whether or not that ordinance will be upheld by the Court.

City of Dublin's Ban On Internet Sweepstakes Cafés

We have also reviewed Chapter 5.50 of the City of Dublin Municipal Code concerning a ban on Internet sweepstakes cafés (Attachment 3). The City of Dublin is a general law city.

In Section 5.50.20 of its municipal code, the City of Dublin bans all Internet sweepstakes cafes. The way that this term is defined in the definition section (Section 5.50.010) of their municipal code is very broad and could be overbroad as a matter of law, as discussed below. This prohibition by the City of Dublin applies to both operators and owners of businesses where Internet sweepstakes cafés are operated. The City of Dublin also declares all Internet sweepstakes cafés a public nuisance.

Any person violating these municipal code provisions in the City of Dublin is guilty of a misdemeanor (Section 5.50.030).

In both Sections 5.50.010 and 5.50.040, the City of Dublin is very careful, as a general law city, to not regulate any gaming devices under State law and to not regulate any public offenses under the California Penal Code or any other State law.

However, given the Attorney General's Advisory on Internet Gaming that we previously provided the Council at the December 3, 2013 meeting, we are concerned what practical legal effect the City of Dublin's code section has if the State, through the Attorney General, has already indicated that these types of sweepstakes games are prohibited by State law. (Exhibit D)

We are unaware of any litigation involving the City of Dublin's above-referenced municipal code sections. There is the possibility that a court might find that, for example, the City of Dublin's definition of a "computerized sweepstakes device" in Section 5.50.010 of its municipal code is overbroad and could apply to many types of games for "entertainment" or "amusement" that are commonly operated at a Chuck-E-Cheese, Dave & Busters, or similar establishment.

Conclusion

We have not reviewed a city code at this time that we feel, based on the current state of the law, would provide the City with sufficient assurances that the City would be likely to prevail in litigation if that ordinance were challenged. As municipal code sections regulating Internet gaming continue to be addressed by courts in connection with litigation involving other cities, a clear legal standard should emerge from those cases that would provide the City with sufficient clarity on the types of ordinances that would survive legal scrutiny.

At this time, we do not recommend that the City adopt an ordinance regulating Internet gaming or take any further steps beyond the resolution that was adopted at the last Council meeting until such time that the law is more well-settled by the courts concerning municipal authority to regulate Internet gaming.

RECOMMENDATION: It is recommended that the City Council:

1. Receive a staff presentation on the options available; and
2. Provide staff with any direction.

ATTACHMENTS:

1. Leon County, Florida, Ordinance No. 2011-13 Regulating Simulated Gaming Devices.
2. City of Hayward Staff Report & Proposed Ordinance.
3. City of Dublin, Chapter 5.50, Internet Sweepstakes Cafes.
4. Attorney General Advisory on Sweepstakes Games.

*Leon County
Florida*

*Maybe
call it
5-11*

ORDINANCE NO. 2011- 13

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AN ORDINANCE REGULATING THE USE AND LICENSING OF SIMULATED GAMBLING DEVICES; ESTABLISHING A NEW ARTICLE XXIII ENTITLED "REGULATION OF SIMULATED GAMBLING DEVICES" OF CHAPTER 11 OF THE LEON COUNTY CODE OF LAWS, TO REGULATE THE USE OF SIMULATED GAMBLING DEVICES; ESTABLISHING EXEMPTIONS; PROVIDING FOR LEGISLATIVE AUTHORIZATION; PROVIDING FOR DEFINITIONS, REGULATIONS FOR PERMITTING AND FEES, INSPECTIONS, SIGNAGE REQUIREMENTS, LIMITATIONS ON THE OPERATIONS OF THE BUSINESSES, SAFETY AND SECURITY REQUIREMENTS; PROVIDING FOR ENFORCEMENT, PENALTIES FOR VIOLATIONS AND INJUNCTIVE RELIEF; PROVIDING FOR CONFLICTS OF LAW; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, in the last decade, establishments allegedly operated pursuant to sections 849.0935 and 849.094, Florida Statutes, have created problematic issues for local law enforcement authorities, complicated by limitations of resources and difficulty of enforcement of state law; and

WHEREAS, sections 849.0935 and 849.094, Florida Statutes, authorize drawings by chance and game promotions (also known as sweepstakes); and

WHEREAS, confusion has existed for some years as to the interpretation and enforcement of these statutes as applied to game promotions utilizing a computer or other electronic device to reveal a prize, and which grant an exemption from the statutory framework prohibiting illegal gambling activities; and

1 WHEREAS, computer or video displays of spinning reels or other simulations of a game
2 or games ordinarily played on a slot machine, or in a casino or otherwise in connection with
3 gambling and which show the results of raffles, sweepstakes, contests or other promotions
4 (hereinafter collectively referred to in these recitals as "simulated gambling devices") were not
5 among the types of pari-mutuel pools authorized by law as of the effective date of the 1968
6 Florida Constitution; and,

7 WHEREAS, there is presently in Leon County an increasing proliferation of
8 establishments that utilize simulated gambling devices for commercial gain; and,

9 WHEREAS, local law enforcement authorities have limited resources with which to
10 monitor this industry, and a regulatory fee will better fund enforcement efforts and ensure
11 compliance with the law; and

12 WHEREAS, the County has evaluated the costs of permitting and enforcement, and has
13 determined that the permitting fees and revenues will not exceed such costs; and

14 WHEREAS, an ordinance regulating the use of electronic equipment in the conduct of
15 drawings by chance and game promotions will protect the public welfare; and

16 WHEREAS, pursuant to Section 125.01, Florida Statutes, and the Leon County Code of
17 Ordinances (the "Leon County Code"), and as a Charter County, the County may regulate this
18 activity for the health, safety, and welfare of the community; and

19 WHEREAS, the Board of County Commissioners of Leon County, Florida (the "Board"),
20 desiring to protect individual rights, while at the same time affording opportunity for the fullest
21 development of the individual, and promoting the health, safety, education, and welfare of the
22 people, including the elderly and economically disadvantaged, and the children of Leon County
23 who are our most precious and valuable resource, finds that Leon County has a compelling

1 interest in protecting its citizens, and in particular its elderly, economically disadvantaged, and
2 children from certain activities and influences which can result in irreparable harm, including
3 simulated gambling devices; and,

4 WHEREAS, the Board recognizes that while the State of Florida has authorized slot
5 machine gaming at licensed facilities in certain areas outside of Leon County, it also recognizes
6 that establishments that utilize simulated gambling devices, including but not limited to devices
7 that simulate slot machines, can deceive members of the public, including the elderly, the
8 economically disadvantaged, and children, into believing that they are engaging in a lawfully
9 permitted gaming activity; and,

10 WHEREAS, some operations display images of gambling or slot machines in their
11 advertisements and signage suggesting the presence of illegal activity; and those activities should
12 be controlled and regulated; and,

13 WHEREAS, it is necessary and in the public interest to ensure that businesses portray
14 themselves in a manner not likely to mislead the public; and,

15 WHEREAS, the Board is also charged with the responsibility of protecting and assisting
16 its citizens who suffer from compulsive or problem gambling behavior; and,

17 WHEREAS, there is a direct relationship between these establishments that utilize
18 simulated gambling devices and disturbances of the peace and good order of the community, and
19 the concurrence of these activities is hazardous to the health and safety of the persons in
20 attendance; and,

21 WHEREAS, in order to ensure the uniform enforcement of existing laws, to preserve the
22 public peace and good order, and to safeguard the health, safety, morals and welfare of the

1 community and citizens thereof, it is necessary and advisable to regulate the use of simulated
2 gambling devices; and,

3 WHEREAS, in terms of the negative impact recited herein, there is little or no material
4 difference between the effect of allowing slot machines and allowing the use of simulated
5 gambling devices;

6 BE IT ORDAINED by the Board of County Commissioners of the County of Leon,
7 Florida, as follows, that:

8 **Section 1.** Chapter 11 of the Leon County Code of Laws is hereby amended by
9 enacting a New Article XXIII to be entitled "Regulation of Simulated Gambling Devices," which
10 shall read as follows:

11

12 **REGULATION OF SIMULATED GAMBLING DEVICES**

13 **Sec. 11-800. Legislative Authorization.** This article is enacted in the interest of the
14 public health, peace, safety, morals and general welfare of the citizens and inhabitants of Leon
15 County, Florida, pursuant to Article VIII, Section 1(g), Florida Constitution and Section 125.01,
16 Florida Statutes, and the Charter of Leon County, Florida. It is established to regulate the use of
17 simulated gambling devices to effect giveaways through drawings by chance, sweepstakes or
18 game promotions that do not otherwise violate Florida law.

19 **Sec. 11-801. Definitions.** The following definitions apply to this Chapter 11, Article
20 XXIII:

21 (a) "Person" means an individual, association, partnership, joint venture, corporation,
22 or any other type of organization, whether conducted for profit or not for profit, or a director,

1 executive, officer or manager of an association, partnership, joint venture, corporation or other
2 organization.

3 (b) "Applicant" means the Operator for whom a permit application is submitted and
4 in the name of whom, if the permit is granted, the drawing by chance conducted in connection
5 with the sale of a consumer product or service, sweepstakes, or game promotion shall be
6 conducted.

7 (c) "Conviction" means a determination of guilt in a criminal case by a court of
8 competent jurisdiction, regardless of whether the defendant pled guilty, no contest, or *nolo*
9 *contendere*, or was found guilty by a judge or jury.

10 (d) "Simulated gambling device" means any device that, upon connection with an
11 object, is available to play or operate a computer simulation of any game, and which may deliver
12 or entitle the person or persons playing or operating the device to a payoff; or any electronic
13 device that is used or adapted for use to conduct and/or reveal the results of a drawing by chance
14 conducted in connection with the sale of a consumer product or service, sweepstakes or game
15 promotions that display results by simulating a game or games ordinarily played on a slot
16 machine. The following rules of construction apply to this definition of "simulated gambling
17 device":

18 (1) The term "device" means any mechanical or electrical contrivance,
19 computer, terminal, video or other equipment that may or may not be capable of downloading
20 games from a central server system, machine, computer or other device or equipment. The term
21 "device" also includes any associated equipment necessary to conduct the operation of the
22 device.

1 (2) The term "upon connection with" means insertion, swiping, passing in
2 range, or any other technical means of physically or electromagnetically connecting an object to
3 a device.

4 (3) The term "object" means a coin, bill, ticket, token, card or similar object,
5 obtained as a bonus or supplement to another transaction involving the payment of consideration.

6 (4) The terms "play or operate" or "play or operation" includes the use of
7 skill, the application of the element of chance, or both.

8 (5) The term "computer simulation" includes simulation by means of a
9 computer, computer system, video display, video system or any other form of electronic video
10 presentation.

11 (6) The term "game" includes slot machines, poker, bingo, craps, keno, any
12 other type of game ordinarily played in a casino, a game involving the display of the results of a
13 raffle, sweepstakes, drawing, contest or other promotion, lotto, sweepstakes, and any other game
14 associated with gambling or which could be associated with gambling, but the term "game" does
15 not necessarily imply gambling as that term may be defined elsewhere.

16 (7) The term "payoff" means cash, monetary or other credit, billets, tickets,
17 tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of
18 value whatsoever, whether made automatically from the machine or manually.

19 (8) The use of the word "gambling" in the term "simulated gambling device"
20 is for convenience of reference only. The term "simulated gambling device" as used in this
21 article is defined exclusively by this subsection and does not incorporate or imply any other legal
22 definition or requirement applicable to gambling that may be found elsewhere.

1 (e) "Simulated gambling facility" means the house, building, edifice, or location,
2 along with its grounds in which simulated gambling devices are used, operated, or stored.

3 (f) "Slot machine" has the same meaning as specified in Section 551.102, Florida
4 Statutes or as amended from time to time.

5 (g) "De Minimis Activity Facility" means a facility operated by an organization
6 exempt from federal taxation under Section 501(c) of the Internal Revenue Code and with five
7 (5) or fewer electronic or mechanical devices that are used to conduct a drawing by chance,
8 sweepstakes or game promotion utilizing those electronic or mechanical devices, all of which
9 devices were in operation before the passage of this Ordinance at that facility.

10 (h) The term "minor" means any individual under the age of 18 years.

11 (i) The term "Senior citizen's center" means any public or private center, that is
12 organized and operated exclusively to provide recreational or social services for persons who are
13 fifty-five years of age or older.

14 (j) The term "Security personnel" includes any person who either is a sheriff, deputy
15 sheriff, marshal, deputy marshal, or a police officer or other person authorized by law who holds
16 a Class "G" license issued by the Florida Department of Agriculture & Consumer Services and
17 who is hired to provide security for the simulated gambling facility.

18 (k) "County Administrator" shall mean the Leon County Administrator or his or her
19 designee.

20 (l) "Operator" means any Person in whose name a drawing by chance conducted in
21 connection with the sale of a consumer product or service, sweepstakes, or game promotion that
22 utilizes Electronic Equipment is conducted.

1 (m) "Permit Holder" means the Operator in whose name the County Administrator
2 has issued a permit under this Ordinance.

3 (n) "Rules" means the restrictions and covenants governing the operation of the
4 drawing by chance, sweepstakes, or game promotion.

5 **Sec. 11-802. Area of Enforcement.** The Board is acting herein as the governing body
6 for Leon County, Florida, and this Part shall be effective within the boundaries of Leon County,
7 Florida.

8 **Sec. 11-803. General Prohibition.** Except as expressly regulated and permitted by this
9 Ordinance, no Person, other than a De Minimis Activity Facility as defined herein, shall conduct
10 a drawing by chance pursuant to s. 849.0935, Florida Statutes, sweepstakes, or game promotion
11 pursuant to s. 849.094, Florida Statutes, or any other game of chance on any simulated gambling
12 device provided by an operator of the game of chance which displays the result by simulating a
13 game or games ordinarily played on a slot machine.

14 **Sec. 11-804. Permitting and Fees.**

15 (a) *Permit Required.* No person shall conduct or operate a simulated gambling
16 facility (facility) in Leon County without having first obtained a permit from the County
17 Administrator for each facility. Each permit is valid only for the Operator and the facility named
18 in the permit. Each permit is valid for one year. No permit shall be assignable or transferable,
19 either as to person, operator, facility, or location.

20 (b) *Initial Permits.* Within sixty (60) days of enactment of this Ordinance, all current
21 Operators who have been operating a simulated gambling facility on June 15, 2011, and which
22 are subject to this Ordinance, and which apply for, facially qualify for, and pay required fees for
23 a permit, shall be granted a permit for the facility as provided for in this section. Each such

1 Operator shall, in addition to the requirements set forth herein as part of the application, provide
2 proof satisfactory to the County Administrator that the Operator was lawfully operating a
3 simulated gambling facility, as of June 15, 2011, which such evidence may include a current and
4 valid lease, rental agreement, purchase and sale contract, bill of sale or receipt indicating the
5 purchase, lease or use of simulated gambling devices for that particular facility, or other
6 certificates, permits, licenses, receipts or filings issued by the Federal, State or local government
7 indicating proof of the uses contemplated by this Ordinance.

8 (c) *Permits Limited.* Unless greater than ten (10) permits have been issued as
9 provided for in subsection (b) above, the County Administrator shall limit the total number of
10 permits issued pursuant to this section to ten (10). After the permits authorized by subsection
11 (b) are issued, no permits for new businesses shall be issued unless the issuance of the permit
12 will not cause the total number of permits issued to exceed ten (10) permits. All qualifying
13 Operators who receive an initial permit as provided for in subsection (b) shall be entitled to
14 renew their permit if they otherwise qualify and pay required fees.

15 (d) *Application Materials Required for Permit.*

16 (1) Applicant shall file with the County Administrator the following
17 materials:

18 (i) a copy of Applicant's proposed Rules governing the drawing by
19 chance, sweepstakes or game promotion which includes the odds of winning and the prize table;

20 (ii) for a sweepstakes or game promotion operating pursuant to s.
21 849.094, Florida Statutes, a copy of Applicant's certification of a bond or trust account provided
22 to the Florida Department of Agriculture and Consumer Services, regardless of aggregate prize

1 amount; non-profit organizations operating pursuant to s. 849.0935, Florida Statutes are exempt
2 from this provision.

3 (iii) a complete list of all products and services offered and the prices
4 charged therefor;

5 (iv) for every principal, officer, shareholder, and director of the
6 Operator, a fingerprint card and letter certifying the results of a criminal background check
7 generated by the Leon County Sheriff's Office or Florida Department of Law Enforcement; and

8 (v) A certification that the computer software that is used by the
9 Operator to conduct a drawing by chance or game promotion in connection with the sale of a
10 consumer product or service has been tested by an independent testing laboratory that has
11 verified that it is not a slot machine as defined by Florida law.

12 (2) Applicant shall provide a sworn affidavit containing the following:

13 (i) the identity of the Applicant and if the Applicant is:

14 A. an individual, his name, residence address, and date of
15 birth;

16 B. an unincorporated organization, the names, dates of birth,
17 and residence addresses of its principals; or

18 C. a corporation, the corporate name, state of incorporation
19 and the names, dates of birth, and residence addresses of its
20 principal officers, directors, and shareholders; or

21 D. a limited liability company, the company name, state of
22 incorporation and the names, dates of birth, and residence
23 addresses of its members and managers;

1 (ii) a description, including the number of simulated gambling devices;
2 (iii) a statement of whether any of the individuals listed has, within the
3 seven-year period immediately preceding the date of the application, been convicted of any
4 felony under the laws of Florida, the United States, or any other state, and, if so, the particular
5 criminal act involved and the place of conviction;

6 (iv) the street address of the simulated gambling facility;

7 (v) if the Applicant is a branch, chapter, lodge, or other local unit of a
8 charitable organization or corporation, the name of the primary organization and the street
9 address of its principal office; and

10 (vi) the name and address of an individual in Leon County who is
11 authorized to receive notices from the County;

12 (vii) a statement certifying that all information on the application and
13 any attachments thereto is true and that the Applicant understands that any misstatement of
14 material fact in the application will result in the denial of the permit or, if it has been issued, in
15 the suspension or revocation of the permit; and

16 (3) Applicant shall file with County Administration the following:

17 (i) a copy of the sworn affidavit described in subsection (2) above;

18 (ii) a complete list of all products and services offered and the prices
19 charged therefor;

20 (iii) a verification that the prices charged for the products and/or
21 services constitute a reasonable market value; and

22 (iv) a copy of the certification report issued by an independent testing
23 laboratory that describes and verifies the manner in which the software works.

1 (e) Application Fee. Each Applicant shall remit a non-refundable application fee of
2 \$500.00.

3 (f) Review of Application.

4 (1) Duration of Review. Within sixty (60) days of receipt of an Applicant's
5 completed permit application, the County Administrator or a designee shall grant or deny
6 the application. If any principal, officer, shareholder or director of the Operator has a
7 pending criminal case for an enumerated crime the County Administrator may delay its
8 grant or denial of the permit until sixty (60) days after the final judgment.

9 (2) Eligibility of Applicant. An Applicant is ineligible for a permit if:

10 (i) within seven years of the date of the application, Applicant has
11 been convicted of any felony under the laws of Florida, the United States, or any other state
12 unless said violation would not constitute a crime in Florida;

13 (ii) within three years of the date of the application, has had a permit
14 under this Ordinance revoked or been convicted for a violation of this Ordinance;

15 (iii) the prices to be charged for the product(s) or service(s) offered, as
16 listed on the permit application, do not constitute a reasonable market value; or

17 (iv) the application materials are incomplete or untruthful;

18 The County Administrator shall deny the permit for any of the above reasons. If an Applicant
19 satisfies all permit filing requirements and is not ineligible, the County Administrator shall
20 approve the application.

21 (g) Denial of Permit. An Applicant whose permit application is denied may reapply
22 at any time by completing all steps of the application procedure, including payment of a new
23 application fee.

1 (h) Permit fees. The permit fee for simulated gambling facility shall be in accordance
2 with the following schedule:

3 (1) 1 to 20 devices - \$2,500.00

4 (2) 21 to 40 devices - \$5,000.00

5 (3) 41 to 60 devices - \$7,500.00

6 (4) 61 to 80 devices - \$10,000.00

7 (5) 81 to 100 devices - \$12,500.00

8 (i) Inspection fee. \$50.00 per simulated gambling device will be assessed annually.

9 (j) Renewal of Existing Permit. Existing permits shall be renewed upon compliance
10 with this Ordinance, notwithstanding the total number of permits issued. The Permit Holder
11 shall apply for the renewal permit no later than sixty (60) days and no sooner than one-hundred
12 twenty (120) days before the expiration of the current permit. The renewal permit application
13 shall include all the materials and the application fee required for the issuance of an original
14 permit, and shall include evidence of current lawfully existing operations consistent with the
15 requirements of this Ordinance. Renewal permit applications shall be processed using the same
16 procedure and standards as required for review of an original permit application but shall be
17 processed within 30 days. Upon approval, Renewal permit applicants shall pay the same fees as
18 set forth in subsection (h) above and said renewals shall be deemed denied if an eligible
19 Applicant fails to pay these fees on or before the thirtieth (30th) day after approval, availability,
20 and notice of the permit authorization.

21 (k) Lost or destroyed permit. The fee for a replacement permit shall be fifty dollars
22 (\$50.00)

1 (1) Revocation of Permit. The County Administrator or a designee may revoke a
2 permit for violation of any provision of this Ordinance or due to a Permit Holder's cessation of
3 the use of simulated gambling devices during its normal business hours for at least fourteen (14)
4 consecutive days. Prior to revocation, the County Administrator shall provide to the Permit
5 Holder, through their individual in Leon County authorized to accept notices from the County,
6 the following:

7 (1) A written notice of intent to revoke the permit,

8 (2) A fourteen (14) calendar day opportunity to cure the alleged violation, and

9 (3) An opportunity to be heard prior to revocation.

10 Revocation shall not take place before twenty one (21) days after receipt of a notice of
11 revocation is delivered to the Permit Holder and opportunities to cure and to be heard are
12 provided. The decision to revoke a permit shall be considered non-final agency action subject to
13 appellate review by the Board of Adjustment and Appeals ("BOAA"). The decision of the
14 BOAA shall constitute final agency action subject to judicial review. Any appeal of a revocation
15 decision shall be made within fifteen (15) calendar days of receipt of a notice of revocation by
16 filing a written notice of appeal with the Board of Adjustment and Appeals, along with an appeal
17 fee of \$150.00. Failure to file written notice of appeal and appeal fee within the prescribed time
18 period constitutes a waiver of the right to appeal.

19 **Sec. 11-805. Location.** All simulated gambling facilities shall be located in appropriate
20 commercial zoning districts, but in no event may such a simulated gambling facility be located
21 within 500 feet of any real property comprising a child care facility as defined in Section
22 402.302 Florida Statute or as may be amended from time to time, or a public or private
23 elementary, middle, secondary school, or any private or public college, university, or other post-

1 secondary educational institution, or within 500 feet of real property comprising a church, a
2 county park, a community center, a senior citizen center, or publicly owned recreational facility,
3 nor may such a simulated gambling facility be closer than 5,000 feet from another such
4 simulated gambling facility. The distance measurements shall be from the point of edge of
5 property to the next closest edge of property.

6 **Sec. 11-806. Inspections.**

7 During business hours, the County Administrator, the Leon County Sheriff's Office, or
8 their agents may enter the facility without any warrant for purposes of inspecting all areas of the
9 facility, to ensure compliance with the provisions of this Ordinance or any other ordinances
10 within their authority, including but not limited to the right to enter the facility and to select and
11 remove any simulated gambling device to inspect, test and/or have tested to determine
12 compliance with this Ordinance.

13 **Sec. 11-807. Signage Requirements.**

14 (a) Exterior of Facility. Exterior signage shall be limited to the advertisement of the
15 consumer product and/or service sold at the facility. No signs shall be posted on the exterior of
16 any simulated gambling facility that suggest gambling takes place or display any image
17 commonly associated with slot machines. All signage shall be further subject to all applicable
18 Leon County Code regulations regarding signs.

19 (b) Interior of Facility. The Permit Holder shall conspicuously post the name of the
20 Permit Holder, a description of all products and services sold, and the complete rules for all
21 sweepstakes or game promotions at the main counter. Rules for all promotions shall include the
22 following language in at least 26-point font: "State and local law prohibits this establishment
23 from requiring an entry fee, payment, or proof of purchase as a condition of participating. No

1 donation or contribution is required. You may obtain free entries upon request from any
2 employee on the premises.” The Permit Holder shall also post a sign which shall include the
3 following language in at least 26-point type: “The video displays are for amusement and
4 entertainment only. The video displays do not determine the result of your sweepstakes entries.”
5 The Permit Holder shall affix signage that shall include the following language in at least 10
6 point type on each simulated gambling device: “The video displays are for amusement and
7 entertainment only. The video displays do not determine the result of your sweepstakes entries.”
8 A complete copy of the Rules, prize tables, and odds of winning shall be made available on
9 request without cost. Any consumer product or service offered for sale shall be identified by
10 description and price by conspicuous posting. A copy of the permit shall be posted
11 conspicuously at the main counter or at the entrance.

12 **Sec. 11-808. Limitations on Operation of Business.**

13 (a) *Alcoholic Beverages.* Permit Holders shall not sell or permit any individual to
14 consume or possess any alcoholic beverages within any simulated gambling facility.

15 (b) *Minors.* Minors are prohibited from entering any simulated gambling facility. It is
16 the responsibility of the owner and employees of the facility to ensure no minors are present
17 within the facility. A person’s ignorance of minor’s age, a minor’s misrepresentation of his or
18 her age, a bona fide belief of minor’s age may not be raised as a defense for violation of this
19 section.

20 (c) *Limitation on Simulated Gambling Devices.* Permit Holders shall not operate
21 more than one hundred (100) simulated gambling devices except that Permit Holders operating
22 on or before June 15, 2011 in Leon County may not operate more simulated gambling devices
23 than were in operation on June 15, 2011, and any reduction following the enactment of this

1 Ordinance in devices by such Permit Holders shall be permanent. Replacing an existing
2 simulated gambling device due to a defect or upgrade shall not be deemed a reduction pursuant
3 to this subsection, provided that such replacement occurs within thirty (30) days.

4 (e) Hours of Operation. No simulated gambling facility shall be open for business
5 between the hours of 2:00 a.m. and 7:00 a.m.

6 (f) Additional Restrictions. No simulated gambling facility shall:

7 (1) design, engage in, promote, or conduct a game wherein the winner may be
8 predetermined or the game may be manipulated or rigged;

9 (2) arbitrarily remove, disqualify, disallow or reject any entry;

10 (3) fail to award any prize offered;

11 (4) print, publish, or circulate literature or advertising material which is false,
12 deceptive or misleading;

13 (5) require an entry fee, payment or proof of purchase as a condition of
14 entering; or

15 (6) cover facility windows with opaque or reflective window tinting.

16 (g) Additional Requirements. An Operator of a simulated gambling facility shall:

17 (1) maintain a list of the names and addresses of all persons who have won
18 prizes which have a value of more than \$25.00, the value of such prizes, and the dates when the
19 prizes were won and keep the list at the facility for one (1) year;

20 (2) maintain a trust account or bond in an amount equal to the total announced
21 value of the prizes offered or \$50,000.00, whichever is less.

22 (3) display at the point of sale contact information related to gambling
23 addiction treatment.

1 (h) *Felony Convictions.* No person who has at any time in the previous 7 years been
2 convicted of, or is currently under indictment or information for, any felony, shall be eligible to
3 operate or manage a simulated gambling facility.

4 **Sec. 11-809. Safety and Security Requirements.**

5 The Permit Holder shall maintain the following security devices and standards:

6 (a) *video surveillance.* All such simulated gambling facilities shall install a video
7 surveillance system for both the entrance and parking area to the facility and for the cashier area
8 of the simulated gambling facility as well as the interior of the simulated gambling facility. The
9 video surveillance system shall be maintained and kept in working order at all times. The video
10 surveillance system recordings, whether by film or digital, shall be kept for a period no less than
11 fourteen (14) days and shall be open and accessible to representatives of Leon County, including
12 the Leon County Sheriff's Office, at all times upon reasonable notice. a security camera system
13 capable of recording and retrieving an identifiable image;

14 (b) a drop safe or cash management device for restricted access to cash receipts;

15 (c) at all public entrances to the facility, a conspicuous notice stating cash register
16 contains a limited amount of cash;

17 (d) a cash management policy limiting cash on hand;

18 (e) a silent alarm system capable of notifying law enforcement;

19 (f) Monday thru Friday during the hours of 5 p.m. to close and during the entire
20 business day on Saturday and Sunday, maintain at least one licensed, armed security guard
21 holding a Class "G" license issued by the Florida Department of Agriculture & Consumer
22 Services; and

1 (g) Permit Holder must maintain reasonable safety standards, including but not
2 limited to, lighted parking areas.

3 (h) may not cover facility windows with opaque or reflective window tinting, posters,
4 flyers, or anything else that obstructs the exterior view into the interior of the facility.

5 Sec. 11-810. Addition Information. All simulated gambling facilities shall be
6 required to have displayed in a conspicuous location near cashier, flyers, pamphlets or leaflets
7 that contain a current list of the names, addresses, and phone numbers of local Gambling
8 Anonymous facilities and treatment centers.

9 Sec. 11-811. Exemptions.

10 (a) This Part does not prohibit an individual's personal, recreational, and non-
11 commercial ownership, possession, play, operation or use of a device which could be construed
12 to be a simulated gambling device.

13 (b) This Part does not prohibit the ownership, possession, play, operation or use of
14 any device expressly permitted by the Florida Statutes and not otherwise prohibited by the
15 Florida Constitution, except that devices permitted by Article X, Section 23 of the Florida
16 Constitution and Chapter 551, Florida Statutes, in Broward and Miami-Dade County only are not
17 permitted by this Part.

18 (c) This Part does not prohibit a religious or charitable organization from conducting
19 a fund raising activity involving gaming, provided the religious or charitable organization does
20 not conduct the activity more than twice in one (1) calendar year, the organization provides
21 advance written notice to the Leon County Sheriff of the date, time, place, and nature of such
22 activity and who will be conducting it, and the activity is not otherwise unlawful.

1 Sec. 11-812. Conflict with State Law. Nothing in this Part is intended to conflict with
2 the provisions of the Florida Constitution or Chapter 849, Florida Statutes, concerning gambling.
3 In the event of a direct and express conflict between this Part and either the Florida Constitution
4 or Chapter 849, Florida Statutes, then the provisions of the Florida Constitution or Chapter 849,
5 Florida Statutes, as applicable, control.

6 Sec. 11-813. Applicability to Municipalities. The provisions of this Part are to be
7 applied and enforced within all unincorporated areas of Leon County as well as within all
8 incorporated areas of Leon County to the extent that there are no conflicting municipal
9 regulations. In the event a municipal regulation conflicts with this Part then the municipal
10 regulation will prevail within the jurisdiction of that municipality.

11 Sec. 11-814. Enforcement; Penalties.

12 (a) Any person who violates this article shall be punished as provided in section 1-9.
13 Each day the violation exists shall constitute a separate violation for the purposes of this
14 Ordinance and shall be punishable as such.

15 (b) The Leon County Attorney's Office is authorized to pursue temporary or
16 permanent injunctive relief or any other legal or equitable remedy authorized by law in courts of
17 competent jurisdiction to cure, remove or end any activity which violates this article.

18 (c) Permittees shall have a private right of action to pursue all legal and equitable
19 remedies necessary to ensure full compliance with this Ordinance against any other permittee,
20 including but not limited to injunctive relief.

21 Secs. 11-815 – 11-825. Reserved.

1 **Section 2.** Conflicts.

2 All ordinances or parts of ordinances in conflict with the provisions of this ordinance are
3 hereby repealed to the extent of such conflict, except to the extent of any conflicts with the
4 Tallahassee-Leon County Comprehensive Plan as amended, which provisions shall prevail over
5 any parts of this ordinance which are inconsistent, either in whole or in part, with the said
6 Comprehensive Plan.

7 **Section 3.** Severability.

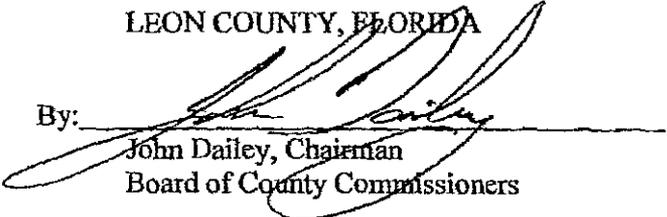
8 If any provisions or portion of this Ordinance is declared by any court of competent
9 jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and
10 portions of this Ordinance shall remain in full force and effect.

11 **Section 4.** Effective Date.

12 This ordinance shall have effective date of June 15, 2011; however, enforcement of the
13 ordinance shall not commence until September 1, 2011, except that no facility not already
14 owning, operating, or housing a simulated gambling device shall be permitted on or after June
15 15, 2011.

16 DONE, ADOPTED AND PASSED by the Board of County Commissioners of Leon
17 County, Florida this 14th day of June, 2011.

18 LEON COUNTY, FLORIDA

19 By: 

20 John Dailey, Chairman
21 Board of County Commissioners

1 ATTESTED BY:
2 BOB INZER, CLERK OF THE COURT
3 LEON COUNTY, FLORIDA



4 By: [Signature]
5 Bob Inzer, Clerk of Court
6 Leon County, Florida

7 APPROVED AS TO FORM:
8 COUNTY ATTORNEY'S OFFICE
9 LEON COUNTY, FLORIDA

10 By: [Signature]
11 Herbert W. A. Thiele, Esq.
12 County Attorney



DATE: December 10, 2013

TO: Mayor and City Council

FROM: Director of Development Services
City Attorney

SUBJECT: Introduction of Ordinance Amending the Hayward Municipal Code by Adding Article 16 to Chapter 4 Regarding Simulated Gambling Devices and Proposed Revisions to the Definitions Section of the Hayward Zoning Ordinance (Section 10-1.3500); the Project is Exempt from Environmental Impact Analysis, per the California Environmental Quality Act; Text Amendment Application No. PL-2013-0388 TA; Applicant: City of Hayward

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment I), making required findings and determining the proposed amendments are exempt from environmental impact analysis per California Environmental Quality Act (CEQA) Guidelines Sections 15321 (exemption for governmental regulatory activities) and 15061(b)(3) (projects clearly not impacting the environment); and introduces the attached two ordinances (Attachments II and III), adding Article 16 to Chapter 4 related to simulated gambling devices and amending Hayward Municipal Code Section 10-1.3500 (Definitions), related to internet cafes.

SUMMARY

Staff recommends revisions to the City's regulations to address businesses that provide internet access to customers, and to distinguish between computer gaming that does not include cash prizes from the use of simulated gambling devices that include cash prizes. Businesses that provide simulated gambling devices attract undesirable activities that have significant negative impacts on the surrounding community.

BACKGROUND

On February 19, 2013, the City Council enacted Ordinance No. 13-03 ("Ordinance") as an interim urgency ordinance pursuant to California Government Code §65858. The express purpose of the ordinance was to establish a temporary moratorium on the development, establishment, and operation of Computer Gaming and Internet Access Businesses in the City of Hayward. A Computer Gaming and Internet Access Business was defined in the moratorium ordinance as an "establishment that provides one or more computers or other electronic devices for access to the World Wide Web, Internet, e-mail, video games, or computer software programs that operate alone

or are networked (via LAN, WAN or otherwise) or that function as a client/server program, and which seeks compensation or reimbursement in any form from users.”

The ordinance imposed a 45-day moratorium on the issuance of all City approvals, including business licenses, use permits, variances, sign permits, building permits, and zoning text amendments for Computer Gaming and Internet Access Businesses. The ordinance also declared the establishment, maintenance, or operation of a Computer Gaming and Internet Access Business within the City limits of Hayward as a public nuisance. The moratorium was subsequently extended through the enactment of Ordinance No. 13-05 on April 2, 2013, after a duly noticed public hearing, and was to remain in force until no later than February 18, 2014.

The moratorium was enacted in response to the establishment of three businesses that ostensibly described themselves as “business centers” that rented computer time to patrons and provided other ancillary business-related services, such as facsimile and copy services. The three businesses were: Worldnet Business Center, LLC located at 22620 Vermont St; Net Connection Hayward, LLC located at 778 B Street; and I Biz, LLC located at 22466 Maple Court. These businesses obtained business licenses through the Finance Department, the applications for which did not indicate simulated internet gambling, and commenced operations in late 2012 and early 2013. However, based on complaints from citizens and upon investigation by Hayward Police officers, it was revealed that the businesses were engaged in activity that appeared to be online computer-based gambling.

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

The City Attorney’s Office served cease and desist letters on three businesses in February 2013 and April 2013, requesting that the businesses cease the sweepstakes component of the businesses due to the fact that the use was not listed as a permitted use under the Zoning Ordinance, was of questionable legality under state gambling laws, and was in violation of the moratorium. Worldnet, LLC, closed its business in February 2013 after being evicted by the property owner for reasons unrelated to the City’s actions. Net Connection Hayward, LLC and I Biz, LLC responded by initiating litigation in United States District Court challenging the validity of the moratorium and seeking a preliminary injunction against its enforcement, (*Net Connection Hayward, LLC v. City of Hayward* U.S. District Court Case No. 13-1212; *IBiz, LLC v. City of Hayward*, U.S. District Court Case No. 13-1537). During the course of the litigation, an additional business called Chances Are, LLC, which obtained a business license in January 2013, commenced operations at 22632 Main

Street. The City instituted a civil action against Chances Are, LLC in Alameda County Superior Court (*City of Hayward v. Chances Are, LLC et. al.* Alameda County Superior Court Case No. RG 13681065) and Chances Are, LLC responded with a suit in federal court, *Chances Are, LLC v. City of Hayward*, U.S. District Court Case No. 13-2383.

The U.S. District Judge in the *Net Connection* and *IBiz* matters concluded that the text of the moratorium was too broad and violated the First Amendment. The Court further concluded that the City would be better served by enacting a more narrowly focused ordinance directed specifically toward the sweepstakes activity in order to comply with the First Amendment.

The attached ordinance (Attachment II) and recommended revisions to the City's codes respond to the Court's direction.

November 7, 2013 Planning Commission hearing – The Planning Commission held a noticed public hearing on November 7, and recommended 6:0:1 (one absent) that the City Council adopts the attached two ordinances. As the attached meeting minutes (Attachment IV) reflect, minor word edits were recommended by the Commission regarding the Simulated Gambling Device ordinance, which have been incorporated into the attached ordinance.

Every speaker at the November 7 hearing supported the proposed text amendments, including the owner of a business on Main Street next to one of three simulated gambling businesses. She expressed concerns with the customers of that business, and encouraged adoption of the proposed regulations. Hayward Chamber of Commerce President Kim Huggett indicated he believed the Chamber was supportive of the regulations. A Hayward resident also testified at the hearing in support of the regulations, and indicated the American Gaming Association opposed such establishments. Attachment V is a summary from the AGA regarding its position on these types of simulated gambling establishments.

Also, Hayward Police Department (HPD) Detective Aurel Agustin testified at the hearing that the HPD had received complaints associated with some of the customers of simulated gambling businesses in Hayward that included customers smoking in the parking lot, being a public nuisance, using the access area behind the downtown Lucky's store as a parking lot, and persons loitering late at night.

DISCUSSION

Staff has received numerous complaints from members of the public regarding the various internet gaming businesses. City Council members have a direct view from their City Hall offices of one of the internet gaming businesses, *Net Connection*, on B Street and have observed several men playing dice in front of the store. A local business owner has complained about loitering in front of the owner's business, use of the business' parking area by customers of *Net Connection*, and late night noise that disturbed residential tenants above the business. Staff has also received complaints from a local business owner on Foothill Boulevard regarding the *IBiz* business, regarding late-night noise, smoking, and gambling in the Maple Street-side parking lot. That owner also complained that people walked through the store from Foothill Boulevard to the Maple-side entrance to *IBiz* (which

does not have a Foothill entrance). Additionally, staff received anonymous tips that the *Chances Are* business on Main Street was robbed of cash.

Simulated Gambling Device Ordinance (New Chapter 4, Article 16 of the Hayward Municipal Code) - The proposed Simulated Gambling Device Ordinance would add Article 16 to Chapter 4 of the Hayward Municipal Code. The ordinance would make it unlawful "for any person to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices." The term "simulated gambling device" is defined to mean "any device that, upon connection with an object, is available to play or operate a computer simulation of any game, where the play or operation of the device may deliver or entitle the person or persons playing or operating the device to a payoff directly or indirectly from the owner or operator of the device or that person's designee." The ordinance further defines specific terms used to describe a simulated gambling device. The definitions are cumulative and every condition provided must be met for something to qualify as a simulated gambling device under the ordinance.

The first part of the definition requires that a person "connect" an "object" to a "device." A "device" is "any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading games" and includes "any associated equipment necessary to conduct the operation of the device." An "object" is "a coin, bill, ticket, token, card or similar object, obtained directly or indirectly through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration." The "connection" that must be made between the two can be an "insertion, swiping, passing in range, or any other technical means of physically or electromagnetically connecting."

Once the connection is made, the device must make "a computer simulation" of a "game" available to "play or operate." A "computer simulation" includes simulations by means of a computer, computer system, video display, video system or any other form of electronic video presentation. The definition of "game" under the ordinance includes "slot machines, poker, bingo, craps, keno, [or] any other type of game ordinarily played in a casino," and "a game involving the display of the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, [or] sweepstakes" and "any other game associated with gambling or which could be associated with gambling." Playing or operating the computer simulation of a game "includes the use of skill, the application of the element of chance, or both." Finally, a "payoff" is defined as "cash, monetary or other credit, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the machine or manually."

To illustrate, it is helpful to examine how the activities of the existing businesses in Hayward (i.e., Net Connection, LLC; I Biz, LLC; and Chances Are, LLC) fit within the context of the ordinance and would be prohibited by it. The businesses' computers (devices) are, upon swiping (connecting) an account card (object), available to play (utilizing skill and/or chance) a computer simulation of casino games (for example, a slot machine), which may entitle the player to a payoff (for example, cash) for winning the sweepstakes.

The model for this ordinance is Section 222.7 through 222.15 of the Seminole County, Florida Code of Ordinances. Seminole County enacted its ordinance in response to the proliferation within the County of businesses similar to those currently found in Hayward. Staff chose to model Hayward's

ordinance on the Seminole County ordinance because it is narrower in scope than the emergency moratorium adopted by the Hayward City Council and which is in line with the Federal judge's direction in the Net Connection and I Biz lawsuits. Additionally, the ordinance has withstood similar Constitutional challenges to those which were successful against Hayward's emergency moratorium (see *Allied Veterans of the World, Inc. v. Seminole County, Florida* U.S. District Court Case No. 6:11-cv-155-Orl-28DAB).

Revisions to Zoning Ordinance Definitions (see Attachment II) – Because internet usage is not specifically listed as being allowed in the Zoning Ordinance, and due to concerns with internet gaming/stimulated internet gambling, staff is also recommending that amendments to the Zoning Ordinance definitions section (Section 10-1.3500) be made to clarify and address such uses, as follows:

- “Commercial Amusement Facility” definition is amended to include or allow internet access usage, but specifically prohibits a Commercial Amusement Facility from having simulated gambling devices. A Commercial Amusement Facility is allowed with an administrative use permit in the General Commercial (CG), Central Business (CB, applicable to Southland Mall), and the Central City-Commercial (CC-C, applicable to downtown) zones and with a conditional use permit in the Central City-Plaza (CC-P, along front portions of major streets in downtown core) and Flood Plain zoning districts.
- “Copying or Reproduction Service” and “Mailing or Facsimile Service” definitions are amended to allow internet usage as an ancillary use, but specifically prohibit businesses from operating simulated gambling devices. Such uses are allowed in all commercial zones, the Industrial (I), Airport Terminal-Commercial (AT-C), and Airport Terminal-Industrial Park (AT-IP) zones; and with an administrative use permit in the Central City-Residential (CC-R) zone.
- “Office” definition is amended to prohibit the operation of simulated gambling devices.
- “Recreational Facility” is amended to specifically prohibit the operation of simulated gambling devices. Such facilities are allowed in the Open Space (OS) zone as a primary use; with administrative use permits in all residential and commercial zones, except the Limited Commercial (LC), Office Commercial (CO), and Regional Commercial (CR) zones; and with conditional use permits in the Agricultural (A), Central City-Plaza (CC-P), and Flood Plain (FP) zones.

Staff is not recommending that the zones where such uses are allowed be changed, but that the definition for these uses be changed to specifically address internet usage.

Text Amendment Findings – The City Council must make the following four findings in order for the proposed text amendments to be approved. Staff's responses to the findings are shown below and included in Attachment III.

A. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.

The proposed text amendment will promote the public health, safety, convenience, and general welfare of the residents of Hayward by ensuring that businesses that offer simulated

gambling are not permitted to operate in the City. The simulated gambling businesses are a drain on scarce public resources and have an adverse impact on the quality of City life. The Hayward Police Department reports that there have been approximately fifty calls for service since the beginning of 2013 to the three existing businesses in the City that engage in simulated gambling. The Alameda County Sheriff's Office had more than seventy calls for service and seventeen arrests through March 2013 related to a single establishment on Hesperian Boulevard in San Lorenzo that is owned by one of the Hayward simulated gambling business operators.

The Hayward Police Department has received numerous complaints from local property and business owners regarding late night loitering, parking problems, illegal smoking, excessive noise, and other problems arising from the operation of the simulated gambling businesses. Security checks at the simulated gambling businesses in the City have resulted in arrests for, among other things, outstanding warrants, unlawful possession of concealed weapons, possession of methamphetamine and other controlled substances, theft, battery, and possession of stolen property.

The simulated gambling establishments are known to have large amounts of currency on the premises, which creates the opportunity for robberies. In one incident, a pregnant employee of a Hayward simulated gambling establishment was stopped at gunpoint while attempting to deliver the weekend's cash proceeds to the business owner. Law enforcement personnel report that these simulated gambling establishments are known to be frequented by persons on parole or probation. The proposed text amendment will allow legitimate video and/or electronic gaming businesses to operate in the City with a use permit, while prohibiting simulated gambling establishments that offer cash prizes. Thereby, reducing the threat to the public's health, safety, and welfare posed by these establishments.

B. The proposed change is in conformance with all applicable, officially adopted policies and plans.

The proposed text amendment is in conformance with City policies and plans. For example, the Economic Development Chapter of the General Plan contains the following strategies with which the amendment, as described in the preceding finding, is aligned:

- Preserve and enhance those assets and characteristics that make Hayward attractive as a residential community and as an economic investment.
- Approve development opportunities that result in minimal adverse impacts to the City's environment.
- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.
- Promote Hayward as a city that has a broad variety of occupations and family incomes, ethnic diversity, diverse lifestyles and housing accommodations, a broad range of commercial services, educational and job opportunities, and many recreational opportunities.
- Promote Hayward as a destination for nonresidents.

The Land Use Chapter of the General Plan contains the following applicable strategies:

- Emphasize making the downtown a focal point for the City within a pedestrian-friendly environment.
- Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas; encourage residential and office uses to locate above retail uses.
- Encourage both commercial and residential development in the area surrounding the Downtown BART Station.
- Encourage residential development in the downtown area to increase market support for business and to extend the hours of downtown activity.

Additionally, the purpose of the Central City - Commercial (CC-C) Subdistrict, in which the three existing simulated gambling establishments are located, is to “establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses.” The proposed text amendment will help eliminate undesirable uses that have a negative impact on the City and will thus help attract new desirable uses by enhancing safety and eliminating nuisances in the business environment.

C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.

No properties are proposed to be reclassified. New businesses are required to have adequate streets and facilities before operating, as currently mandated.

D. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.

No properties are proposed to be reclassified. The proposed regulations and text amendment would provide clarification regarding which types of electronic games are permissible and which are not permissible, to help ensure that such establishments are operated in a manner that would not generate impacts on surrounding properties and neighborhoods.

Environmental Impact Analysis – As reflected in the attached resolution, the proposed text amendments are exempt from environmental impact analysis under the California Environmental Quality Act; CEQA Regulation 15321 (exemption for governmental regulatory activities) and CEQA Regulation 15061(b)(3). Section 15061(b)(3) from the CEQA Guidelines states “[t]he activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” Staff concludes there is no possibility the text changes would cause a significant environmental impact.

PUBLIC CONTACT

Notice of this hearing was published in *The Daily Review* newspaper on November 30, 2013. Also, notice of this hearing was sent on November 23 to the property owners and operators of the three existing simulated internet gambling businesses in Hayward and surrounding property owners and residents, as well as to the Hayward Chamber of Commerce. The Chamber President, Kim Huggett, submitted a letter in support of the proposed regulations (Attachment VI).

NEXT STEPS

Should Council adopt the attached resolution and introduce the attached two ordinances, staff will present the two ordinances for adoption at the next Council meeting on December 17. The ordinances would be effective upon adoption.

Prepared and recommended by: David Rizk, AICP, Development Services Director
Michael Lawson, City Attorney

Approved by:



Fran David, City Manager

Attachments

- Attachment I: Draft Resolution
- Attachment II: Draft Ordinance Regarding Proposed New Regulations Regarding Simulated Gaming Devices (new Article 16 to Chapter 4 of the Hayward Municipal Code)
- Attachment III: Draft Ordinance Regarding Proposed Revisions to the Zoning Ordinance Definitions (showing proposed revisions) (Hayward Municipal Code Section 10-1.3500)
- Attachment IV: November 7, 2013 Planning Commission Meeting Minutes (partial)
- Attachment V: American Gambling Association Overview of Internet Sweepstakes Cafes
- Attachment VI: Letter from Hayward Chamber of Commerce President Kim Huggett

Attachment I

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Councilmember _____

RESOLUTION DETERMINING PROJECT IS EXEMPT FROM ENVIRONMENTAL IMPACT ANALYSIS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND APPROVING THE ENACTMENT OF CHAPTER 4, ARTICLE 16 OF THE HAYWARD MUNICIPAL CODE PROHIBITING SIMULATED GAMBLING DEVICES AND RELATED AMENDMENTS TO THE DEFINITIONS SECTION OF THE HAYWARD ZONING ORDINANCE (SECTION 10-1.3500)

WHEREAS, on February 19, 2013, the City Council enacted Ordinance No. 13-03 as an interim urgency ordinance pursuant to California Government Code § 65858, in response to three internet sweepstakes businesses that had recently opened and in order to establish a temporary moratorium on the development, establishment, and operation of computer gaming and internet access businesses in the City of Hayward and to allow City staff the opportunity to conduct research and analyze the potential negative and positive impacts of such businesses; and

WHEREAS, the moratorium was subsequently extended through the enactment of Ordinance No. 13-05 on April 2, 2013, after a duly noticed public hearing, and is to remain in force until no later than February 18, 2014; and

WHEREAS, at the direction of the City Council, staff has prepared a new set of regulations to be codified as Chapter 4, Article 16 to the Hayward Municipal Code related to simulated gambling devices and corresponding amendments to the City's Definitions Section of the Zoning Ordinance (Section 10-1.3500) related to internet use (the "Project"); and

WHEREAS, internet sweepstakes activity at establishments in Hayward has created undesirable behavior, as evidenced by testimony from surrounding business owners and Hayward Police Department staff; and

WHEREAS, the Planning Commission considered the Project at a duly noticed public hearing held on November 7, 2013, and unanimously recommended, with one Commissioner absent, that the City Council find the Project exempt from CEQA and approve the proposed text amendments (Application No. PL-2013-0388 TA); and

1

WHEREAS, notice of a public hearing was published in the manner required by law and the hearing was duly held by the City Council on December 10, 2013.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines as follows:

CALIFORNIA ENVIRONMENTAL QUALITY ACT

- A. The text amendment is exempt from environmental review under California Environmental Quality Act (CEQA) Guidelines Sections 15321 (exemption for governmental regulatory activities) and 15061(b)(3) (projects clearly not impacting the environment).

TEXT AMENDMENTS

- A. **Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.**

The proposed text amendment will promote the public health, safety, convenience, and general welfare of the residents of Hayward by ensuring that businesses that offer simulated gambling are not permitted to operate in the City. The simulated gambling businesses are a drain on scarce public resources and have an adverse impact on the quality of City life. The Alameda County Sheriff's Office had more than seventy calls for service and seventeen arrests through March 2013 related to a single establishment on Hesperian Boulevard in San Lorenzo that is owned by one of the Hayward simulated gambling business operators. The Hayward Police Department has received numerous complaints from local property and business owners regarding late night loitering, parking problems, illegal smoking, excessive noise, and other problems arising from the operation of the simulated gambling businesses. Security checks at the simulated gambling businesses in the City have resulted in arrests for, among other things, outstanding warrants, unlawful possession of concealed weapons, possession of methamphetamine and other controlled substances, theft, battery and possession of stolen property. The simulated gambling establishments are known to have large amounts of currency on the premises, which creates the opportunity for robberies. In one incident, a pregnant employee of a Hayward simulated gambling establishment was stopped at gunpoint while attempting to deliver the weekend's cash proceeds to the business owner. Law enforcement personnel report that these simulated gambling establishments are known to be frequented by persons on parole or probation. The proposed text amendment will allow legitimate video and/or electronic gaming businesses to operate in the City with a use permit, while prohibiting simulated gambling establishments that offer cash prizes and, thereby, reducing the threat to the public's health, safety and welfare posed by these establishments.

- B. **The proposed change is in conformance with all applicable, officially adopted policies and plans.**

Attachment I

The proposed text amendment is conformance with city policies and plans. For example, the Economic Development Chapter of the General Plan contains the following strategies with which the amendment, as described in the preceding finding, is aligned:

- Preserve and enhance Hayward's assets and character, which make it attractive as a residential community and as an economic investment.
- Approve development opportunities that result in minimal adverse impacts to the City's environment.
- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.
- Promote Hayward as a city that has a broad variety of occupations and family incomes, ethnic diversity, diverse lifestyles and housing accommodations, a broad range of commercial services, educational and job opportunities, and many recreational opportunities.
- Promote Hayward as a destination for nonresidents.

The Land Use Chapter of the General Plan contains the following applicable strategies:

- Emphasize making the downtown a focal point for the City within a pedestrian-friendly environment.
- Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas; encourage residential and office uses to locate above retail uses.
- Encourage both commercial and residential development in the area surrounding the Downtown BART Station.
- Encourage residential development in the downtown area to increase market support for business and to extend the hours of downtown activity.

Additionally, the purpose of the Central City - Commercial (CC-C) Subdistrict, in which the three existing simulated gambling establishments are located, is to "establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses." The proposed text amendment will help eliminate undesirable uses that have a negative impact on the City and, thus, attract new desirable uses.

C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.

No properties are proposed to be reclassified. New businesses are required to have adequate streets and facilities before operating, as currently mandated.

D. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.

No properties are proposed to be reclassified. The proposed regulations and text amendment would provide clarification regarding which types of electronic games are

permissible and which are not permissible, to help ensure that such establishments are operated in a manner that would not generate impacts to surrounding properties and neighborhoods.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts findings in support of the text amendments (Text Amendment Application No. PL-2013-0388 TA), subject to the adoption of the companion ordinances.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ORDINANCE NO.

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA
ADDING ARTICLE 16 TO CHAPTER 4 OF THE HAYWARD
MUNICIPAL CODE REGARDING PROHIBITION OF
SIMULATED GAMBLING DEVICES

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Article 16 is added to Chapter 4 of the Hayward Municipal Code and is hereby enacted to read as follows:

ARTICLE 16

PROHIBITION OF SIMULATED GAMBLING DEVICES

SEC. 4-16.00 FINDINGS AND PURPOSE. The City Council of the City of Hayward finds as follows:

- A. Pursuant to Article XI, Section 5 of the California Constitution and the City Charter, the City of Hayward may make and enforce all regulations and ordinances in respect to municipal affairs.
- B. Pursuant to Article XI, Section 7 of the California Constitution the City of Hayward may make and enforce all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
- C. Pursuant to California Government Code Section 38771 the City Council may declare what activities or conditions may constitute a nuisance.
- D. It is a goal of the City Council to establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area, with a high quality of life in an attractive, secure environment for the City's residents and businesses.
- E. In Hayward, businesses describing themselves variously as "business centers" and "internet cafes" have opened within the City. These businesses purport to offer customers access to personal computers, photocopy and facsimile services. In an apparent effort to promote the sale of such services the business offers entries into a sweepstakes, the results of which may be revealed in several ways, including by playing games on the business' computers. Patrons can select from multiple games,

many of which have the appearance of casino-style games of chance, such as slot machines. Winning sweepstakes entries may be redeemed at the business for cash payouts.

- F. Businesses that utilize simulated gambling devices, such as those found in “business centers” and “internet cafes” in Hayward present unique challenges for local government. These businesses provide the allure of traditional gambling by offering casino-like computer games and cash prizes without facing the strict regulations imposed by the State on traditional gambling.
- G. Many of the negative community impacts that might be expected from a gambling establishment have manifested themselves in relation to “business centers” and “Internet cafes” that provide simulated gambling devices in Hayward. At least one establishment was the target of a robbery and another was the site of multiple arrests by Alameda County Sheriff’s deputies and California Department of Corrections and Rehabilitation parole officers.
- H. The City Council and City offices have received numerous complaints from community members voicing concern over these businesses that they perceive as “gambling houses” operating within the City.
- I. The intent of the City Council in adopting this ordinance is to protect public health, safety and welfare by prohibiting broadly the possession or use of simulated gambling devices, including any related activity or behavior which can be reasonably construed to be the use of simulated gambling devices. Further, the City Council in prohibiting simulated gambling devices in no way intends to approve the use of actual slot machines, other forms of casino gambling or other types of gambling devices that may be regulated pursuant to California law. In addition, this prohibition is aimed directly at devices that simulate gambling activity, regardless of whether the devices or the simulations in and of themselves can be said to constitute gambling as that term may be defined elsewhere.

SEC. 4-16.10 DEFINITIONS. For the purpose of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their content that a different meaning is intended:

Attachment II

(a) "Person" means an individual, association, partnership, joint venture, corporation, or any other type of organization, whether conducted for profit or not for profit, or a director, executive, officer or manager of an association, partnership, joint venture, corporation or other organization.

(b) "Simulated gambling device" means any device that, upon connection with an object, is available to play or operate a computer simulation of any game, where the play or operation of the device may deliver or entitle the person or persons playing or operating the device to a payoff directly or indirectly from the owner or operator of the device or that person's designee. The following rules of construction apply to this definition of "simulated gambling device":

(1) The term "device" means any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading games from a central server system, machine, computer or other device or equipment. The term "device" also includes any associated equipment necessary to conduct the operation of the device.

(2) The term "upon connection with" means insertion, swiping, passing in range, or any other technical means of physically or electromagnetically connecting an object to a device, including by the manual input by any person of characters, numbers, or any combination thereof, or other code for the purpose of accessing or activating a device, or any other mechanism or method by which the object provides access to the device.

(3) The term "object" means a coin, bill, ticket, token, card, characters, numbers, or any combination thereof, other code, or any other tangible or intangible access mechanism or method, obtained directly or indirectly through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration.

(4) The terms "play or operate" or "play or operation" includes the use of skill, the application of the element of chance, or both.

(5) The term "computer simulation" includes simulations by means of a computer, computer system, video display, video system or any other form of electronic video presentation.

(6) The term "game" includes slot machines, poker, bingo, craps, keno, any other type of game ordinarily played in a casino, a game involving the display of the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, and any other game associated with gambling or which could be associated with gambling, but the term "game" does not necessarily imply gambling as that term may be defined elsewhere.

(7) The term "payoff" means cash, monetary or other credit, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the machine or manually.

(8) The use of the word "gambling" in the term "simulated gambling device" is for convenience of reference only. The term "simulated gambling device" as used in this Article is defined exclusively by this subsection and does not incorporate or imply any other legal definition or requirement applicable to gambling that may be found elsewhere.

(c) "Slot machine" has the same meaning as specified in Section 330b of the California Penal Code.

SEC. 4-16.20 SIMLUATED GAMBLING DEVICES PROHIBITED. It is unlawful for any person to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices. Each individual act to manage, supervise, maintain, provide, produce, possess or use a simulated gambling device constitutes a separate violation of this section.

SEC. 4-16.30 EXEMPTIONS. This Article does not prohibit an individual's personal, recreational, and non-commercial ownership, possession, play, operation or use of a device which could be construed to be a simulated gambling device.

SEC. 4-16.40 CONSTRUCTION WITH STATE LAW. Nothing in this Article is intended to conflict with the provisions of state law concerning gambling, slot machines, gambling devices or lotteries. In the event of a direct and express conflict between this Article and state

Attachment II

law, California law, as applicable, controls.

SEC. 4-16.50 VIOLATIONS. A violation of this Article shall be a misdemeanor subject to a fine of \$1000 or imprisonment in County jail for six (6) months, or both a fine and imprisonment. A violation of this Article is also declared to be a public nuisance which may be enjoined by civil action or pursuant to the procedures provided in this Code for abatement of nuisances.

SEC. 4-16.60 APPLICATION. The provisions of this Article shall apply retroactively to any person who commenced to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices prior to the effective date of this Article and engages in such activity after the effective date of this Article, regardless of whether that person was previously issued a permit or license by the City of Hayward.

Section 2. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 3. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of _____, 2013, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the ___ day of _____, 2013, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Mayor of the City of Hayward

DATE:

ATTEST:

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Attachment III

ORDINANCE NO. _____

ORDINANCE AMENDING HAYWARD MUNICIPAL CODE
SECTION 10-1.3500, ZONING ORDINANCE DEFINITIONS,
RELATING TO SIMULATED GAMBLING DEVICES

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF HAYWARD DOES
HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council incorporates by reference the findings contained in Resolution , approving the text changes requested in Zone Change Application PL-2013-0388 TA.

Section 2. Zoning Ordinance Section 10-1.3500, relating to Definitions, is hereby amended to add text (as indicated by underline) to the following definitions, to conform to the City's Simulated Gambling Devices ordinance introduced herewith.

The definition of "Commercial Amusement Facility" is hereby amended to read as follows: "A facility offering entertainment to the public, for a fee or by membership subscription, for example, ticket, door charge, amusement device fee. Said facility shall include but not be limited to, internet access usage, theaters, arcades (place of business containing five or more amusement devices), billiard parlors, golf courses (including miniature golf), water slides, indoor soccer, batting cages and bowling facilities. Four (4) or less manually or coin- or token- or slug-operated viewing or electronic or video game machines or other amusement devices (excluding juke boxes) located in association with other permitted uses and activities, such as, but not limited to, taverns, restaurants, book stores, grocery stores, motels, hobby shops or toy stores, music or stereo stores, laundromats, barber or beauty shops, or computer stores shall be considered accessory to the permitted use. Under no circumstance, as a primary, permitted or accessory use, shall any Commercial Amusement Facility be allowed to operate Simulated Gambling Devices as defined in the City's Municipal Code. (See HMC Chapter 4, Article 16.)"

The definition of "Copying or Reproduction Service" is hereby amended to read as follows: "An establishment which provides printing services to customers. Typically includes blueprint machines, reproduction machines, paper goods and binding services (spiral binding, glue binding, staples, etc.), and may include as an ancillary use, access to the internet. Also see 'NEWSPAPER PRINTING FACILITY.' Under no circumstance, as a primary, permitted or accessory use, shall any Copy or Reproduction Service be allowed to operate Simulated Gambling Devices as defined in the City's Municipal Code. (See HMC Chapter 4, Article 16.)"

The definition of "Mailing or Facsimile Service" is hereby amended to read as follows: "An establishment which provides postal services and a facsimile machine available to the public for a fee. Typically includes packaging and weighing facilities, and may include related copy work or

Page 1 of Ordinance No.

wrapping paper and greeting cards for sale at retail as an ancillary use, as well as internet access as an ancillary use. Under no circumstance, as a primary, permitted or accessory use, shall any Mailing or Facsimile Service be allowed to operate Simulated Gambling Devices as defined in the City's Municipal Code. (See HMC Chapter 4, Article 16.)"

The definition of "Office" is hereby amended to read as follows: "An establishment which provides administrative services such as business or professional services (i.e., law firm, stock broker, insurance or real estate office) or medical or travel agent services, to the public for a fee. Offices uses typically include copying and facsimile machines. Under no circumstance, as a primary, permitted or accessory use, shall any Office be allowed to operate Simulated Gambling Devices as defined in the City's Municipal Code. (See HMC Chapter 4, Article 16.)"

The definition of "Recreational Facility" is hereby amended to read as follows: "Those facilities maintained to provide a pastime, sport or exercise as a means to refresh one's body or mind, and ancillary activities as determined by the Planning Director, and whose other functions are not indicated elsewhere in this ordinance as administrative or conditional uses. May be a commercial or non-commercial facility. Under no circumstance, as a primary, permitted or accessory use, shall any Recreational Facility be allowed to operate Simulated Gambling Devices as defined in the City's Municipal Code. (See HMC Chapter 4, Article 16.)"

Section 3. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the day of _____, 2013, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2013, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

Attachment III

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

requires that they not be treated differently than other residential dwellings of the same type in the same zone.

Senior Planner Buizer confirmed for Commissioner Lavelle that no comments were received from the public regarding the Text Amendment. In response to Commissioner Lavelle’s question as to when “Reasonable Accommodation for Persons with Physical Disabilities” applies, she stated that reasonable accommodation provide someone with disability with an administrative process that allow them to be given access to housing that maybe otherwise a violation of the zoning regulations for a particular zone. She added that the reasonable accommodation is granted only to the household that needs accommodation and does not apply to successors of interest to the site.

Commissioner Lavelle noted a correction to the typographical error on Attachment IV, Letter F - Appeals, the word “fee” should be added after the word “prescribed” in the last sentence.

Commissioner Márquez asked if the City had funding to assist homeowners who needed modifications to their homes. Senior Planner Buizer responded that there were some programs for minor home repairs but she was not sure of the current status. Development Services Rizk added that the funds have been eliminated or significantly reduced.

Chair Faria opened and closed the Public Hearing at 8:21 p.m.

Commissioner Trivedi made a motion to adopt the Negative Declaration and approve the proposed text amendment, subject to the findings for approval, with an amendment to Chapter 10, Section 10-1.145 (F) (3) by adding the word “fee” after the word “prescribed” in the last sentence.

Commissioner Lavelle seconded the motion.

AYES:	Commissioners Loché, Trivedi, McDermott, Lamnin, Márquez, Lavelle Chair Faria
NOES:	None
ABSENT:	None
ABSTAINED:	None

Commissioner Márquez left the Council Chambers at 8:24 p.m.

3. Related to internet gaming establishments, proposed revisions to the definitions section of the Hayward Zoning Ordinance (Section 10-1.3500) and proposed amendment to the Hayward Municipal Code adding Article 16 to Chapter 4 regarding simulated gambling devices; the project is exempt from environmental impact analysis, per the California Environmental Quality Act (CEQA Guidelines Sections 15321 (exemption for governmental regulatory activities) and 15061 (b) (3) (projects clearly not impacting the environment)); Text Amendment Application No. PL-2013-0388 TA; Applicant: City of Hayward

Development Services Director Rizk provided a synopsis of the staff report. Mr. Rizk referenced letters from representatives of two of the establishments and the letters have been distributed to



Attachment IV
**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION**
Council Chambers
Thursday, November 7, 2013, 7:00 p.m.
777 B Street, Hayward, CA94541

the Planning Commission. He noted that Assistant City Attorney Vigilia, Assistant City Attorney Conneely and Hayward Police Department Detective Agustin were available for questions.

Commissioner Loché asked about any written complaints from neighboring businesses. Development Services Director Rizk noted staff had received complaints via email. Detective Agustin added that staff had received two online complaints through the ACCESS Hayward; one for Net Connection Hayward, LLC located at 778 B Street and another for I Biz, LLC located at 22466 Maple Court. Detective Agustin stated that the complaints were: customers smoking in the parking lot; being a public nuisance; using the access area behind Lucky's as a parking lot and persons loitering late at night. He added that if citizen complaints came in without addresses, it was difficult to identify the problem establishments. Mr. Rizk noted that based on his personal observations, the majority of customers were sitting at computers playing the games. Mr. Rizk also noted that because the three establishments did not fully disclose their business use on their business license application, staff has been diligent in asking business license applicants what the nature of their business is.

In response to Commissioner McDermott's inquiry as to the age restriction, Assistant City Attorney Vigilia noted there were not age restrictions for patrons and it was at the discretion of the business owner to restrict the age to persons 18 years and older. Mr. Vigilia further stated that he did not agree with the Net Connection's attorney's position that the proposed retroactive application of the ordinance was illegal, and that if the City Council adopted the proposed amendments, the Council would be exercising its police power to declare it a public nuisance and it would be appropriate for the ordinance to be applied to the existing businesses. Mr. Vigilia noted it was important to recognize that the establishments characterize the use of the games as a promotional tool and compared it to McDonald's, Coke and/or Pepsi's, sweepstakes games and added the games were supposed to be secondary to the internet time and copy and fax services.

Commissioner Lavelle asked if the new regulations affected card clubs and non-profits such as churches that offer bingo games. Development Services Director Rizk responded that card clubs have separate City regulations, which were also State-regulated. Mr. Rizk stated that the prohibition was for establishments that offered the "simulated gambling devices" and there was separate language in the ordinance that addressed internet usage as an allowed use. Ms. Lavelle was glad there was language governing the other businesses that followed regulations and would not be impacted by the proposed language. Ms. Lavelle noted the Seminole County, Florida regulations could be a big help to other agencies that were having similar issues. Mr. Vigilia responded to Ms. Lavelle that the proposed language in sections 4-16.20 and 14-16.30 addressed the issue that private parties were not prohibited from engaging in computer activities in their own home. Ms. Lavelle offered amending Chapter 4, Article 16 Section 14-16.00 (E) by removing "Within the past years" and replacing it with "In Hayward" and amending Chapter 4, Article 16, Section 14-16.00 (G) by changing the word "would" with "might" as not all gambling was negative.

DRAFT

In response to Commissioner Lamnin's question about persons bringing in their own computers to the establishments and the applications for conditional use permits, Assistant City Attorney Vigilia noted the language in the ordinance addressed the trends that currently existed and that staff was responding to the direction given by City Council that "simulated gambling devices" were undesirable uses. Development Services Director Rizk noted for Ms. Lamnin that staff conducted extensive noticing of tonight's meeting and that the information provided on the business licenses by the establishments in question were not a true reflection of the business being conducted. Ms. Lamnin noted she had visited two establishments: *Chances Are* on Main Street and *Satin Rose* on B Street. Mr. Rizk said the conditional use permit for *Satin Rose* was still valid but the internet portion would not be allowed because of the current moratorium.

Commissioner Trivedi thanked staff for explaining what was being transacted at the establishments that were conducting the "simulated gambling devices" activity. Staff noted payouts could be as high as \$3,000. Detective Agustin spoke about the 50 calls for service with complaints ranging from smoking, parking, noise complaints, and fighting that started in the establishment and ended in the street. Mr. Trivedi appreciated the staff report and the well-written ordinance and agreed with Commissioner Lavelle's text changes.

Commissioner Lamnin provided the following information: the establishments she visited charged \$5 to \$6 per hour of computer time and the customers were required to initial a waiver stating that they are not gambling, but are playing a promotional game. Ms. Lamnin asked if the waiver would impact the ordinance. Assistant City Attorney Vigilia responded the ordinance did not address gambling and the waiver would not affect the applicability of the proposed ordinance.

Chair Faria opened the Public Hearing at 9:04 p.m.

Ms. Beneba Thomas, owner of Golden Tea Garden on Main Street, noted the business *Chances Are* was next door to her establishment, that this was a gambling establishment, and she observed that all of the computer screens looked like slot machines. She added that *Chances Are* provides food and drinks for their patrons to keep them buying more computer time, similar to a casino. She added that this type of business attracted a negative element and requested the Planning Commission to shut them down.

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, pointed out that the three establishments were not members of the Chamber of Commerce and that there have been multiple complaints by business members about smoking, loitering, parking, and noise. Mr. Huggett said he believed the Chamber would be supportive of the proposed amendments to the Municipal Code. Mr. Huggett also noted the Chamber insists on integrity regarding disclosure of information on business license applications and that the referenced three establishments had not made any contributions to the community.

Mr. Scott Moore, Hayward resident, noted that he nor his neighbors received any notification about this hearing and that he supported the proposed amendments to the Municipal Code. He said that *Net Connection* was a public nuisance and cautioned staff to address the sweepstakes as the sweepstakes payout was determined at the time of computer time purchase. Mr. Moore also



Attachment IV
MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers

Thursday, November 7, 2013, 7:00 p.m.
777 B Street, Hayward, CA94541

shared that the American Gaming Association does not support these types of businesses and that they have literature that explains what can be done.

Chair Faria closed the Public Hearing at 9:12 p.m.

Commissioner Lavelle made a motion per staff recommendation with two amendments: change Chapter 4 Article 16 Section 4-16.00 (E) by removing "Within the past years" and replacing it with "In Hayward", and change Chapter 4 Article 16 Section 4-16.00 (G) by changing the word "would" with "might."

Commissioner Trivedi seconded the motion.

Commissioner Lavelle noted that no one attended or spoke in support of the establishments and that the City Council was correct in responding to the multitude of complaints. Ms. Lavelle expressed her concern that Ms. Thomas was having such a bad experience and how it was negatively impacting Ms. Thomas. Ms. Lavelle hoped that the City Council will listen to the remarks of this meeting and enact the ordinance.

Assistant City Attorney Vigilia said staff would research language to address the sweepstakes payout aspect as noted by Mr. Moore. Commissioner Trivedi was in favor of legitimate internet cafes and it was a problem when a business was not truthful on their business license applications. Mr. Trivedi supported the motion and recommended that the City Council support the proposed amendments.

Commissioner Lamnin asked about the pending litigation with *Chances Are* in the hopes to provide Ms. Thomas relief from the negative activity she has been suffering. Ms. Lamnin noted that when it was brought to the attention of *I Biz* about the "simulated gambling devices", they made a concerted effort to improve. Ms. Lamnin reluctantly supported the motion.

Commissioner McDermott noted the owners of local businesses that she frequented have limited English and would not feel comfortable coming before the Commission to speak.

Commission Loché expressed concern that several speakers did not receive a notice of the hearing. Mr. Loché thanked the speakers who stayed through the entire meeting. He said it was important to support the businesses that abide by the regulations and they were suffering because of the businesses that misrepresented themselves. Mr. Loché supported the motion.

Chair Faria noted she had spoken to several businesses that had concerns about the establishments that misrepresented the type of business that were conducted. Ms. Faria supported the motion.

The motion to recommend to City Council to approve the ordinances adding Article 16 to Chapter 4 related to simulated gambling devices and amending Hayward Municipal Code Section 10-1.3500

DRAFT

related to internet cafes was approved with two amendments: change Chapter 4 Article 16 Section 4-16.00 (E) by removing "Within the past years" and replacing it with "In Hayward", and change Chapter 4 Article 16 Section 4-16.00 (G) by changing the word "would" with "might."

AYES: Commissioners Loché, Trivedi, McDermott, Lamnin, Lavelle
Chair Faria
NOES: None
ABSENT: Márquez
ABSTAINED: None

COMMISSION REPORTS

4. Oral Report on Planning and Zoning Matters

Development Services Director Rizk announced that one upcoming agenda item would be a work session on tobacco regulations and noted that staff had held one community meeting on this item. Mr. Rizk said that at the November 12, 2013, Council meeting, there would be an item concerning alcohol regulations related to fees.

5. Commissioners' Announcements, Referrals

Commissioner Lamnin reported that a community member made a comment about negative activity by an auto business. The auto business now works on one car at a time and the negative impacts have been resolved. Ms. Lamnin shared that the City Council had started the process of reviewing Council Priorities.

Commissioner Lavelle reminded everyone that Monday is Veteran's Day and hoped that everyone will take a moment to thank and honor those who served the country.

APPROVAL OF MINUTES

6. There were none.

ADJOURNMENT

Chair Faria adjourned the meeting at 9: 25 p.m.

APPROVED:

Dianne McDermott, Secretary
Planning Commission

ATTEST:

Yolanda Cruz, Deputy City Clerk
Office of the City Clerk



Internet Sweepstakes Cafes

Background

In recent years, thousands of "Internet sweepstakes cafes" have sprung up in storefronts, gas stations and convenience stores in more than a dozen states. Carefully designed to take advantage of state sweepstakes laws and to avoid state antigambling laws and gambling licensing restrictions, Internet sweepstakes cafes are estimated to earn more than \$10 billion a year with games that closely mimic the experience of traditional slot and video poker machines. The cafes advertise and sell a product — usually Internet time or long-distance telephone minutes — that the gambler does not actually want. Along with that unwanted product, the customer receives a supposed bonus of "entries" in the Internet sweepstakes. With those entries, the customer can participate in Internet-based games at the cafe's specially-programmed personal computers. Based on a random allocation of winning and losing entries, the customer may or may not win cash prizes through those games. According to the cafes that are reaping unregulated profits, this elaborate masquerade is not gambling, but a sweepstakes. According to every appellate court that has decided a case involving similar games, it is incontestably gambling.

Nevertheless, through aggressive litigation tactics and high-powered lobbying at state legislatures, the cafes have managed to forestall effective law enforcement against them in many jurisdictions. The result is that many neighborhoods now house gambling venues that are free of the legal restraints that Americans have traditionally demanded for gambling businesses.

For more information on Internet Sweepstakes Cafes, download the AGA white paper on the subject.

Status (as of 10/24/13)

California

In December, the California Bureau of Gaming Control issued an Advisory that state law prohibits "so-called 'Internet café's' that sell Internet time or phone cards in conjunction with a 'promotional sweepstakes.'" In response to the state Advisory, several local governments adopted ordinances or took enforcement measures to shut down local cafes. Sacramento police raided and closed two cafes and charged the business manager at each location with operating an illegal gambling business. Even before the state Advisory issued, Kern County (Bakersfield) prosecutors sued to stop sweepstakes

operators in nine locations, and a Kern County judge granted an injunction against them. *State v. Collom*, No. S-1500-CV-276960.

Florida

In a headline-grabbing sweep in March, federal and Florida state agents arrested fifty-seven people associated with more than forty Internet sweepstakes cafes in that state operated by the Allied Veterans of the World & Affiliates, which purports to be a charity. The sweep, called Operation Reveal the Deal, also netted the principal of an Oklahoma business that provides software to the operation. Those arrested included three officials of Allied Veterans, the president and vice president of the Jacksonville Fraternal Order of Police, and a former president of the Jacksonville Bar Association who was described by authorities as the mastermind of a scheme to milk profits from the supposedly charitable gambling sites. Of roughly \$300 million taken in by Allied Veterans, according to public accounts, two percent went to charity.

Those arrested were charged with multiple felony counts of illegal gambling, operating illegal slot machines, money laundering, fraud and racketeering. By court order, 292 bank accounts holding more than \$64 million were frozen. By mid-October 2013, six individuals had accepted plea deals in the case and one who went to trial – a lawyer who helped design the cafes’ business structure – was convicted by a jury on more than 100 counts of illegal gambling and racketeering. The sweep inflicted a political casualty, as well. Florida Lieutenant Governor Jennifer Carroll resigned from office the day after law enforcement agents interviewed her in connection with the investigation. Her public relations firm worked for Allied Veterans in 2009 and 2010, while she served in the state legislature.

Though Internet sweepstakes cafes have been banned by a number of local governments (the city of Tampa and Hillsborough, Polk, Pasco, and Pinellas counties), more than 1,000 now operate in the state. In its 2013 session, the Florida legislature will consider legislation to regulate the cafes.

Georgia

DeKalb County prosecutors have leveled racketeering charges against three people who operate eight “Big Dawg” locations that offer Internet sweepstakes. The criminal charges allege that the games are illegal because (i) that Big Dawg makes no effort to advertise services and products other than sweepstakes game, (ii) that Big Dawg’s sweepstakes run perpetually, unlike the sweepstakes promotions of other companies, and (iii) Big Dawg’s revenues almost entirely come from sweepstakes, not other services or products.

Mississippi

In March 2013, the Mississippi Legislature adopted a new law declaring that Internet sweepstakes cafes represent illegal gambling activity in that state. The new Mississippi law bars any person from offering a “simulated gambling program” on an “electronic video monitor” in return for direct or

Attachment V

indirect consideration “including consideration associated with a product, service or activity other than the simulated gambling program.” House Bill 974 (March 6, 2013).

New Jersey

In February, a New Jersey resident was sentenced to probation for operating Internet sweepstakes cafés in Pequannock and Parsippany. After concluding that Chester Ward had operated illegal casino resorts, the Morris County Superior Court also imposed a forfeiture of \$89,000 in cash and 87 computers.

New York

In June 2013, the New York legislature adopted broad new legislation providing that anyone operating an Internet sweepstakes machine is guilty of a Class E felony.

North Carolina

Internet café owners in this state pursued a novel legal strategy: to claim that their businesses are engaging in protected First Amendment speech that cannot be shut down under state anti-gambling laws. Because the state statute at issue barred the promotion of sweepstakes that employ an “entertaining display,” sweepstakes advocates claimed a constitutional right to link those displays to sweepstakes games. A divided panel of the North Carolina Court of Appeals accepted this argument in March 2012, but on December 14, the North Carolina Supreme Court unanimously reversed that decision and reinstated the state anti-sweepstakes law. Holding that the statute “primarily regulates noncommunicative conduct rather than protected speech,” Justice Robin Hudson ruled that the café operators could not “skillfully disguise[]” conduct with a façade of speech to gain First Amendment protection.” Ironically, Texas recently arrested the senior executives of the company that is challenging the North Carolina prohibition. The defendants face charges of felony gambling, money laundering, and organized criminal activity.

Based on the Supreme Court ruling, a number of local law enforcement agencies have begun to shut down North Carolina’s Internet sweepstakes cafés. In Waynesboro, the manager of a café was convicted in Morris County District Court of violating the state law, though he promptly appealed his conviction. *State v. James Locker*, (Morris County District Court). Some café operators are arguing in court that the state statute does not reach machines that have been modified to comply with the state law. On that theory, two defendants have been acquitted in district court cases in both Catawba and Macon Counties, and a lawsuit in Macon County seeks an injunction declaring that specific machines do not violate the North Carolina statute. Until there is a further definitive ruling from an authoritative state court, these disputes are likely to continue.

Ohio

In early June, Ohio Governor John Kasich signed into law new legislation (HB 7), which will impose a ceiling of \$10 on the payouts that can be made by Internet sweepstakes cafes. The new

requirement, which took effect in October, is expected to force the shutdown of the more than eight hundred Internet sweepstakes cafes in the state. The cafes mounted a referendum drive to repeal the law but failed to collect the necessary signatures. A coalition of political, law enforcement and business groups that includes the Fraternal Order of Police of Ohio, the Buckeye State Sheriffs' Association, County Commissioners Association of Ohio and the Ohio Council of Retail Merchants supported House Bill 7. The state's action followed an investigative report by the Columbus Dispatch reported that a majority of the cafes in Ohio flouted a requirement that they provide full business information to the state attorney general, while barely 20 percent of the Ohio cafes identified the people who own and operate them.

In March, the Ohio Court of Appeals affirmed criminal convictions against café operators in *City of Cleveland v. Thorne*, No. 2010-CRB-04521 (8th Dist., March 22, 2013). The appellate court impatiently rejected the defendants' claim that their customers truly bought Internet time or other business services, and thus paid no consideration to gamble. The computer games at the cafe, the court added, represented a "patently obvious gambling scheme." In October, two corporations and three individuals who supplied software to Internet sweepstakes cafes in Cuyahoga County pled guilty to criminal racketeering and gambling charges and agreed to cease operations in Ohio.

Pennsylvania

A federal trial court upheld Pennsylvania's ban on Internet sweepstakes cafés in early October. Judge Robert D. Mariani of the Middle District of Pennsylvania refused to enter a preliminary injunction against the statute, which was adopted on June 30. He rejected the claim that the law violated the First Amendment rights of café owners. Intervening in support of the statute were three Pennsylvania casinos: Mohegan Sun at Pocono Downs, Sands Bethworks Gaming, LLC, and Greenwood Gaming and Entertainment, Inc., d/b/a Parx Casino. *Telesweeps of Butler Valley, Inc. v. Kelly*, No. 3:12-CV-1374 (M.D. Pa.) (October 10, 2012).

AGA Position

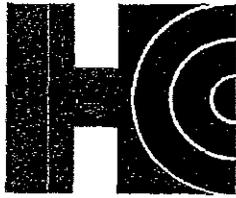
States have longstanding policies that gambling businesses must be specifically authorized, strictly regulated to protect consumers, kept free of crime and fairly taxed to contribute resources for the public good. In recent years, thousands of "Internet Sweepstakes Cafes" with estimated annual revenues exceeding \$10 billion have sprung up in more than a dozen states in total circumvention of state antigambling laws and gambling license requirements. After making very little investment, these rogue businesses spread quickly and become entrenched, posing a threat to existing state-licensed businesses and the thousands of jobs they create.

Although they often claim otherwise, Internet sweepstakes cafes sell games that involve prize, consideration and chance and, thus, are engaged in the business of gambling. In the vast majority of communities where they operate, cafes lack regulation of (1) the integrity of the owners and operators, (2) the fairness of the games, (3) the exclusion of customers too young to gamble, and (4) their location, including the proximity to schools or churches. They do not educate customers about

Attachment V

responsible gaming or contribute funds to combat problem gambling. In addition, neither the cafes nor the software companies that support them pay state or local gaming taxes. To the contrary, their largely unreported profits may siphon revenues from state-authorized businesses.

The American Gaming Association believes that strict regulation to protect consumers is the cornerstone of gambling policy and should apply to all forms of gambling. Responsible public policy should prohibit Internet sweepstakes cafes, as numerous states have done.



HAYWARD
CHAMBER of
COMMERCE

Nov. 25, 2013

Hayward City Council
777 B Street
Hayward, California, 94541

Members of the Council,

The Hayward Chamber of Commerce endorses revisions to the Hayward Zoning Ordinance and the proposed amendment to the Hayward Municipal Code regarding simulated gambling devices in businesses that have located in our downtown area by falsely claiming their purpose to be that of "business centers."

None of the three internet gaming operations in operation are members of the chamber and our downtown members have profound concerns about the loitering, smoking, noise, and parking-related issues.

We support the city's legal efforts to shut down these operations because these "business centers" have found a loophole that goes to the integrity of the business license process. These are not business centers as purported in their license application. Instead of offering fax, copier, and business internet services, they are little more than fronts for so-called "sweepstakes" operations where customers sit and play simulated slot machines on computer monitors for hours on end.

Copy Mat, Copy Pacific and Quick Printing Service are reputable downtown business centers, and our members, that meet the "business center" description. The internet gaming operations don't even have signage denoting their purpose and certainly make no contribution to the community expected of responsible businesses, such as contributions to nonprofits.

The chamber urges that you support the recommendation of city staff, also endorsed by the Hayward Planning Commission.

Sincerely,

Kim Huggett
President & CEO

22561 Main Street, Hayward, CA 94541 Tel (510)537-2424 Fax (510)537-2730 www.hayward.org

(9 hits)

**Chapter 5.50
INTERNET SWEEPSTAKES CAFES**

Sections:

- 5.50.010 Definitions.
- 5.50.020 Prohibitions.
- 5.50.030 Violations.
- 5.50.040 Exceptions.

5.50.010 Definitions.

A. "Computerized sweepstakes device" shall mean any computer, machine, game or apparatus which, upon insertion of a coin, token, access number, magnetic card or similar object, or upon payment of anything of value, may be operated by the public generally for use in a contest of skill, entertainment, amusement or chance whether or not registering a score, and which provides the user with a chance to win anything of value or any cash payout or anything that could be redeemed, directly or indirectly, for any cash payout and which is not regulated as gambling, a lottery or as a gaming device under state or local law.

B. "Internet sweepstakes cafe" shall mean any premises upon which a computerized sweepstakes device is located for the use or entertainment of the public, whether or not such premises has other business purposes of any nature whatsoever. (Ord. 16-12 § 1 (part))

5.50.020 Prohibitions.

A. Internet sweepstakes cafes are prohibited within the city.

B. It is unlawful for any person to establish, manage or otherwise engage in the business of operating an Internet sweepstakes cafe.

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

D. The operation, conduct or maintenance of an Internet sweepstakes cafe is a public nuisance. (Ord. 16-12 § 1 (part))

5.50.030 Violations.

Any person violating, or causing or permitting to be violated, any of the provisions of this chapter shall be deemed guilty of a misdemeanor. (Ord. 16-12 § 1 (part))

5.50.040 Exceptions.

Nothing in this chapter includes or applies to any act which is made a public offense by any section of the California Penal Code or by any other law of the state of California. (Ord. 16-12 § 1 (part))

The Dublin Municipal Code is current through Ordinance 5-13, passed September 3, 2013.

Disclaimer: The City Clerk's Office has the official version of the Dublin Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

	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.

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

AGENDA TRANSMITTAL

MEETING DATE: December 3, 2013

CITY AGENDA ITEM: Council Consideration of a Simplified Approach to Designating One-way Streets:

- a. Council Consideration, Waive Reading and Introduction of Ordinance No. ____: Amending Chapter 10.16 of Title 10 of the Suisun City Code Relating to the Parking, Moving, Operation, and Travel of Vehicles on One-Way Streets; and
- b. Council Adoption of Resolution No. 2013 ____: Designating One-Way Streets.

FISCAL IMPACT: An undetermined amount of vehicle fines are likely to be generated.

BACKGROUND: Chapter 10.16 of the Suisun City Code authorizes the designation of certain named streets to be one-way (Attachment 1). On January 20, 2009, the City Council adopted Resolution No. 2009-06 (Attachment 2), which designated portions of Solano and Kellogg Streets as one-way. Subsequently, as the Suisun City Police Department (SCPD) attempted to enforce this Resolution, it was determined that the Resolution was unenforceable, because only those street segments designated as one-way streets in the Suisun City Code could be enforced.

Since the Code would need to be amended anyway to include these two one-way street segments, staff thought it might be a good time to streamline the Code to enable the Council to designate one-way streets by Resolution, as it attempted to do in 2009. Accordingly the attached Ordinance Amendment has been prepared to provide that flexibility to the City Council (Attachment 3). In addition, a Resolution has been prepared (Attachment 4), so that the Council may designate as one-way streets those street segments originally included in the Code, as well as the two segments that the Council designated by Resolution in 2009.

Once these two changes become effective, the SCPD would be empowered to enforce all of the street segments which are currently signed and striped as one-way streets. The City may assess a violation fee for each violation of this ordinance. Such fee shall be in the amount provided in the City's master fee schedule.

STAFF RECOMMENDATION: It is recommended that the City Council:

1. Open the Public Hearing and receive testimony; and
2. Waive First Reading and Introduce Ordinance No. ____: Amending Chapter 10.16 of Title 10 of the Suisun City Code Relating to the Parking, Moving, Operation, and Travel of Vehicles on One-Way Streets; and
3. Adopt Resolution No. 2013 ____: Designating One-Way Streets.

PREPARED BY:
REVIEWED/APPROVED BY:

Ed Dadisho, Police Chief
Suzanne Bragdon, City Manager

ATTACHMENTS:

1. Existing Chapter 10.16 of the Suisun City Code.
2. Resolution No. 2009-06: Authorizing Portions of Solano Street and Kellogg Street to be Changed from Two-Way to One-Way Traffic.
3. Ordinance No. ____: Amending Chapter 10.16 of Title 10 of the Suisun City Code Relating to the Parking, Moving, Operation, and Travel of Vehicles on One-Way Streets.
4. Resolution No. 2013 ____: Designating One-Way Streets.

PREPARED BY:
REVIEWED/APPROVED BY:

Edmond Dadisho, Chief of Police
Suzanne Bragdon, City Manager

placed or erected within or adjacent to intersections to regulate or prohibit turning movements at such intersections. (Ord. 429 §3, 1979)

Chapter 10.16

ONE-WAY STREETS

Sections:

- 10.16.010 Designated.
- 10.16.020 Posting.

10.16.010 Designated. The following named streets in the city are established and declared to be one-way streets, and vehicles thereon shall park, move, operate or travel in one direction only, as prescribed in this section:

A. Solano Street: Vehicles shall park, move, operate and travel in a westerly direction only from Main Street to West Street;

B. California Street: Vehicles shall park, move, operate and travel in an easterly direction only from West Street to Main Street;

C. Morgan Street: Vehicles shall park, move, operate and travel in a westerly direction only from Main Street to West Street;

D. Suisun Street: Vehicles shall park, move, operate and travel in a southerly direction only from Sacramento Street to Cordelia Street;

E. West Street: Vehicles shall park, move, operate and travel in a northerly direction only from Morgan Street to California Street. (Ord. 476 §1, 1983)

10.16.020 Posting. The city traffic engineer is authorized and directed to cause appropriate one-way street signs, indicating the direction of travel, to be erected and posted in the proper places on each street affected. (Ord. 476 §2, 1983)

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RESOLUTION NO. 2009-06

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY
AUTHORIZING PORTIONS OF SOLANO STREET AND KELLOGG STREET TO BE
CHANGED FROM TWO-WAY TO ONE-WAY TRAFFIC**

WHEREAS, on October 7, 2008, the City Council/Agency directed staff to proceed with a feasibility study for the one-way traffic alternative of Solano Street and Kellogg Street; and

WHEREAS, the study, *Potential Parking Improvement Strategies in Downtown Suisun City*, focuses on potential parking strategies to create additional parking in and around the areas containing the Harbor Theater and the new Harbor Square building; and

WHEREAS, Solano Street, Kellogg Street, Morgan Street, and Main Street were considered for improvements and/or modifications; and

WHEREAS, the report considers parking improvements, costs per parking space, time to construct and traffic safety improvements; and

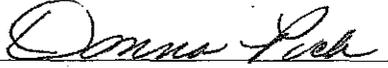
WHEREAS, after considering the various short- and long-term options, the report concludes that in addition to re-striping to maximize the on-street parking, certain street segments on Solano Street and Kellogg Street should be converted from two-way traffic to one-way traffic as shown in Exhibit A.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Suisun City authorizes the City Manager, or her designee, to change certain street segments of Solano Street and Kellogg Street as shown in Exhibit A to be changed from two way to one way traffic and to take such further actions as are necessary or appropriate to implement this Resolution.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Suisun City, duly held on the 20th day of January, 2009 by the following vote:

AYES:	Councilmembers:	<u>Hudson, Segala, Sanchez</u>
NOES:	Councilmembers:	<u>None</u>
ABSENT:	Councilmembers:	<u>Day, Derting (Due to Conflict of Interest)</u>
ABSTAIN:	Councilmembers:	<u>None</u>

WITNESS my hand and the seal of said City this 20th day of January 2009.



Donna Pock, Deputy City Clerk

ORDINANCE NO. ___

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY,
CALIFORNIA AMENDING CHAPTER 10.16 OF TITLE 10 OF THE SUISUN CITY
CODE RELATING TO THE PARKING, MOVING, OPERATION, AND TRAVEL
OF VEHICLES ON ONE-WAY STREETS**

WHEREAS, it is in the best interests of the citizens of the City of Suisun City to restrict the parking, moving, operating, and travel of vehicles on one-way streets within the City; and

WHEREAS, there is a need to identify the streets in the City designated as one-way travel; and

WHEREAS, the Police Department may only enforce one-way street violations when the streets are established and declared one-way by the City Council pursuant to the Suisun City Code.

THE CITY COUNCIL OF THE CITY OF SUISUN CITY, COUNTY OF SOLANO, STATE OF CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 10.16

The Section 10.16.10 of Chapter 10.16 of the Suisun City Code shall hereby be replaced by the following provision:

10.16.010 Designated. The City Council may by resolution establish and declare that certain named streets shall be designated as one-way streets, and vehicles thereon shall park, move, operate, or travel in one direction only.

The remaining provisions of the chapter shall remain unchanged.

SECTION 2. SEVERABILITY. If any section, clause, phrase or portion of this chapter 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 portion of this chapter. The City Council of the City of Suisun City hereby declares that it would have adopted this chapter and each section, subsection, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared in valid or unconstitutional.

SECTION 3. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after passage thereof.

SECTION 4. NOTICE OF PUBLICATION. This ordinance shall be posted in three (3) public places within the City prescribed by ordinance within fifteen (15) days after its passage, there being no newspaper of general circulation printed and published within the City.

Pete Sanchez, Mayor

CERTIFICATION

I, Linda Hobson, City Clerk of the City of Suisun City and ex-officio Clerk of the City Council of said City, do hereby certify that the above and foregoing ordinance was regularly introduced at a meeting of the said City Council held on Tuesday, December 17, 2013, and regularly passed and adopted at a regular meeting of said City Council held on Tuesday, January __, 2014 by the following vote:

AYES:	COUNCILMEMBERS	_____
NOES:	COUNCILMEMBERS	_____
ABSENT:	COUNCILMEMBERS	_____
ABSTAIN:	COUNCILMEMBERS	_____

WITNESS my hand and the seal of said City this 17th day of December 2013.

Linda Hobson, CMC
City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY
DESIGNATING ONE-WAY STREETS

WHEREAS, Section 10.16.010 of the Suisun City Code authorizes the City Council to designate certain named streets to be one-way; and

WHEREAS, five street segments were previously designated one-way in that Code section prior to its amendment; and

WHEREAS, the City Council has subsequently directed that other street segments be so designated.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby establishes and declares the following streets as one-way for the parking, moving, operation, and travel of vehicles on one-way streets:

- A. Solano Street: Vehicles shall park, move, operate and travel in a westerly direction only from Main Street to West Street.
- B. California Street: Vehicles shall park, move, operate and travel in an easterly direction only from West Street to Main Street.
- C. Morgan Street: Vehicles shall park, move, operate and travel in a westerly direction only from Main Street to West Street.
- D. Suisun Street: Vehicles shall park, move, operate and travel in a southerly direction only from Common Street to Cordelia Street.
- E. West Street: Vehicles shall park, move, operate and travel in a northerly direction only from Morgan Street to California Street.
- F. Common Street (a U-shaped street): Vehicles shall park, move, operate and travel in a westerly, southerly and easterly direction only from Main Street (entrance onto the north leg of Common Street) to Main Street (exit off of the south leg of Common Street).
- G. Solano Street: Vehicles shall park, move, operate and travel in a easterly direction only from Main Street to Kellogg Street.
- H. Kellogg Street: Vehicles shall park, move, operate and travel in a southerly direction only from Solano Street to Morgan Street.

PASSED AND ADOPTED at a regular meeting of the Suisun City Council, duly noticed and held on Tuesday the 17th day of December 2013 by the following vote:

AYES: Councilmembers: _____
NOES: Councilmembers: _____
ABSENT: Councilmembers: _____
ABSTAIN: Councilmembers: _____

WITNESS my hand and the seal of said City this 17th day of December 2013.

Linda Hobson, CMC
City Clerk

AGENDA TRANSMITTAL

MEETING DATE: December 17, 2013

CITY AGENDA ITEM: City Ordinance Adoption of Ordinance No. ___: Amending Chapter 15.04 of Title 15 of the Suisun City Municipal Code, Which Adopts by Reference the 2013 California Building Code, the 2013 California Residential Code, the 2013 California Electrical Code, the 2013 California Plumbing Code, the 2013 California Mechanical Code, the 2013 California Fire Code, the 2013 California Building Standards Administrative Code, the 2013 California Green Building Standards Code and the 2013 California Reference Standards Code.

FISCAL IMPACT: The cost for the Building Department to prepare to enforce the new codes is approximately \$4,000 for the purchase of new code books and staff training. These costs were anticipated in the current budget, so no budget adjustment is necessary.

BACKGROUND: The building and fire codes, which the City is required to enforce by the State of California, have now been republished as the 2013 edition. In the State process, certain model codes published by organizations such as the International Code Council, International Association of Plumbing and Mechanical Officials, National Fire Protection Association, etc., are reviewed and amended by the California Building Standards Commission (CBSC). The CBSC has completed this process and the body of codes known collectively as the 2013 California Building Code (CBC) has been published. It is appropriate, therefore, that we amend the Suisun City Code to update its references to the latest building and fire code editions. This is primarily a housekeeping measure to change titles and references in our City Code to correspond correctly to the new or revised sections in the CBC.

On November 19, 2013, the ordinance to adopt the latest version of the CBC was introduced, the reading was waived, and a public hearing was held.

STAFF REPORT: There are no changes to the originally proposed ordinance. A request was made by a Councilmember at the November 19, 2013 meeting that staff provide a synopsis of how the ordinance has changed on the City webpage. Staff will work to ensure that a synopsis is provided to the public on the City webpage.

As previously presented on November 19, 2013, the Suisun City Code includes by reference the building codes and standards collectively known as the CBC. This body of codes includes the building code, plumbing code, mechanical code, electrical code, fire code, and other supporting documents. Periodically the CBSC publishes an updated edition of the CBC. The 2013 Edition was published in July of 2013 and will become effective January 2014. The Suisun City Code must now be updated to reference the newest editions of the various codes and make other needed administrative changes.

PREPARED BY:

REVIEWED AND APPROVED BY:

Daniel Kasperson, Building & Public Works Director

113

Amanda Dum, Management Analyst I

Suzanne Bragdon, City Manager

For better understanding, the proposed ordinance includes the entire Suisun City Code Chapter 15.04 including the unchanged sections. Highlights of the proposed ordinance include:

- The changes in City Code Section 15.04.030 include the updated references to the newest documents within the 2013 CBC, including three additional reference documents. References to documents where no updated version is available have not been changed such as Section 15.04.030-F.
- Section 15.04.130 establishes the time before a building permit expires. Previously a permit issued to a single family homeowner would expire after two years after the date of issuance while all other permits would expire one year after issuance. The proposed change establishes that all permits expire two years after issuance. Recent experience has shown that it is sometimes difficult for many commercial projects to be completed within the 12 month time limit.
- The remaining changes to City Code are editorial in nature only.
- In order for local amendments to the CBC to be enforceable, the City must make “findings” justifying the amendments based on local climatic, topographical or geological conditions. Such findings are included in the proposed ordinance for all of the local amendments that have been included historically where they are required.

STAFF RECOMMENDATION: It is recommended that the City Council:

1. Reopen the Public Hearing for additional comments; and
2. Close the Public Hearing; and
3. Adopt Ordinance – City Ordinance Adoption of Ordinance No. __: Amending Chapter 15.04 of Title 15 of the Suisun City Municipal Code, Which Adopts by Reference the 2013 California Building Code, the 2013 California Residential Code, the 2013 California Electrical Code, the 2013 California Plumbing Code, the 2013 California Mechanical Code, the 2013 California Fire Code, the 2013 California Building Standards Administrative Code, the 2013 California Green Building Standards Code and the 2013 California Reference Standards Code.

ATTACHMENTS:

1. Ordinance No. __: Amending Chapter 15.04 of Title 15 of the Suisun City Municipal Code, Which Adopts by Reference the 2013 California Building Code, the 2013 California Residential Code, the 2013 California Electrical Code, the 2013 California Plumbing Code, the 2013 California Mechanical Code, the 2013 California Fire Code, the 2013 California Building Standards Administrative Code, the 2013 California Green Building Standards Code and the 2013 California Reference Standards Code.

ORDINANCE NO. - ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY, CALIFORNIA, AMENDING CHAPTER 15.04 OF TITLE 15 OF THE SUISUN CITY MUNICIPAL CODE, WHICH ADOPTS BY REFERENCE THE 2013 CALIFORNIA BUILDING CODE, THE 2013 CALIFORNIA RESIDENTIAL CODE, THE 2013 CALIFORNIA ELECTRICAL CODE, THE 2013 CALIFORNIA PLUMBING CODE, THE 2013 CALIFORNIA MECHANICAL CODE, THE 2013 CALIFORNIA FIRE CODE, THE 2013 CALIFORNIA BUILDING STANDARDS ADMINISTRATIVE CODE, THE 2013 CALIFORNIA GREEN BUILDING STANDARDS CODE AND THE 2013 CALIFORNIA REFERENCE STANDARDS CODE

WHEREAS, the State Building Standards Commission adopted the 2013 California Building Standards Code, codified in Title 24 of the California Code of Regulations; and

WHEREAS, the City Council of the City of Suisun City (the "City") wishes to update the rules and regulations governing building and construction in the City limits to reflect the 2013 California Building Standards Code, California Code of Regulations Title 24 ("CBSC"); and

WHEREAS, the City would like to make certain amendments to the 2013 CBSC in order to address the health and safety issues of the City's local climatic, geological or topographical conditions; and

WHEREAS, before making changes to the CBSC pursuant to Health and Safety Code Section 17958.5, Health and Safety Code Section 17958.7 requires the City to make express findings that such changes are reasonably necessary because of local climatic, geological or topographical conditions; and

The City Council of the City of Suisun City does hereby ordain as follows:

SECTION 1. Findings. The City finds it is necessary to adopt local amendments to the following subcodes of the CBSC: Building Code, Plumbing Code; Fire Code; Administrative Code. These local amendments have been evaluated and recognized by the City as tools for addressing problems with building construction in the City of Suisun City, which are aimed at establishing and maintaining an environment that will afford the City a high level of fire and life safety to all those who work live and play within the City's boundaries. The City finds as follows:

A. The City, pursuant to the authority granted it under California Health and Safety Code Sections 17958.5 and 18941.5, has determined that there is a need to establish building standards that are more restrictive than those adopted by the State of California and found in Title 24 and Title 25 of the California Code of Regulations.

These new building standards have been determined by the City of Suisun City to address the problems, concerns and future direction by which the City can establish and maintain an environment which will afford an appropriate level of fire and life safety to all who live and work within its boundary.

B. Under the provisions of Sections 17958.5 and 18941.5 of the Health and Safety Code, the amendment of state building standards at the local level must be reasonably necessary due to local climatic, topographical and/or geological conditions and the City must make express findings in this regard. The Council has determined that the following findings of fact address and present the local climatic, topographical, and/or geological conditions, which either singularly or in combination, have caused the aforementioned amendments to be adopted:

1. CLIMATIC

a. The City of Suisun City has extreme variations in weather patterns: summers are arid and hot, winters are cool to freezing, fall and spring can bring any combination of weather pattern together. As a result, the climate in the Suisun City area can have a great influence on fire behavior and other major emergency events in the City.

2. TOPOGRAPHICAL

a. The City of Suisun City is subject to possible flooding due to low lying elevations.

3. GEOLOGICAL

a. The City of Suisun City is subject to ground tremors from seismic events as the City is in Seismic Zone 4. Water inundation has occurred in the portion that lay in river Delta areas. Intricate levee systems hold back a portion of the floodwater, however, development has moved into areas that have the potential for flooding.

b. The City of Suisun City is in an area with localized pockets of clay and expansive soils. These soil conditions have been found to be a source of concern for footing and foundation design. Additionally, expansive soils can hold large amounts of moisture for extended periods of time. Either of these factors, or a combination of both has been found to create an increased risk of moisture intrusion under slabs in certain, common construction methods.

c. The City of Suisun City and its surrounding region contain many pockets of "hot" or corrosive soils. Galvanic corrosion is self-generating and occurs on the surface of a metal exposed to an electrolyte (such as moist, salt-laden soil). The action is similar to that which occurs in a wet, or dry, cell battery. Differences in electrical potential between locations on the surface of the metal (pipe) in contact with such soil may occur for a variety of reasons, including the joining of different metals (iron and copper or brass for example). This can be due to the characteristics of the soil in contact with the pipe

surface, e.g., pH, soluble salt, oxygen and moisture content, soil resistivity, temperature and presence of certain bacteria. Any one or a combination of these factors may cause a small amount of electrical current to flow through the soil between areas on the pipe or metal surface. Where this current discharges into the soil from such an area, metal is removed from the pipe surface and corrosion occurs. Premature failure of buried metallic pipe due to galvanic action has been experienced in these the Suisun City areas for decades.

d. The City of Suisun City is served with natural gas by the Pacific Gas and Electric Company (PG&E). The gas provided from PG&E is obtained primarily from sources in the Western United States and Canada. According to the Copper Development Association, Copper and copper alloy tube (except tin-lined copper tube) should not be used if the gas contains more than an average of 0.3 grains of hydrogen sulfide per 100 standard cubic feet (scf) of gas (0.7 mg/100 L). PG&E cannot assure that it's gas supplies meet this criterion. Excess hydrogen sulfide will cause corrosion of pipes as well as the creation of copper sulfides, which can cause failures in the appliances served.

e. The City of Suisun City is situated in "Seismic Zone 4" as defined by the International Code Council. This area contains a higher risk of seismic activity than most areas in the country. Catastrophic earthquakes account for 60% of worldwide casualties associated with natural disasters. Economic damage from earthquakes is increasing, even in technologically advanced countries, as shown by the 1989 Loma Prieta, CA, (\$ 6 billion), 1994 Northridge, CA, (\$ 25 billion), and 1995 Kobe, Japan, (> \$ 100 billion) earthquakes. Additionally, a high degree of hazard to occupants has been found to occur from unsupported fixtures, appliances and appurtenances in ceilings. These fixtures, though small in size, have been found to create a significant hazard to occupants in the event of seismic activity.

C. Based upon the local climatic, topographical and geological conditions identified in Section B, the specific amendments identified in Suisun City Municipal Code Sections 15.04.180-15.04.380 are found to be reasonable and necessary modifications to the requirements established pursuant to Sections 17958.5 and 18941.5. While it is clearly understood that the adoption of such amendments may not prevent the incidence failures, the implementation of these various amendments to the code attempt to reduce the severity and potential loss of life, property and protection of the environment.

D. California Health and Safety Code Section 17958.7 requires that building standards modifications or change be expressly marked and identified as to which each finding refers. Therefore, the City Council finds that the following table identifies the sections of the subcodes that have been amended by the City and the corresponding local climatic, geological and topographical conditions , as identified in Section B, that have necessitated the modification of the state's building standards.

Code Section	Local Condition:
Building Code Section 111.1 and California Residential Code Section R110.1 (SCMC § 15.04.160)	1a, 2a
Building Code Section 111.1 and California Residential Code Section R110.1 (SCMC § 15.04.170)	1a, 2a,
Building Code Section 110.3.10 and California Residential Code Section R109.2(SCMC § 15.04.180)	1a, 2a, 3b
Building Code Sections 1403.4, 1505.1, 1510.1 and California Residential Code Section R902.1 (SCMC § 15.04.190)	1a
Building Code Section 105.2 (SCMC § 15.04.195)	3a,3b,3e
Electric Code Section 230.79 (C) (SCMC § 15.04.210)	1a, 3c
Plumbing Code Section 604.1 (SCMC § 15.04.215)	3c
Fire Code Section 104.11.4 (SCMC § 15.04.230)	1a, 2a
Fire Code Section 503.1.4 (SCMC § 15.04.270)	1a, 2a
Fire Code Section 903.3.1.1.1 (SCMC § 15.04.295)	1a, 2a
Fire Code Section 903.2.11.3 (SCMC § 15.04.300)	1a, 2a
Fire Code Section 5704.4 (SCMC § 15.04.360)	1a, 2a
Fire Code Section 905.4.3 (SCMC § 15.04.370)	1a, 2a

SECTION 2. Suisun City Municipal Code Amendment – Chapter 15.04. Chapter 15.04 of the Suisun City Municipal Code “Permits – Uniform Codes” is hereby amended as follows (deletions in ~~strikethrough~~; additions in underlined):

15.04.010 Purpose.

This chapter is enacted for the purpose of adopting rules and regulations pursuant to the State Housing Law and the Health and Safety Code, for the protection of the public health, safety and general welfare of the occupant and the public governing the creation, construction, enlargement, conversion, alteration, repair,

moving, removal, demolition, occupancy, use, height, court area, sanitation, ventilation and maintenance of any building used for human habitation; provided, however, that nothing in the codes adopted in this chapter shall be construed to prevent any person from performing his own building, mechanical, plumbing or electrical work when performed with the permits in compliance with this chapter.

15.04.020 Definitions.

Whenever any of the following names or terms are used in this chapter or in any of the codes adopted by reference by this chapter, unless the context directs otherwise, such names or terms so used shall have the meaning ascribed thereto by this section:

A. "Board of appeals," "housing advisory and appeals board" and any other reference to the appellate body, mean the Board of Appeals for the City of Suisun City made up of five (5) Building Official members of the Napa-Solano Chapter of the International Code Council (NSICC) chosen on a case by case basis. The NSICC, an organization of Building Officials, Building Inspectors, and Construction Industry personnel, was formed in 1978 to help maintain consistent and uniform code enforcement and code interpretation within the jurisdictions of Napa and Solano counties. Building Officials from jurisdictions within Napa and Solano counties and neighboring counties are members of the NSICC. Building Official members of the NSICC are well versed in the technical and administrative provisions of construction codes.

B. The "Accessibility Appeals Board" shall mean the Board of Appeals for the City of Suisun City plus an additional two members having demonstrated experience dealing with accessibility standards and their applications, appointed on a case by case basis.

C. All decisions by the Board of Appeals and by the Accessibility Appeals Board shall be submitted in writing to the City Council for final review. All actions found by the City Council to be based on incomplete or inadequate analysis shall be referred back to the appropriate board for further deliberations.

D. "Building official," "plumbing official," "chief," "electrical inspector," "fire code official," "administrative authority" and similar references to a chief administrative position mean the Chief Building Official of the city of Suisun City; provided, however, that:

1. Where such terms are used in connection with those duties imposed by statute or ordinance upon the county health officer the terms shall include the county health officer;
2. For the purpose of implementing the Uniform Code for the Abatement of Dangerous Buildings the term "authorized representative" of the "building official" shall refer to and include the director of environmental

health and such personnel of the Solano County department of environmental health as he may designate.

E. "Building department," "electrical department," "plumbing department," "department of fire prevention", "office of administrative authority" or "housing department" means the building department of the city.

F. "City clerk" means the ex officio clerk of the city council.

G. "City council" or "mayor" means the governing elected officials of the city of Suisun City.

H. "Fire chief" means the chief of the fire department of the city wherein a particular building is or is to be located, or, for any area not within the city limits, the same shall mean the county fire warden designated by the board of supervisors.

I. "Safety assessment" is a visual, non-destructive examination of a building or structure for the purpose of determining the condition for continued occupancy.

15.04.030 Uniform codes adopted.

Subject to the modifications and amendments contained in this chapter, the following primary and secondary codes are adopted and incorporated into the codes of the city by reference and as having the same legal effect as if their respective contents were set forth in this chapter and which may be amended and/or corrected from time to time:

A. The ~~2010-2013~~ California Building Code (CBC) which references the International Building Code ~~2009-2012~~ Edition as published by the International Code Council, Inc, and state amendments.

B. The Uniform Housing Code, 1997 Edition, as published by the International Code Council, is adopted by reference as the housing code of the city.

C. The ~~2010-2013~~ California Plumbing Code which references the Uniform Plumbing Code, ~~2009-2012~~ Edition, together with the appendices thereto, and state amendments as published by the International Association of Plumbing and Mechanical Officials is adopted by reference as the plumbing code of the city.

D. The ~~2010-2013~~ California Electric Code which references the National Electrical Code, ~~2008-2011~~ Edition, as published by the National Fire Protection Association and state amendments is adopted by reference as the electrical code of the city.

E. The ~~2010-2013~~ California Mechanical Code which references the Uniform Mechanical Code, ~~2009-2012~~ Edition, together with the appendices thereto, as

published by the International Conference of Building Officials, and state amendments, is adopted by reference as the mechanical code of the city.

F. The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, as published by the International Code Council, is adopted by reference as the dangerous buildings code of the city, with Section 205 amended as follows: Section 205.1. In order to provide for final interpretation of provisions of this code and to hear appeals provided for hereunder, there is hereby established a Board of Appeals as defined in City Code Section 15.04.020. The Building Official shall be an ex officio member of and shall act as secretary to said Board. The Board shall adopt reasonable rules and regulations for conducting its business and shall render all decisions and findings in writing to the appellant, with a copy to the Building Official. Appeals to the board shall be processed in accordance with the provisions contained in Section 501 of this code. Copies of all rules or regulations adopted by the Board shall be delivered to the Building Official, who shall make them freely accessible to the public.

G. The Uniform Sign Code, 1997 Edition, as published by the International Code Council, is adopted by reference as the sign code for the city with the following exception: Section 303 item 3 is deleted.

H. The California Referenced Standards Code, ~~2010-2013~~ Edition, together with appendices thereto, as published by the International Code Council, with state amendments, is adopted by reference as the building standards of the city.

I. The ~~2010-2013~~ California Fire Code which references the International Fire Code, ~~2009-2012~~ Edition as published by the International Code Council, including appendices, with state amendments, is adopted by reference as the fire code of the city.

J. The Uniform Administrative Code, 1997 edition, as published by the International Conference of Building Officials, is adopted by reference as the administrative code of the city.

K. The ~~2010~~ 2013 California Building Standards Administrative Code, as published by the California Building Standards Commission, is adopted by reference as the building standards administrative code of the city.

L. The ~~2010~~ 2013 California Residential Code with Appendices (CRC), incorporating the ~~2009~~ 2012 edition of the Uniform Residential Code, as published by the International Code Council, is adopted by reference as the residential code of the city.

M. The ~~2010~~ 2013 California Green Building Standards Code, as published by the California Building Standards Commission, is adopted by reference as the green building standards code of the city.

15.04.040 Copies of adopted codes.

~~The city clerk shall maintain at least one copy of each primary code adopted by reference, and each secondary code pertaining thereto, The Building Official shall~~ maintain a least one copy of each primary code adopted by reference at the office of the city clerk for public inspection while this Ordinance is in force.

15.04.050 Utility connections.

It is unlawful for any person, including utility companies, to connect electric power lines or liquefied petroleum gas or natural gas sources permanently to any building or structure for which a permit is required by this chapter until the final inspection has been made and the approval signed by the building inspector. This section shall not prohibit the erection and use of temporary power poles approved by the power company during the course of construction, when approved by the building official.

15.04.060 Encroachment or grading.

No building permit shall be issued for which an encroachment or grading permit is required, unless and until the requirements prerequisite to the encroachment or grading permit have been met.

15.04.070 Conformance of construction to law.

No building permit shall be issued unless and until the building official is satisfied that the construction authorized by the permit will not violate any existing law or ordinance.

15.04.075 Construction work hours.

It shall be the responsibility of anyone engaging in construction or demolition work to restrict the hours of work activity on the site as follows.

A. No construction equipment shall be operated nor any outdoor construction or repair work shall be permitted within five hundred feet from any occupied residence except during the hours of seven a.m. to ten p.m., Monday through Saturday, and eight a.m. to ten p.m., on Sunday: 1. Interior work which would not create noise or disturbance noticeable to a reasonable person of normal sensitivity in the surrounding neighborhood shall not be subject to these restrictions;

B. A request for an exception to the permitted construction hours and days may be granted by the chief building inspector for emergency work, to offset project delays due to inclement weather, for twenty-four-hour construction projects, or other similar occurrences.

C. City projects determined by the director of public works to be emergencies shall be exempt from these provisions.

D. For construction work hours for earthwork, trenching, concrete or paving see Section 15.12.320.

15.04.080 Adoption or amendment procedure.

A. The building official shall review all codes newly adopted by the state pursuant to the State Housing Law, Section 17910 *et seq.* of the Health and Safety Code and shall:

1. Report such newly adopted codes to the city council and advise the board to schedule a hearing not less than ninety days from the date of report; and
2. Place copies of the codes to be considered by the board in the office of the city council, and in the building department for review by the general public.

B. The city council shall, upon the advice of the building official, schedule such public hearing to receive public testimony on the codes to be adopted by the board.

C. The clerk of the city council shall give notice of the time, place and subject matter of the public hearing scheduled on the matter by the council posting in three public places due to the fact that no newspaper is published or printed within the city limits.

D. The city council shall hold such public hearing at the date and time scheduled, and shall then adopt the code with amendments, if any.

15.04.090 Violations and penalties.

A. It is unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter.

B. Any person, firm, corporation or other entity which violates any of the provisions of this chapter including any of the codes adopted by reference, or who violates or fails to comply with any order made thereunder, or who builds in violation of any detailed statement of specification of plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who fails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction shall be guilty of an infraction unless otherwise provided in this code.

C. Any person, firm, corporation or other entity which is guilty of an infraction under this chapter shall be punished by:

1. A fine not exceeding one hundred dollars for the first violation;
2. A fine not exceeding five hundred dollars for a second or subsequent conviction within one year.

Any failure to correct the condition for which the infraction is imposed within a period of seven days after the issuance of a citation, and for each seven-day period thereafter may be treated as a separate and additional violation subject to the same penalties set forth herein.

In addition to the penalties set forth above, any violation beyond the third conviction within a one-year period or any willful violation of this section which creates an immediate threat to the health, safety or welfare of the members of the public or the occupants of any structure in violation of this section may be charged as a misdemeanor punishable as provided in Chapter 1.08.

D. In addition to the penalties set forth herein, any person, firm, corporation or other entity guilty of a violation of this chapter shall be liable for such costs, expenses and disbursements paid or incurred by the city in correction, abatement and prosecution of the violation.

15.04.095 Enforcement.

A. Pursuant to Section 836.5 of the California Penal Code, the chief building official, any deputy or assistant building official, agent or other employee of the building department of Suisun City is authorized to enforce the provisions of this chapter and to arrest or issue citations to violators thereof.

B. The city manager shall have the power to designate by written order that particular officers and other individuals shall be authorized to enforce particular provisions of this chapter as described in subsection A of this section in addition to those persons set forth therein.

15.04.100 Building permit-business license required.

A. Any contractor or subcontractor who applies for permits to do work within the city limits of the city shall be denied permits if he does not possess current valid city business licenses.

B. Any permits issued in error to anyone not licensed by the city shall be revoked until such time as all fees are paid and licenses are valid.

15.04.110 Building permit-application-plans and specifications.

A. Applications are to be signed by the property owner or a duly licensed contractor, engineer or architect.

B. With each application for a building permit, and when required by the building official for enforcement of any provisions of this chapter, three sets of plans and specifications shall be submitted. The building official may require plans and specifications to be prepared and designed by an engineer or architect licensed by the state to practice as such.

15.04.120 Building permit-professional designs required.

All structures or buildings classified in Occupancy Groups A, B, E, F, H, I, M, S and R-1 shall be designed in accordance with the Building and Professional Codes of the state of California.

15.04.130 Building permit-term-retention of plans.

~~A. The permits for Occupancy Groups A, B, F, E, H, I, M, S and R-1 will expire twelve months after issuance. The permit documents and plans or a retrievable document image of the permit documents and plans will be retained as a permanent record for the life of the structure.~~

B. Permits for R-3 and U all occupancy groups shall be valid for two years from the date of their issuance provided that the time limits of starting work or work stoppage are met. The permit documents and plans or a retrievable document image of the permit documents and plans will be retained as a permanent record for the life of the structure.

15.04.140 Building permit-fees.

Building permit fees shall be prescribed in Section 304 of the Uniform Administrative Code, except buildings shall be valued as determined by the Building Official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment.

15.04.150 Fees for plan checking, inspections and/or related permits.

The city council shall establish a schedule of fees, as found in the master fee schedule, to be charged and collected for plan checking, inspection services performed, and for the issuance of permits. A copy of these fee schedules shall be kept in the office of the city clerk and shall be available for public inspection in all city offices where permits are issued.

15.04.160 CBC Section 111.1 amended and CRC Section R110.1-Certificate of occupancy Required.

CBC Section 111.1 and CRC Section R110.1 shall be amended to add:
No building or structure shall be used or occupied without a certificate of occupancy. Such a certificate shall not be issued until compliance with all city requirements has been met. Occupying or using a structure without this approval constitutes a public nuisance.

15.04.170 CBC Section 111.1 amended and CRC Section R110.1 -Certificate of occupancy-Requirements.

CBC Section 111.1 and CRC Section R110.1 shall be amended to add:

A certificate of occupancy shall not be issued until all applicable city ordinances, resolutions, regulations and the conditional use permit conditions have been complied with.

15.04.180 CBC Section 110.3.10-amended and CRC Section R109.2- Final inspection.

CBC Section 110.3.10 and CRC Section R109.2 shall be amended to read as follows:

Final Inspection: To be made after final grading and the building is completed and ready for occupancy. This shall mean all electrical, plumbing and mechanical complete and ready for occupancy, as well as all floor covering installed and painting completed, as well as any required exterior landscaping complete with house, sidewalks and streets cleaned.

15.04.190 California Building Code and California Residential Code amended-roofing.

CBC Sections 1505.1, 1403.4 and 1510.1 and CRC Section R902.1 are amended as follows:

CBC Sec. 1505.1 and CRC Section R902.1 is amended to add the following:

All materials applied as roof covering shall have a fire rating of class "B" or better.

CBC Sec.1403.4 and CRC Section R902.1 is amended to add the following:

All roof materials applied as exterior wall covering shall have a fire rating of class "B" or better.

CBC Sec. 1510.1 and CRC Section R902.1 Re-roofing, is amended to add the following:

All materials applied as roof covering for re-roofing shall have a fire rating of class "B" or better, when 50% or more of an existing roof is replaced.

15.04.195 California Building Code amended- satellite dish antennas.

CBC Section 105.2 is amended as follows:

14. Satellite dish antennas are exempt from building permit, except when attached to roof or pole mounted above 15 feet.

15.04.200 California Building Code amended- standard plans.

The following is added to CBC Section 107.1 and CRC Appendix AE302.2:

Standard Plans: The Building Official may approve a set of plans for a building or structure as a "standard plan", provided the applicant has made proper application, submitted complete sets of plans, and paid the Plan Review Fee as required by CBC Section 109 and Uniform Administrative Code Section 304.3.

When it is desired to use an approved "standard plan" for an identical structure, two plot plans and one duplicate plan shall be submitted, and Plan Review Fee equal to one-half of the full Plan Review Fee required in Uniform Administrative Code Section 304.3 shall be paid at the time application is made for such identical structure. Such duplicate plans shall be compared, stamped, and kept on the job as required by CBC Section 107.5. In case of any deviation whatsoever from this standard plan, complete plans, together with a full Plan Review Fee, shall be submitted for the proposed work, as required by Section 107.3, 107.4 and 108 respectively.

Standard plans shall be valid for a period of one (1) year from the date of approval. This period may be extended by the Building Official when there is evidence that the plan may be used again.

15.04.210 California Electric Code amended-service panels.

California Electric Code Section 230.79 (C) is amended to add:

All new single-family dwellings will be equipped with two hundred amp main service panels, minimum.

15.04.215 California Plumbing Code amended-water supply piping.

California Plumbing Code Section 604.1 is amended to add:

A. An approved type of polyethylene or P.V.C. water supply piping will be acceptable except that the first ten feet of pipe from a structure shall be copper pipe, buried as per Uniform Plumbing Code. This is required to insure a proper Ground is provided.

15.04.220 Uniform Administrative Code Section 204 amended- new materials, appeals.

Uniform Administrative Code Section 204 is changed to read:

- (a) Appeals, New Materials, Processes, or Occupancies which may require permits.
- (b) The City Manager, the Building Official, the Fire Chief, and any other affected person shall act as a committee to determine suitability of alternative materials, processes or responsible interpretations of adopted codes.
- (c) When it is claimed that the provisions of any code adopted herein do not apply or that the true intent and meaning has been misconstrued or wrongly interpreted, the applicant may appeal the decision of the committee to the Board of Appeals within thirty (30) days after the committee's written decision.

15.04.230 California Fire Code - Section 104.11.4 added-hazard abatement.

California Fire Code Section 104.11.4 is added as follows:

Section 104.11.4 Abatement of Hazards. In situations where immediate abatement of a fire hazard is required, the Fire Chief shall have the authority to order such abatement and shall cause the expense of such abatement and/or action to become a lien upon the property affected. All affected persons shall be notified of actions taken as soon as possible.

15.04.240 California Fire Code -Section 105.1.4 added-fees.

California Fire Code Section 105.1.4 is added as follows:

Section 105.1.4 Fees for Plan Checking, Inspections, Permits. The City Council shall establish a schedule of fees, as found in the Master Fee Schedule, to be charged and collected for plan checking and inspection services performed and for the issuance of permits. A copy of these fee schedules shall be kept in the office of the city clerk and shall be available for public inspection in all city offices where permits are issued.

15.04.270 California Fire Code-Section 503.1.4 added-access way parking.

California Fire Code Section 503.1.4 is added as follows:

Access - Parking May Be Prohibited. If, in the judgment of the Fire Chief, it is necessary to prohibit vehicular parking along private driveways and other access ways devoted to public use in order to keep them clear and unobstructed, he may require the owner, lessee, or other person in charge of the premises to paint the curbs red, or install signs, or give other appropriate notice to the effect that parking is prohibited. It shall thereafter be unlawful for any such owner, lessee, or other person in charge to fail to install and maintain in good condition the form of notice so prescribed. When areas are marked or signed as prescribed herein, it shall be unlawful for any person to park or leave standing a vehicle adjacent to any such curb marking or contrary to such sign.

15.04.295 California Fire Code-Section ~~903.2.18~~ 903.3.1.1.1 added-sprinklers above storage areas.

California Fire Code Section ~~903.2.18~~ 903.3.1.1.1 is added as follows:

In all rooms containing combustible waste storage and above all combustible waste storage areas within ten (10) feet of a building or roof overhang. Such sprinklers may be connected to the domestic water supply provided the piping is sufficient to supply the area. If there is no ceiling a heat baffle plate shall be provided not more than six (6) inches above the sprinkler head.

15.04.300 California Fire Code-Section ~~903.2.19~~ 903.2.11.3 added-sprinklers in tall or large buildings.

California Fire Code Section ~~903.2.19~~ 903.2.11.3 is added as follows:

903.2.20 Tall or Large Commercial Buildings. In all non single family residential buildings in excess of two stories or 30 feet in height, or where the total floor area of all stories, basement and mezzanines of a building exceeds 3,600 square feet in area shall be equipped throughout with an approved automatic fire sprinkler system.

15.04.360 Fire code-outside aboveground storage limits.

The limits referred to in California Fire Code Section ~~3404.2.9.6.1~~ 5704.4, in which storage of flammable or combustible liquids in outside aboveground tanks is prohibited, are established as follows:

A. All areas except commercial sites where, in the opinion of the chief, no undue hazard to life or property exists;

B. Construction Sites. Tanks must comply with all other appropriate sections of the fire code and have a maximum capacity of five hundred fifty gallons.

15.04.370 California Fire Code-Section 905.4.3 added-hose connections in large or multiple story buildings.

California Fire Code Section 905.4 Item 3 is added as follows:

Additional local design criteria includes:

A. Hose connections are required in all buildings having floor area more than one hundred lineal feet from the nearest vehicular access point. Hose connections shall be designed to the following standards: 1. Hose connections may be used in place of hose cabinets and feature two and one-half gated (globe) valves with national hose standard thread. They shall be properly braced and are to be located where accessible but protected, as much as possible, from mechanical damage from equipment.

B. Standpipes are required in multiple story buildings having floor area more than one hundred lineal feet from the nearest vehicular access point. Hose connections shall be designed to the following standards: 1. Class I standpipe systems, as defined in Fire Prevention Standard 89-35, will be required. If the building is equipped with automatic sprinklers, the system may be designed as a combined system in accordance with National Fire Code Standard 14 and Fire Prevention Standard 89-35.

15.04.380 Electric access gates.

A. When access to or within a multi-unit residential structure or multi-unit residential area is impeded by an electronically or electrically secured gate, such electronically or electrically secured gate shall be constructed and maintained in accordance with plans approved by the fire chief and police chief. The chiefs shall not approve such plans unless the plans allow emergency vehicles and emergency personnel to open such electronically secured gate by city approved radio equipment used by emergency vehicles or personnel.

B. On or before February 15, 2008, all existing electronically or electrically secured gates that impede access to a multi-unit residential structure or multi-unit residential area shall either be (a) removed, or (b) constructed and maintained in accordance with plans approved by the police chief and fire chief.

SECTION 3. Filing with the CBSC. A copy of this Ordinance and Suisun City Municipal Code Chapter 15.04 shall be filed with the California Building Standards Commission in accordance with Health and Safety Code Section 17958.7.

SECTION 4. Severability and Validity. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Suisun City by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

SECTION 5. Effective Date. In accordance with California Government Code Section 36937, this Ordinance shall take effect and be in force on the thirty-first (31st) day after adoption.

SECTION 6. Publication. In accordance with Section 36933 of the Government Code of the State of California, this ordinance shall be posted in three (3) public places within the City prescribed by ordinance within fifteen (15) days after its passage, there being no newspaper of general circulation printed and published within the City.

By: Pete Sanchez, Mayor

CERTIFICATION

I, Linda Hobson, City Clerk of the City of Suisun City and ex-officio Clerk of the City Council of said City, do hereby certify that the above and foregoing ordinance was introduced at a regular meeting of the said City Council held on Tuesday, November, 19, 2013, and regularly passed and adopted at a regular meeting of said City Council held on Tuesday, December 17, 2013, by the following vote:

- AYES:** Councilmembers:
- NOES:** Councilmembers:
- ABSENT:** Councilmembers:
- ABSTAIN:** Councilmembers:

WITNESS my hand and the seal of said City this 17th day of December 2013.

Linda Hobson, CMC,
City Clerk