



Council Chambers
200 H Street
Antioch, CA 94509

Closed Session - 6:30 P.M.
Regular Meeting - 7:00 P.M.

ANNOTATED AGENDA

for

November 12, 2013

Antioch City Council
Regular Meeting

Wade Harper, Mayor
Mary Helen Rocha, Mayor Pro Tem
Gary Agopian, Council Member
Monica E. Wilson, Council Member
Tony Tiscareno, Council Member
Arne Simonsen, City Clerk
Donna Conley, City Treasurer
Jim Jakel, City Manager
Lynn Tracy Nerland, City Attorney

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Council meetings are televised live on Comcast Channel 24

Notice of Availability of Reports

This agenda is a summary of the actions proposed to be taken by the City Council. For almost every agenda item, materials have been prepared by the City staff for the Council's consideration. These materials include staff reports which explain in detail the item before the Council and the reason for the recommendation. The materials may also include resolutions or ordinances which are proposed to be adopted. Other materials, such as maps and diagrams, may also be included. All of these materials are available at the City Clerk's Office, located on the 3rd Floor of City Hall, 200 H Street, Antioch, CA 94509, during normal business hours for inspection and (for a fee) copying. Copies are also made available at the Antioch Public Library for inspection. Questions on these materials may be directed to the staff member who prepared them, or to the City Clerk's Office, who will refer you to the appropriate person.

Notice of Opportunity to Address Council

The public has the opportunity to address the Council on each agenda item. To address the Council, fill out a yellow Speaker Request form, available on each side of the entrance doors, and place in the Speaker Card Tray. See the Speakers' Rules on the inside cover of this Agenda. Comments regarding matters not on this Agenda may be addressed during the "Public Comments" section.

6:30 P.M. ROLL CALL for Closed Session – *All Present*

PUBLIC COMMENTS for Closed Session – *None*

CLOSED SESSION:

- 1) **CONFERENCE WITH LABOR NEGOTIATORS** – This Closed Section is authorized by California Government Code Section 54957.6. City designated representatives: Michelle Fitzer, Denise Haskett, and Glenn Berkheimer; Employee organizations: Management and Confidential Units

Direction given to Labor Negotiator

7:04 P.M. ROLL CALL for Council Members – *All Present*

PLEDGE OF ALLEGIANCE

ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS

ANNOUNCEMENTS OF BOARD AND COMMISSION OPENINGS

(Deadline date to apply 11/21/13)

- *Board of Administrative Appeals: 1 partial vac., expiring Mar. 2016 & 1 Alt. vac., 2-yr term*
- *Contra Costa County Mosquito & Vector Control Board of Trustees – 1 Antioch Rep. vac.*
 - *Contra Costa County Library Commission – 1 Antioch Rep. vac.*

PUBLIC COMMENTS—*Only unagendized issues will be discussed during this time*

CITY COUNCIL SUBCOMMITTEE REPORTS

MAYOR'S COMMENTS

1. **CONSENT CALENDAR**

A. APPROVAL OF COUNCIL MINUTES FOR OCTOBER 22, 2013

Recommended Action: Motion to approve the minutes

Approved, 5/0

MINUTES

CONSENT CALENDAR — Continued

- B.** APPROVAL OF SPECIAL MEETING/CLOSED SESSION MINUTES FOR NOVEMBER 4, 2013
Approved, 5/0

Recommended Action: Motion to approve the Special Meeting Minutes

STAFF REPORT

- C.** APPROVAL OF COUNCIL WARRANTS

Recommended Action: Motion to approve the warrants

Approved, 5/0

STAFF REPORT

- D.** FOUR PERSON TREE TRIMMING CREW BID AWARD (BID NO. 988-1016-13A)

Recommended Action: Motion to award the Four Person Tree Trimming Crew bid and issuance of a purchase order to Stewart's Tree Service, Inc., the overall low bidder, in the amount of \$125,000

Approved, 5/0

STAFF REPORT

- E.** RESOLUTION ACCEPTING WORK AND AUTHORIZING THE PUBLIC WORKS DIRECTOR/CITY ENGINEER TO FILE A NOTICE OF COMPLETION FOR THE ANTIOCH COMMUNITY PARK SYNTHETIC TURF FIELDS (P.W. 394-7F)

Recommended Action: Motion to adopt the resolution accepting work, authorizing the Public Works Director/City Engineer to File a Notice of Completion and authorizing the Director of Finance to make a retention payment of \$68,631.98 to be paid 35 days after recordation of the Notice of Completion and upon completion of all contractual landscape maintenance obligations

Reso No. 2013/62, 5/0

STAFF REPORT

- F.** RESOLUTION ACCEPTING WORK AND AUTHORIZING THE PUBLIC WORKS DIRECTOR/CITY ENGINEER TO FILE A NOTICE OF COMPLETION FOR THE PREWETT FAMILY WATER PARK FILTER REPLACEMENT AND RESURFACING (P.W. 567-5)

Recommended Action: Motion to adopt the resolution accepting work, authorizing the Public Works Director/City Engineer to File a Notice of Completion and authorizing the Director of Finance to make a final payment of \$23,981.45 plus retention of \$34,886.96 to be paid 35 days after recordation of the Notice of Completion

Reso No. 2013/63, 5/0

STAFF REPORT

- G.** AMEND THE FISCAL YEAR 2014 BUDGET FOR CONSULTANT SERVICES CONTRACTS

Recommended Action: Motion to amend the Fiscal Year 2014 Residential Development Allocation (RDA) expenditure budget by \$10,600. This amendment will cover increased consultant costs for the completion of the Development Impact Fee Study and Analysis.

Approved, 5/0

STAFF REPORT

END OF CONSENT CALENDAR

COUNCIL REGULAR AGENDA

2. KELLY'S CARD ROOM

Reso No. 2013/64, 5/0

Recommended Action: 1) Motion to adopt the resolution memorializing the expiration of the City's Card Room License associated with Kelly's Card Room at 408 O Street held by Albert Cianfichi.

STAFF REPORT

STAFF REPORT

Other actions for City Council consideration:

Reso No. 2013/65 with revised conditions of approval, 5/0

2) Motion to adopt a resolution approving Anthony Keslinke's application to operate a Card Room as ancillary to a full-service restaurant at 408 O Street with no more than 6 card tables subject to conditions of approval and approving a Parking Lot Lease between Anthony Keslinke and the City of Antioch for APN 066-124-002.

STAFF REPORT

3. PROPOSED LEASE OF CITY-OWNED PROPERTY LOCATED AT THE NORTHEAST CORNER OF CENTURY AND DELTA FAIR BOULEVARDS (APN 074-080-029) BY MESA OUTDOOR

Approved, 5/0

Recommended Action: Motion to approve the lease of City-owned property

4. ADOPTION OF THE CALIFORNIA BUILDING STANDARDS CODES AND AMENDMENTS TO THE CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING ORDINANCE

Recommended Action: 1) Motion to read the ordinances by title only;

To 11/26/13 for adoption, 5/0

2) Motion to introduce an ordinance amending and adding specific Local Amendments to chapters of Title 8 of the Antioch Municipal Code, adopting by reference the California Code of Regulations Title 24, 2013 Edition of the California Building Standards Codes and related model codes and amending Chapters 1 through 19 of Title 8 of the Antioch Municipal Code with Appendices and Amendments.

3) Motion to introduce an ordinance amending Article II, Chapter 3, of Title 6 of the Antioch Municipal Code, dealing with Construction and Demolition Debris Recycling.

To 11/26/13 for adoption, 5/0

STAFF REPORT

PUBLIC HEARING

5. FY 2012-13 REVIEW OF CDBG-FUNDED ACCOMPLISHMENTS

Recommended Action: 1) Motion to receive and file accomplishment data presented in the FY 2012-13 Consolidated Annual Performance and Evaluation Report.

Received and filed and received public comments, 5/0

2) Motion to receive public comment on the needs of lower income Antioch residents for public services, infrastructure, economic development, housing and other categories for use in developing the 2014-15 Action Plan and the 2015-19 Consolidated Plan.

STAFF REPORT

PUBLIC HEARING – Continued

6. ORDINANCE ESTABLISHING ZONING REGULATIONS FOR COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

- Recommended Action:
- 1) Motion to read the ordinances by title only;
To 11/26/13 for adoption, 5/0
 - 2) Motion to introduce an ordinance establishing zoning regulations for computer gaming and internet access businesses. The Planning Commission recommended adoption of the proposed ordinance on October 16, 2013 by a 5-0 vote with one absence.
 - 3) Motion to introduce an ordinance amending Title 5, Chapter 11 regarding refinements to the licensing requirements for computer gaming and internet access businesses.
To 11/26/13 for adoption, 5/0

STAFF REPORT

PUBLIC COMMENT

STAFF COMMUNICATIONS

COUNCIL COMMUNICATIONS

ADJOURNMENT – 11:05 p.m.

**CITY COUNCIL MEETING
INCLUDING THE ANTIOCH CITY COUNCIL
ACTING AS SUCCESSOR AGENCY/HOUSING SUCCESSOR
TO THE ANTIOCH DEVELOPMENT AGENCY**

**Regular Meeting
7:00 P.M.**

**October 22, 2013
Council Chambers**

5:30 P.M. - CLOSED SESSION

1. **CONFERENCE WITH LABOR NEGOTIATORS** – This Closed Section is authorized by California Government Code Section 54957.6. City designated representatives: Denise Haskett, and Glenn Berkheimer; Employee organizations: Management and Confidential Units
2. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION** – Initiation of Litigation pursuant to California Government Code Section 54956.9(d)(4): 1 potential case
3. **PUBLIC EMPLOYEE APPOINTMENT** pursuant to Government Code section 54957: Title: City Manager

City Attorney Nerland announced that an item had come to her attention since the posting of the agenda regarding the lawsuit that the City filed regarding filters for the water treatment plant. Specifically, insurance carrier Cincinnati Specialty Underwriters Insurance Company filed a lawsuit in Indiana against F.D. Deskins Company and the City of Antioch regarding insurance coverage, and there is newly discovered existence of an additional insurance carrier that Deskins had not disclosed. She reported the City needed to decide how to handle this new information before the next Council meeting because of court deadlines and litigation strategy. Therefore, pursuant to Government Code section 54954.2(b)(2) requiring a 2/3 vote, the City Council added the following item to the closed session agenda as an urgency item:

4. **URGENCY ITEM: CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION—**
Pursuant to Government Code section 54956.9(d)(1): City of Antioch vs. Black & Veatch Corporation, F.D. Deskins Company, Inc., TW Associates dba MISCOWater, Contra Costa Superior Court Case No. 00227; The Cincinnati Specialty Underwriters Insurance Company v. F.D. Deskins Company Inc. and City of Antioch, Hamilton Circuit Court, Indiana, Cause No. 29C01 1306 CT511.

City Attorney Nerland reported the City Council had been in Closed Session and gave the following report: **#1 CONFERENCE WITH LABOR NEGOTIATORS**, Labor Negotiator was absent, no action was taken; **#2 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**, Direction given to the City Attorney, **#3 PUBLIC EMPLOYEE APPOINTMENT**, No reportable action; and, **#4 URGENCY ITEM: CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** Direction was given to the City Attorney.

Mayor Harper called the meeting to order at 7:03 P.M., and City Clerk Simonsen called the roll.

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

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Rocha led the Council and audience in the Pledge of Allegiance.

PROCLAMATIONS

- *45th Anniversary of Eden Housing*
- *Domestic Violence Awareness Month, October 2013*
- *Freedom from Workplace Bullies Week, October 20 – 26, 2013*
- *Extra Mile Day, November 1, 2013*
- *National Animal Shelter (and Rescue) Appreciation Week, Nov. 3 – 9, 2013*

On motion by Councilmember Rocha, seconded by Councilmember Agopian, the Council unanimously approved the Proclamations.

Councilmember Wilson presented the proclamation recognizing the *45th Anniversary of Eden Housing* to Woody Karp, Senior Project Developer for Eden Housing, who thanked the City Council for the proclamation and presented the Council with invitations to their event.

Councilmember Rocha presented the proclamation proclaiming November 3-9, 2013 as *National Animal Shelter (and Rescue) Appreciation Week*, to Animal Shelter Supervisor Monika Helgamo, who thanked the City Council for the proclamation and invited the community to attend the Howl-O-Weenie Mutt Strut from 11:00 A.M. to – 2:00 P.M. on October 26, 2013 at the Antioch Animal Shelter. She introduced Animal Services staff and the volunteers in attendance.

Mayor Harper announced the proclamations for *Domestic Violence Awareness Month, October 2013*, *Freedom from Workplace Bullies Week, October 20 – 26, 2013* and *Extra Mile Day, November 1, 2013*, would be sent to the appropriate organizations.

Mayor Harper reported on his attendance at the Black Cat Ball.

ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS

Richard Lamb thanked the City Council and Martha Parsons for assisting in raising funds for the Veteran's Day parade, He expressed concern that the Antioch Police Department wanted the Huey helicopter to land near the police department and for maximum exposure he suggested the City Council request to have the location changed back to the Marina parking lot.

Mayor Harper stated they would continue to work with the Antioch Police Department to address their concerns.

Gil Murillo announced a Deer Valley soccer team fundraiser would be held from 12:00 P.M. – 4:00 P.M. on November 9, 2013, at Bases Loaded.

Jeffery Bell, Antioch resident, announced his daughter, representing the Deer Valley Junior Varsity Cheerleading, recently won the State Championship and the team may be moving on to the National Championships.

ANNOUNCEMENTS OF BOARD AND COMMISSION OPENINGS

City Clerk Simonsen announced the following Board and Commission openings:

- Board of Administrative Appeals – One (1) partial term expiring March 2016 and one (1) alternate for a two (2) year term, Deadline for applications 5:00 P.M. on November 21, 2013.
- Planning Commission – One (1) four-year term, Deadline for applications 5:00 P.M. on October 31, 2013.

He stated applications were available in Council Chambers, at the Clerk's Office and on the City's website.

PUBLIC COMMENTS

Noel Pinto, Antioch resident, requested the City consider adopting an ordinance that would require business permit applicants to reserve a certain percentage of jobs for local residents.

Patricia Britton, Antioch resident, expressed concern regarding speeding traffic on Delta Fair Blvd and requested the City consider a reduced speed limit to Belle Drive and restricting parking at the intersection of Desrys Blvd.

Mayor Harper referred Ms. Britton to Acting Captain Kelly.

Dotty Graham, Antioch resident, questioned if a landlord business fee were still being considered. She noted as a landlord, she was happy to pay the fee and felt it would be money well spent.

Mayor Harper responded that the citizen groups were continuing to meet with staff and the Apartment Associations to discuss this issue.

Amy Fisher, Human Solution Medical Marijuana group, reported a medical marijuana evaluation clinic in Antioch had been raided by the Federal Government and their licenses were not valid, however they continued to operate. She noted they had been attempting to stop them from operating.

Mayor Harper recommended suspected criminal activity be reported directly to the Antioch Police Department.

Councilmember Agopian thanked Ms. Fisher for bringing the information forward and stated he trusts staff would follow up on her concerns.

COUNCIL SUBCOMMITTEE REPORTS

Councilmembers Agopian and Wilson reported on their attendance at the Mello Roos subcommittee meeting.

MAYOR'S COMMENTS

Mayor Harper reported he would be attending a Tri-Delta Transit meeting on October 23, 2013.

PRESENTATION

Mayor Harper thanked District Attorney Peterson for placing a representative from his office in Pittsburg to assist in the filing of cases.

Mark Peterson, Contra Costa County District Attorney gave a brief overhead presentation of his professional background and the programs and services provided by the District Attorney's Office.

In response to Mayor Harper, District Attorney Mark Peterson stated he was open to discuss rotating the Pittsburg office location to Antioch.

In response to Councilmember Rocha, District Attorney Mark Peterson stated his office would contact the Antioch School District to discuss a partnership to address truancy.

Councilmember Agopian thanked District Attorney Peterson for the presentation and spoke to the importance of partnering with the District Attorney's office to combat crime.

District Attorney Mark Peterson stated he looked forward to a partnership with Antioch working on truancy and gang activity. He suggested Antioch officials encourage a representative from Central or East Contra Costa County be appointed to the Community Corrections Partnership.

Councilmember Tiscareno thanked District Attorney Peterson for the presentation and suggested the District Attorney's office hold a joint meeting with the Police Chiefs and School Districts to determine how best to reduce crime.

Mayor Harper thanked District Attorney Mark Peterson for the presentation and his efforts to reduce crime in Antioch. He stated the City was committed to reducing crime and becoming one of the safest Cities in Contra Costa County.

1. COUNCIL CONSENT CALENDAR

A. APPROVAL OF COUNCIL MINUTES FOR OCTOBER 8, 2013

- B. APPROVAL OF COUNCIL WARRANTS
- C. APPROVAL OF TREASURER'S REPORT FOR SEPTEMBER 2013
- D. ORDINANCE NO. 2072 C-S EXCLUSIVE PARKING DISTRICT
- E. AMENDMENT TO THE WATER TREATMENT PLANT SOLIDS MANAGEMENT EQUIPMENT RENTAL AGREEMENT WITH KARL NEEDHAM ENTERPRISES

City of Antioch Acting as Successor Agency/Housing Successor to the Antioch Development Agency
- F. APPROVAL OF SUCCESSOR AGENCY WARRANTS
- G. APPROVAL OF HOUSING SUCCESSOR WARRANTS

On motion by Councilmember Rocha, seconded by Councilmember Agopian, the City Council unanimously approved the Council Consent Calendar.

REGULAR COUNCIL / CITY OF ANTIOCH AS SUCCESSOR AGENCY TO THE ANTIOCH DEVELOPMENT AGENCY AGENDA

- 2. **DEMAND FROM STATE DEPARTMENT OF FINANCE: REMITTANCE OF BALANCE OF OTHER FUNDS AND ACCOUNTS FROM DUE DILIGENCE REVIEW FOR CITY AS SUCCESSOR AGENCY TO THE ANTIOCH DEVELOPMENT AGENCY**

Finance Director Merchant presented the staff report dated October 14, 2013 recommending the City Council authorize the Finance Director to send a letter to the State Department of Finance's (DOF) October 9, 2013 letter ordering the remittance of funds and authorize the following balances be remitted under protest to the Contra Costa County Auditor-Controller's office.

Following discussion, the City Council encouraged Finance Director Merchant to continue to protest and look into how Pittsburg and El Cerrito were able to get their amounts reduced.

On motion by Councilmember Agopian, seconded by Councilmember Tiscareno, the Council unanimously authorized the Finance Director to send a letter to the State Department of Finance's (DOF) October 9, 2013 letter ordering the remittance of funds and authorize the following balances be remitted under protest to the Contra Costa County Auditor-Controller's office.

COUNCIL REGULAR AGENDA

- 3. **APPOINTMENTS TO THE ANTIOCH POLICE CRIME PREVENTION COMMISSION – THREE FULL-TERM VACANCIES**

Mayor Harper recommended appointment of James Davis, Audrey Taylor, and Karen Williams to the Police Crime Prevention Commission – Three Full-Term Vacancies.

On motion by Councilmember Rocha, seconded by Councilmember Agopian, the Council unanimously approved the appointments of James Davis, Audrey Taylor, and Karen Williams to the Police Crime Prevention Commission – Three Full-Term Vacancies.

Karen Williams and Audrey Taylor thanked the City Council for the appointment to the Police Crime Prevention Commission and stated they looked forward to serving the community.

Hans Ho, Coordinator for the Police Crime Prevention Commission, thanked the City Council and Acting Captain Kelley for filling the vacancies on the Commission and welcomed the new Commissioners.

PUBLIC COMMENTS - None

STAFF COMMUNICATIONS

City Manager Jakel announced the next Special City Council meeting would be held on November 4, 2013 to begin the City Manager interview process and the next regular Council meeting would be held on November 12, 2013. He reminded residents that Election Day was November 5, 2013.

COUNCIL COMMUNICATIONS

Councilmember Wilson reported on her attendance at the Black Cat Ball.

Councilmember Rocha reported the next neighborhood cleanup day would be held on November 2, 2013 in the Gentrytown area.

Councilmember Tiscareno reminded the community that the Senior Scam Stopper Seminar would be held at 10:00 A.M. on October 23, 2013, at the Antioch Senior Center.

Mayor Harper reiterated that November 5, 2013 was Election Day. He adjourned the meeting in honor of Marine Corporal, Gregory Jerome Rocha. He announced services would be held at 10:30 A.M. on October, 29, 2013 at St. Ignatius Catholic Church.

ADJOURNMENT

With no further business, Mayor Harper adjourned the meeting at 8:26 P.M. to the next regular Council meeting on November 12, 2013.

Respectfully submitted:

Kitty Eiden

KITTY EIDEN, Minutes Clerk

**SPECIAL MEETING/CLOSED SESSION
ANTIOCH CITY COUNCIL**

**Special Meeting/Closed Session
8:00 A.M.**

**November 4, 2013
Antioch Police Department Community Room
and Closed Session in Conference Room**

ROLL CALL *for Closed Session*

Mayor Harper called the meeting to order at 8:07 A.M., and roll was called.

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

PLEDGE OF ALLEGIANCE

Mayor Harper led the Council and audience in the Pledge of Allegiance.

PUBLIC COMMENTS *for Closed Session – None*

CLOSED SESSION:

- 1) **PUBLIC EMPLOYEE APPOINTMENT** pursuant to Government Code section 54957:
Title: City Manager

ADJOURNMENT

With no further business, Mayor Harper adjourned the meeting at 4:00 P.M.

Respectfully submitted:

LYNN TRACY NERLAND
City Attorney

CITY OF ANTIOCH
 CLAIMS BY FUND REPORT
 FOR THE PERIOD OF
 OCTOBER 17 - NOVEMBER 6, 2013
 FUND/CHECK#

100 General Fund

Non Departmental

203178 BAUMANN, CARL & DANA	BARRICADE REFUND	40.00
347887 HARROLD, ANTONINA	CHECK REPLACEMENT	30.00
347925 STRATZ PERMIT SERVICE	SMIP FEE REFUND	1.50
348029 PROFESSIONAL RECOVERY SYSTEMS	COLLECTION FEES	55.63
348104 ADLERHORST INTERNATIONAL INC	POLICE SERVICE DOG	20,736.00
348128 DELTA DENTAL	PAYROLL DEDUCTIONS	303.28
348176 RITE ROOTER PLUMBING	SMIP FEE REFUND	1.50
348197 TYNDALL HVAC	SMIP FEE REFUND	1.50
920563 ZUMWALT ENGINEERING GROUP INC	ENGINEERING SERVICES	728.00

City Council

202877 BAGEL STREET CAFE	MEETING EXPENSE	81.75
347946 ANTIOCH UNIFIED SCHOOL DIST	FACILITY RENTAL	1,287.81

City Attorney

348041 SHRED IT INC	SHRED SERVICE	50.73
348068 XEROX CORPORATION	COPIER LEASE/USAGE	117.98
348122 CONTINUING EDUCATION OF THE BAR	AUTOMATIC UPDATES	182.56
348140 JARVIS FAY AND DOPORTO LLP	LEGAL SERVICES	4,402.39
348150 LEXISNEXIS	ONLINE LEGAL RESEARCH	76.50
348186 SHRED IT INC	SHRED SERVICE	50.96
348205 XEROX CORPORATION	COPIER LEASE/USAGE	113.06

City Manager

202878 DS WATERS OF AMERICA	WATER	38.87
347933 VFW	VETERANS PARADE	3,000.00
348068 XEROX CORPORATION	COPIER LEASE/USAGE	117.98
348119 CA SHOPPING CART RETRIEVAL CORP	SHOPPING CART RETRIEVAL	204.00
348205 XEROX CORPORATION	COPIER LEASE/USAGE	113.06

City Clerk

347984 EIDEN, KITTY J	MINUTES CLERK	140.00
348068 XEROX CORPORATION	COPIER LEASE/USAGE	117.98
348205 XEROX CORPORATION	COPIER LEASE/USAGE	113.06

City Treasurer

348027 PFM ASSET MGMT LLC	ADVISORY SERVICES	7,029.58
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Human Resources

347849 EMPLOYEE	EMPLOYEE RECOGNITION	300.00
347879 FEDEX	SHIPPING	23.44
347916 EMPLOYEE	EMPLOYEE RECOGNITION	350.00
347923 EMPLOYEE	EMPLOYEE RECOGNITION	350.00
348041 SHRED IT INC	SHRED SERVICE	44.00
348068 XEROX CORPORATION	COPIER LEASE/USAGE	495.71
348186 SHRED IT INC	SHRED SERVICE	117.25
348203 EMPLOYEE	EMPLOYEE RECOGNITION	200.00
348205 XEROX CORPORATION	COPIER LEASE/USAGE	381.06

Economic Development

348068 XEROX CORPORATION	COPIER LEASE/USAGE	117.98
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Prepared by: Georgina Meek
 Finance Accounting

CITY OF ANTIOCH
 CLAIMS BY FUND REPORT
 FOR THE PERIOD OF
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348158 NUNNALLY, BRIAN D	EXPENSE REIMBURSEMENT	67.89
348205 XEROX CORPORATION	COPIER LEASE/USAGE	113.06
Finance Administration		
348068 XEROX CORPORATION	COPIER LEASE/USAGE	309.57
348205 XEROX CORPORATION	COPIER LEASE/USAGE	303.53
Finance Accounting		
347926 THALES CONSULTING INC	STATE CONTROLLER REPORT	3,600.00
348041 SHRED IT INC	SHRED SERVICE	50.73
348112 AT AND T MCI	BITECH PHONE LINE	960.49
348114 BADAWI & ASSOCIATES	FISCAL YEAR 2013 AUDIT	29,501.78
348182 SAUNDERS, LISA D	MILEAGE REIMBURSEMENT	47.35
348186 SHRED IT INC	SHRED SERVICE	50.96
920714 SUNGARD PUBLIC SECTOR INC	ASP SERVICES	12,732.85
Finance Operations		
348054 UNITED PARCEL SERVICE	WEEKLY PRINTER SERVICE FEE	13.00
348068 XEROX CORPORATION	COPIER LEASE/USAGE	2,120.04
348198 UNITED PARCEL SERVICE	WEEKLY PRINTER SERVICE FEE	2.00
348205 XEROX CORPORATION	COPIER LEASE/USAGE	2,092.29
Non Departmental		
203176 ANITGO CONSTRUCTION	BUS LIC FEE REFUND	15.52
203177 MCGEEHANS PORTABLE WELDING	BUS LIC FEE REFUND	36.50
347906 MUNISERVICES LLC	STARS	250.00
347934 WAGeworks	125 PLAN ADMIN FEE	150.00
348011 MUNISERVICES LLC	SUTA SERVICE	3,524.58
348031 PERS	NON ELIGIBLE ADMIN FEE	1,629.58
348156 MUNICIPAL POOLING AUTHORITY	UNMET LIABILITY DEDUCTIBLE	17,948.15
920706 RETIREE	MEDICAL AFTER RETIREMENT	1,654.43
Public Works Maintenance Administration		
348013 NEXTEL SPRINT	CELL PHONE	57.47
348068 XEROX CORPORATION	COPIER LEASE/USAGE	38.98
348205 XEROX CORPORATION	COPIER LEASE/USAGE	38.36
Public Works General Maintenance Services		
348068 XEROX CORPORATION	COPIER LEASE/USAGE	103.96
348160 OFFICE MAX INC	OFFICE SUPPLIES	70.86
348172 QUESADA CHIROPRACTIC	DMV PHYSICAL	150.00
348205 XEROX CORPORATION	COPIER LEASE/USAGE	102.30
Public Works Street Maintenance		
347864 COUNTY ASPHALT	ASPHALT	991.17
347912 PAPA	MEMBER DUES	45.00
347936 WINDSOR FUEL COMPANY	PAVING	3,450.00
347940 AMERICAN ASPHALT	PARKING LOT STRIPING	26,189.67
347944 ANTIOCH BUILDING MATERIALS	ASPHALT MATERIALS	21,247.07
347969 COUNTY ASPHALT	ASPHALT	1,973.81
347974 DELTA GRINDING CO INC	EQUIPMENT RENTAL	2,650.00
348004 LOWES COMPANIES INC	SUPPLIES	32.30
348005 M & L SERPA TRUCKING INC	TRUCK RENTAL	5,592.40

Prepared by: Georgina Meek
 Finance Accounting

CITY OF ANTIOCH
 CLAIMS BY FUND REPORT
 FOR THE PERIOD OF
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348013 NEXTEL SPRINT	CELL PHONE	57.47
348043 SIERRA TRAFFIC MARKINGS INC	THERMOPLASTIC STRIPING	36,518.80
348055 UNIVERSAL BUILDING SERVICES INC	STREET SWEEPING SERVICES	875.00
348066 WINDSOR FUEL COMPANY	PAVING	2,900.00
348124 COUNTY ASPHALT	ASPHALT	980.75
348160 OFFICE MAX INC	OFFICE SUPPLIES	16.22
Public Works-Signal/Street Lights		
347839 AMERICAN GREENPOWER USA INC	SUPPLIES	2,636.12
347950 AT AND T MCI	PHONE	571.35
347966 CONTRA COSTA COUNTY	TRAFFIC SIGNAL MAINTENANCE	56,860.13
348022 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	376.83
920542 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	10,517.36
920554 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	367.94
920708 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	398.12
Public Works-Striping/Signing		
347891 HOME DEPOT, THE	SUPPLIES	62.50
348004 LOWES COMPANIES INC	SUPPLIES	502.45
348006 MANERI SIGN COMPANY	SIGNS	254.98
348013 NEXTEL SPRINT	CELL PHONE	57.47
348040 SHERWIN WILLIAMS CO	PAINT SUPPLIES	206.75
348185 SHERWIN WILLIAMS CO	PAINT SUPPLIES	465.84
348190 SPECIALIZED GRAPHICS	SIGNS	2,426.06
Public Works-Facilities Maintenance		
347837 ACE HARDWARE, ANTIOCH	SUPPLIES	23.01
347846 BAY CITIES PYROTECTOR	SPRINKLER INSPECTION	500.00
347950 AT AND T MCI	PHONE	47.14
347977 DEPT OF INDUSTRIAL RELATIONS	ELEVATOR INSPECTION	450.00
348001 LENHART ALARM AND SECURITY	ALARM SERVICE	432.00
348004 LOWES COMPANIES INC	SUPPLIES	378.76
348015 OAKLEYS PEST CONTROL	PEST CONTROL SERVICES	100.00
348135 GENERAL PLUMBING SUPPLY CO	PLUMBING SUPPLIES	77.23
348179 ROCHESTER MIDLAND CORP	SANITIZING SERVICE	202.53
920552 GRAINGER INC	SUPPLIES	183.79
920557 LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	2,494.82
Public Works-Parks Maint		
347869 DELTA FENCE CO	FENCE SUPPLIES	4,735.00
347907 MYERS CONTAINER LLC	EQUIPMENT	2,004.14
347940 AMERICAN ASPHALT	PARKING LOT STRIPING	8,287.50
347950 AT AND T MCI	PHONE	81.80
348001 LENHART ALARM AND SECURITY	ALARM SERVICE	148.50
348004 LOWES COMPANIES INC	SUPPLIES	17.75
348020 PACHECO BROTHERS GARDENING INC	LANDSCAPE SERVICES	41,057.17
348022 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	142.73
348149 LEATHERS AND ASSOCIATES	PLAYGROUND EQUIPMENT	392.30
920542 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	315.21
920555 JOHN DEERE LANDSCAPES PACHECO	SPRINKLER REPAIR	401.97

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Public Works-Median/General Land

347938 ACE HARDWARE, ANTIOCH	SUPPLIES	17.52
347950 AT AND T MCI	PHONE	156.12
348008 MT DIABLO LANDSCAPE CENTERS INC	SUPPLIES	298.06
348020 PACHECO BROTHERS GARDENING INC	LANDSCAPE SERVICES	1,915.00
348021 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	5,475.00
348022 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	63.88
348103 ACE HARDWARE, ANTIOCH	PVC FITTINGS	97.14
348154 MT DIABLO LANDSCAPE CENTERS INC	CONCRETE MIX	447.73
348161 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	2,765.00

Public Works-Work Alternative

348013 NEXTEL SPRINT	CELL PHONE	133.75
348103 ACE HARDWARE, ANTIOCH	SUPPLIES	32.67

Police Administration

202660 COMCAST	CABLE	54.80
347838 ACSO	COURSE TUITION	1,518.00
347842 ARROWHEAD 24 HOUR TOWING INC	TOWING SERVICES	337.50
347845 BARAKOS, DIMITRI A	PER DIEM	198.00
347850 BITTNER, DESMOND D	EXPENSE REIMBURSEMENT	45.00
347860 COMMERCIAL SUPPORT SERVICES	CAR WASHES	724.50
347861 CONCORD UNIFORMS LLC	UNIFORMS	5,750.95
347862 CONTRA COSTA COUNTY	COURSE TUITION	205.00
347865 CROWNE PLAZA	LODGING-BARAKOS	305.28
347867 D PREP LLC	TUITION-MCMURRAY	275.00
347874 DOUBLETREE HOTEL	LODGING-AGUINAGA	614.80
347875 DOUBLETREE HOTEL	LODGING-MCMURRY	274.88
347877 EIDEN, KITTY J	MINUTES CLERK	60.00
347879 FEDEX	SHIPPING	27.45
347880 FORTNER, JOHN C	PER DIEM	610.00
347885 HAMPTON INN	LODGING WK1-MCMURRY	479.05
347886 HAMPTON INN	LODGING WK2-MCMURRY	479.05
347889 HILTON	LODGING WK2-FORTNER	453.00
347890 HILTON	LODGING WK1-FORTNER	453.00
347898 LOPEZ, KATHLEEN M	EXPENSE REIMBURSEMENT	75.00
347899 MC MANUS, ERIC A	EXPENSE REIMBURSEMENT	45.00
347901 MCMURRY, JAMES P	PER DIEM	153.00
347902 MCMURRY, JAMES P	PER DIEM	610.00
347908 NATIONAL CRIME INVESTIGATION	COURSE TUITION	906.00
347910 NORTHWEST WISCONSIN TECH COLLEGE	TUITION-PFEIFFER/LENDERMAN	700.00
347917 REACH PROJECT INC	REACH SERVICES	51,250.00
347922 SANTA ROSA JR COLLEGE	TUITION-MCMURRY	132.00
347937 WISECARVER JR, JIMMY R	EXPENSE REIMBURSEMENT	45.00
347939 AGUINAGA, DIANE	PER DIEM	168.00
347947 ARROWHEAD 24 HOUR TOWING INC	TOWING SERVICES	47.50
347952 BANK OF AMERICA	AIRFARE	641.34
347953 BANK OF AMERICA	BUSINESS EXPENSE	639.44

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347971	CPS HUMAN RESOURCE SERVICES	EXAMS	1,662.90
347996	JACKSON LEWIS LLP	PROFESSIONAL SERVICES	1,180.00
347997	KELLEY, ROBIN M	PER DIEM	168.00
348016	OFFICE MAX INC	OFFICE SUPPLIES	736.98
348035	RGH GROUP, THE	POLICE RECRUITMENT	1,800.00
348058	VERIZON WIRELESS	AIR CARDS	76.02
348068	XEROX CORPORATION	COPIER LEASE/USAGE	1,709.52
348121	CONCORD UNIFORMS LLC	BODY ARMOR	2,781.84
348126	CSI FORENSIC SUPPLY	SUPPLIES	572.34
348145	KIWANIS CLUB OF THE DELTA ANTIOCH	MEMBER DUES	125.00
348146	KRENZ, RONALD L	EXPENSE REIMBURSEMENT	50.00
348152	MARIN CONSULTING ASSOC	TUITION-NISSEN	275.00
348170	PSYCHOLOGICAL SERVICES GROUP	CRITICAL INCIDENT SERVICES	437.50
348183	SAVE MART SUPERMARKETS	EVENT FOOD	233.25
348186	SHRED IT INC	SHRED SERVICE	423.75
348192	STATE OF CALIFORNIA	FINGERPRINTING	194.00
348205	XEROX CORPORATION	COPIER LEASE/USAGE	1,783.14
920553	HAMMONS SUPPLY COMPANY	SUPPLIES	35.84
920558	MOBILE MINI LLC	PORTABLE STORAGE CONTAINERS	208.96
920707	HUNTINGTON COURT REPORTERS INC	TRANSCRIPTION SERVICES	841.72
920709	IMAGE SALES INC	BADGES	104.05
920710	MOBILE MINI LLC	PORTABLE STORAGE CONTAINERS	142.86
Police Prisoner Custody			
348147	LAMOTHE CLEANERS	DRY CLEANING	120.00
348183	SAVE MART SUPERMARKETS	JAIL FOOD	52.22
Police Community Policing			
203091	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	77.50
347892	HUNT AND SONS INC	FUEL	178.78
347986	EMPLOYEE	PENSION PAYMENT	3,999.00
348031	PERS	PAYROLL DEDUCTIONS	1,386.56
348062	EMPLOYEE	PENSION PAYMENT	3,488.16
348153	MOORE K9 SERVICES	K9 TRAINING	500.00
348183	SAVE MART SUPERMARKETS	EVENT FOOD	40.78
920538	AUGUSTA, VINCENT	COURT APPEARANCE	97.94
Police Investigations			
203091	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	21.20
347970	COURT SERVICES INC	PRISONER TRANSPORTATION	350.00
348068	XEROX CORPORATION	COPIER LEASE/USAGE	669.51
348125	COURT SERVICES INC	PRISONER TRANSPORTATION	675.00
348205	XEROX CORPORATION	COPIER LEASE/USAGE	769.26
Police Special Operations Unit			
348194	TOYOTA FINANCIAL SERVICES	VEHICLE LEASE	1,543.90
Police Communications			
347941	AMERICAN TOWER CORPORATION	TOWER RENTAL	219.17
347949	AT AND T MCI	PHONE	6,781.11
347950	AT AND T MCI	PHONE	1,179.55

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347951 AT AND T MOBILITY	HIGH SPEED WIRELESS	434.69
348016 OFFICE MAX INC	OFFICE SUPPLIES	60.48
348030 PERS	PAYROLL DEDUCTIONS	131.69
348031 PERS	PAYROLL DEDUCTIONS	1,744.18
348113 AT AND T MOBILITY	HIGH SPEED WIRELESS	2,713.76
348162 PACIFIC TELEMAGEMENT SERVICES	LOBBY PAYPHONE	78.00
348173 QUICK PC SUPPORT	SOFTWARE LICENCES	16,423.75
Office Of Emergency Management		
347950 AT AND T MCI	PHONE	317.42
347979 DISH NETWORK	ANNUAL FEE	859.14
Police Community Volunteers		
348183 SAVE MART SUPERMARKETS	WATER	9.58
Police Facilities Maintenance		
347840 AMERICAN PLUMBING INC	PLUMBING SERVICES	1,128.90
347940 AMERICAN ASPHALT	PARKING LOT STRIPING	19,302.85
347950 AT AND T MCI	PHONE	306.03
347958 CAMALI CORP	MAINTENANCE SERVICE	345.00
347977 DEPT OF INDUSTRIAL RELATIONS	ELEVATOR INSPECTION	225.00
348001 LENHART ALARM AND SECURITY	ALARM SERVICE	72.00
348014 NEXTEL SPRINT	CELL PHONE	2,694.08
348015 OAKLEYS PEST CONTROL	PEST CONTROL SERVICES	100.00
920557 LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	4,411.17
Community Development Administration		
348068 XEROX CORPORATION	COPIER LEASE/USAGE	290.10
348205 XEROX CORPORATION	COPIER LEASE/USAGE	362.91
Community Development Land Planning Services		
348129 DYETT AND BHATIA	CONSULTING SERVICES	990.00
348168 PMC	CONSULTING SERVICES	9,211.22
348174 RANEY PLANNING & MANAGEMENT INC	PROFESSIONAL SERVICES	1,355.64
Community Development Neighborhood Improvement		
347894 INTERWEST CONSULTING GROUP INC	CONSULTING SERVICES	6,315.00
347928 TURNAGE II, KEN	PUBLIC NUISANCE ABATEMENT	1,404.67
348059 VERIZON WIRELESS	NETWORK SERVICES	114.03
PW Engineer Land Development		
347950 AT AND T MCI	PHONE	31.00
348013 NEXTEL SPRINT	CELL PHONE	171.29
348068 XEROX CORPORATION	COPIER LEASE/USAGE	157.80
348205 XEROX CORPORATION	COPIER LEASE/USAGE	191.97
Community Development Building Inspection		
347925 STRATZ PERMIT SERVICE	TECH FEE REFUND	88.22
348013 NEXTEL SPRINT	CELL PHONE	57.04
348160 OFFICE MAX INC	OFFICE SUPPLIES	368.73
348176 RITE ROOTER PLUMBING	ENERGY INSPECTION FEE REFUND	62.83
348197 TYNDALL HVAC	INSPECTION FEE REFUND	124.95
Capital Imp. Administration		
203044 DS WATERS OF AMERICA	WATER	41.97

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348068 XEROX CORPORATION	COPIER LEASE/USAGE	29.98
348205 XEROX CORPORATION	COPIER LEASE/USAGE	25.30
Community Development Engineering Services		
348013 NEXTEL SPRINT	CELL PHONE	57.47
348068 XEROX CORPORATION	COPIER LEASE/USAGE	224.88
348160 OFFICE MAX INC	OFFICE SUPPLIES	13.44
348205 XEROX CORPORATION	COPIER LEASE/USAGE	254.25
212 CDBG Fund		
CDBG		
347855 CITY DATA SERVICES	CDBG SERVICES	675.00
347894 INTERWEST CONSULTING GROUP INC	CONSULTING SERVICES	15,830.00
213 Gas Tax Fund		
Streets		
347851 BNSF RAILWAY COMPANY INC	WILBUR AVE PROJECT	69,614.04
347879 FEDEX	SHIPPING	26.17
347896 KIMLEY HORN AND ASSOCIATES INC	ENGINEERING SERVICES	748.23
347913 PARSONS BRINCKERHOFF INC	PROFESSIONAL SERVICES	66,040.60
348022 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	119.63
920543 PROVEN MANAGEMENT INC	WILBUR AVE PROJECT	763,449.83
214 Animal Control Fund		
Animal Control		
200280 GALUSHA, MICHAEL	LICENSE REFUND	38.00
347982 EAST HILLS VETERINARY HOSPITAL	VETERINARY SERVICES	5,786.75
347989 HILLS PET NUTRITION	ANIMAL FOOD	1,841.42
348004 LOWES COMPANIES INC	SUPPLIES	113.27
348014 NEXTEL SPRINT	CELL PHONE	443.73
348068 XEROX CORPORATION	COPIER LEASE/USAGE	183.73
348157 MWI VETERINARY SUPPLY CO	VETERINARY PHARMACEUTICALS	2,551.70
348205 XEROX CORPORATION	COPIER LEASE/USAGE	239.22
920557 LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	435.75
920705 HAMMONS SUPPLY COMPANY	SUPPLIES	869.69
216 Park-In-Lieu Fund		
Parks & Open Space		
348003 LINCOLN EQUIPMENT INC	SUPPLIES	321.55
219 Recreation Fund		
Non Departmental		
347991 IGLESIA ANDA DE LA FE	DEPOSIT REFUND	500.00
348134 GARGARO, ELIZABETH	CHECK REPLACEMENT	10.00
348181 RUTH, CORINNE	CHECK REPLACEMENT	70.00
348191 STATE BOARD OF EQUALIZATION	SALES TAX	104.64
Recreation Admin		
348001 LENHART ALARM AND SECURITY	ALARM SERVICE	144.00
Senior Programs		
347950 AT AND T MCI	PHONE	96.95
348160 OFFICE MAX INC	OFFICE SUPPLIES	67.58

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Recreation Classes/Prog

203155	ROTTIER, BETH	CLASS REFUND	78.00
203156	VANDERZWAN, PAMELA	CLASS REFUND	24.00
203158	VIERA, APRIL	CLASS REFUND	63.00
347844	BANK OF AMERICA	SUPPLIES	511.42
347871	DISCOUNT SCHOOL SUPPLY	CLASS SUPPLIES	350.74
347959	CAVALIC, ABEL	CLASS REFUND	110.00
347963	COLVIN, STANLEY	CLASS REFUND	149.00
347980	DUGAND, KARINA	CONTRACTOR PAYMENT	222.00
347983	EDUCATION TO GO	CONTRACTOR PAYMENT	269.00
348000	KOVALICK, LUANNE	CONTRACTOR PAYMENT	750.69
348007	MCNEAL, ERIKA	CLASS REFUND	152.00
348009	MUIR, ROXANNE	CONTRACTOR PAYMENT	331.32
348019	ORTIZ, CHERYL	CONTRACTOR PAYMENT	162.00
348063	WE ARE ONE PRODUCTIONS	CONTRACTOR PAYMENT	1,428.00
348067	WOOD, GREG	CLASS REFUND	149.00
348151	LIPPE, PATRICIA	CONTRACTOR PAYMENT	176.88
348175	RENWICK-GARCIA, CARLEEN	CLASS REFUND	110.00

Recreation Sports Programs

347893	INTEGRITY BUSINESS SOLUTIONS	FLYERS	465.78
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Recreation Concessions

347950	AT AND T MCI	PHONE	16.14
347962	COLE SUPPLY CO INC	SUPPLIES	93.14
348004	LOWES COMPANIES INC	SUPPLIES	43.71

Recreation-New Comm Cntr

347846	BAY CITIES PYROTECTOR	SPRINKLER INSPECTION	500.00
347856	COLE SUPPLY CO INC	SUPPLIES	112.04
347859	COMCAST	CONNECTION SERVICES	1,586.93
347949	AT AND T MCI	PHONE	63.43
347950	AT AND T MCI	PHONE	18.81
347962	COLE SUPPLY CO INC	SUPPLIES	8.40
347999	KELLY MOORE PAINT CO	SUPPLIES	182.90
348004	LOWES COMPANIES INC	SUPPLIES	270.85
348022	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	7,372.09
348031	PERS	PAYROLL DEDUCTIONS	787.22
348068	XEROX CORPORATION	COPIER LEASE/USAGE	289.82
348111	ANTIOCH GLASS	GLASS REPLACEMENT	2,046.23
348120	COMCAST	CONNECTION SERVICE	1,591.76
348137	HILLYARD INDUSTRIES	SUPPLIES	320.11
348205	XEROX CORPORATION	COPIER LEASE/USAGE	376.02
920542	ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	340.71

226 Solid Waste Reduction Fund

Solid Waste Used Oil

348106	ALLIED WASTE SERVICES	OIL COLLECTION REIMBURSEMENT	1,668.25
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Solid Waste

347853	BUSCH SYSTEMS INTERNATIONAL INC	RECYCLING BINS	1,153.70
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347895	KETTLE CREEK CORP	RECYCLING BINS	6,484.95
348139	ICLEI USA MEMBERSHIP	MEMBER DUES	1,750.00
348188	SIGN A RAMA INC	STENCILS	350.61
229 Pollution Elimination Fund			
Channel Maintenance Operation			
347884	GUARDAIN SECURITY	SECURITY SERVICES	320.00
347903	MJH EXCAVATING INC	EQUIPMENT RENTAL	3,630.00
347942	ANKA BEHAVIORAL HEALTH INC	LANDSCAPE SERVICES	7,544.00
347965	CONTRA COSTA COUNTY	MARKLEY CREEK INSPECTION	261.00
348004	LOWES COMPANIES INC	SUPPLIES	17.94
348013	NEXTEL SPRINT	CELL PHONE	48.75
348023	PAPA	RENEWAL-PORTER	45.00
348108	ANKA BEHAVIORAL HEALTH INC	LANDSCAPE SERVICES	9,878.50
348154	MT DIABLO LANDSCAPE CENTERS INC	CONCRETE MIX	272.23
238 PEG Franchise Fee Fund			
Non Departmental			
347915	QUALITY SOUND	COUNCIL CHAMBERS PROJECT	4,165.37
251 Lone Tree SLLMD Fund			
Lonetree Maintenance Zone 1			
347950	AT AND T MCI	PHONE	64.56
Lonetree Maintenance Zone 2			
347950	AT AND T MCI	PHONE	125.06
348021	PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	1,714.00
348161	PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	3,428.00
348169	PRINTEX CONCRETE PRODUCTS INC	SOUNDWALL PANEL	3,950.00
Lonetree Maintenance Zone 3			
347950	AT AND T MCI	PHONE	47.80
348021	PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	2,571.00
Lonetree Maintenance Zone 4			
348159	ODYSSEY LANDSCAPE CO INC	LANDSCAPE SERVICES	873.00
252 Downtown SLLMD Fund			
Downtown Maintenance			
920542	ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	124.07
253 Almondridge SLLMD Fund			
Almondridge Maintenance			
348159	ODYSSEY LANDSCAPE CO INC	LANDSCAPE SERVICES	1,223.00
254 Hillcrest SLLMD Fund			
Hillcrest Maintenance Zone 1			
347950	AT AND T MCI	PHONE	32.28
920555	JOHN DEERE LANDSCAPES PACHECO	CONTROLLER PARTS	644.98
Hillcrest Maintenance Zone 2			
347911	PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	3,103.25
347950	AT AND T MCI	PHONE	111.75
348021	PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	1,797.00
Hillcrest Maintenance Zone 4			
347911	PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	2,696.34

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347950 AT AND T MCI	PHONE	94.33
347973 DAVEY TREE EXPERT COMPANY, THE	TREE REMOVAL	1,811.25
348021 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	2,396.00
348161 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	1,452.00
255 Park 1A Maintenance District Fund		
Park 1A Maintenance District		
347950 AT AND T MCI	PHONE	16.18
348020 PACHECO BROTHERS GARDENING INC	LANDSCAPE SERVICES	160.00
256 Citywide 2A Maintenance District Fund		
Citywide 2A Maintenance Zone 9		
347911 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	2,228.20
347950 AT AND T MCI	PHONE	64.56
348021 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	3,733.00
348161 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	1,198.00
Citywide 2A Maintenance Zone10		
347978 DISCOVERY BUILDERS	FORMATION AGREEMENT	5,364.00
348159 ODYSSEY LANDSCAPE CO INC	LANDSCAPE SERVICES	793.00
257 SLLMD Administration Fund		
SLLMD Administration		
347907 MYERS CONTAINER LLC	EQUIPMENT	1,998.97
347912 PAPA	MEMBER DUES	315.00
347938 ACE HARDWARE, ANTIOCH	SUPPLIES	24.68
348013 NEXTEL SPRINT	CELL PHONE	165.80
259 East Lone Tree SLLMD Fund		
Zone 1-District 10		
348022 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	142.07
348159 ODYSSEY LANDSCAPE CO INC	LANDSCAPE SERVICES	1,248.00
311 Capital Improvement Fund		
Parks & Open Space		
347964 CONTRA COSTA COUNTY	DDR REMITTANCE	22,000.00
Measure WW		
920711 ODIN SYSTEMS INC	WIRELESS CAMERA SURVEILLANCE	1,790.25
Streets		
348141 JD PARTNERS CONCRETE	SIDEWALK REPAIR PROJECT	108,764.24
Public Buildings & Facilities		
348051 STRATEGIC THREAT MANAGEMENT INC	PATROL SERVICES	1,260.00
312 Prewett Family Park Fund		
Parks & Open Space		
347844 BANK OF AMERICA	SUPPLIES	760.46
348004 LOWES COMPANIES INC	SUPPLIES	353.42
376 Lone Diamond Fund		
Assessment District		
347913 PARSONS BRINCKERHOFF INC	PROFESSIONAL SERVICES	36,377.95
347966 CONTRA COSTA COUNTY	TRAFFIC SIGNAL MAINTENANCE	866.18
348033 PUBLIC STORAGE	STORAGE	576.00
348163 PARSONS BRINCKERHOFF INC	ENGINEERING SERVICES	19,410.73

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416 Honeywell Capital Lease Fund

Non Departmental

348115 BANK OF AMERICA	LOAN PAYMENT	43,050.08
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570 Equipment Maintenance Fund

Non Departmental

347892 HUNT AND SONS INC	FUEL	23,000.20
348138 HUNT AND SONS INC	FUEL	12,142.57

Equipment Maintenance

347843 BANK OF AMERICA	SUPPLIES	21.57
347854 CHUCKS BRAKE AND WHEEL SERVICE	BRAKE VALVES	446.99
347876 EAST BAY TIRE CO	TIRES	301.29
347883 GOLDEN GATE PETROLEUM	HYDRAULIC OIL	1,445.22
347914 PETERSON	BUCKET	2,242.69
347927 TRED SHED, THE	TIRES	3,977.59
347943 ANTIOCH AUTO PARTS	BATTERIES	1,792.32
347945 ANTIOCH GLASS	WINDSHIELD	414.66
347957 BILL BRANDT FORD	BRAKE PADS & ROTORS	387.21
347981 EAST BAY TIRE CO	TIRE REPAIR	102.85
348001 LENHART ALARM AND SECURITY	ALARM SERVICE	72.00
348026 PETERSON	HOSE	220.44
348060 WALNUT CREEK FORD	SEAT COVERS	1,318.10
348068 XEROX CORPORATION	COPIER LEASE/USAGE	47.66
348109 ANTIOCH AUTO PARTS	AUTO PARTS STOCK	238.79
348130 EAST BAY TIRE CO	TIRE SERVICE	527.18
348144 KEN KELLER SALES	EQUIPMENT PARTS	959.05
348155 MUNICIPAL MAINT EQUIPMENT INC	SUPPLIES	204.63
348165 PETERSON	VEHICLE REPAIR	5,290.02
348171 PURSUIT NORTH	VEHICLE SERVICES	3,066.60
348172 QUESADA CHIROPRACTIC	DMV PHYSICAL	75.00
348184 SCOTTOS AUTO BODY INC	AUTO BODY SERVICES	4,716.06
348193 SUPERIOR AUTO PARTS	FUEL FILTER	11.92
348202 WALNUT CREEK FORD	COOLING FAN	1,046.58
348204 WINTER CHEVROLET CO	AUTO PARTS	229.83
348205 XEROX CORPORATION	COPIER LEASE/USAGE	46.89
920548 BIG SKY ENTERPRISES INC	TIRE DISPOSAL	136.85
920549 COAST OIL COMPANY	MOTOR OIL	1,875.76

573 Information Services Fund

Information Services

347932 VERIZON WIRELESS	AIR CARD	108.23
347950 AT AND T MCI	PHONE	59.48
347954 BARTON, T ALAN	EXPENSE REIMBURSEMENT	46.64
348013 NEXTEL SPRINT	CELL PHONE	56.48
348160 OFFICE MAX INC	SUPPLIES	11.43
348201 VERIZON WIRELESS	AIR CARD	73.12

Network Support & PCs

347857 COMCAST	INTERNET SERVICE	214.91
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347858 COMCAST	INTERNET SERVICE	127.19
347859 COMCAST	CONNECTION SERVICES	1,026.55
347870 DIGITAL SERVICES	WEBSITE MAINTENANCE	2,405.00
347950 AT AND T MCI	PHONE	450.69
348013 NEXTEL SPRINT	CELL PHONE	120.81
348120 COMCAST	CONNECTION SERVICE	1,026.55
920539 COMPUCOM SYSTEMS INC	COMPUTER SOFTWARE	3,860.00
Telephone System		
347948 AT AND T MCI	PHONE	36.05
347949 AT AND T MCI	PHONE	187.99
347950 AT AND T MCI	PHONE	2,305.25
GIS Support Services		
347843 BANK OF AMERICA	SUPPLIES	1,446.96
Office Equipment Replacement		
347888 HEWLETT PACKARD COMPANY	COMPUTER EQUIPMENT	731.50
347988 HEWLETT PACKARD COMPANY	COMPUTER EQUIPMENT	2,833.68
577 Post Retirement Medical-Police Fund		
Non Departmental		
348031 PERS	MEDICAL AFTER RETIREMENT	4,156.94
348072 RETIREE	MEDICAL AFTER RETIREMENT	1,219.06
348073 RETIREE	MEDICAL AFTER RETIREMENT	500.50
348081 RETIREE	MEDICAL AFTER RETIREMENT	1,184.56
348085 RETIREE	MEDICAL AFTER RETIREMENT	842.00
348089 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
348096 RETIREE	MEDICAL AFTER RETIREMENT	219.32
348098 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
348100 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
348102 RETIREE	MEDICAL AFTER RETIREMENT	461.74
920544 RETIREE	MEDICAL AFTER RETIREMENT	144.04
920564 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920565 RETIREE	MEDICAL AFTER RETIREMENT	219.32
920569 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920571 RETIREE	MEDICAL AFTER RETIREMENT	1,111.84
920574 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920583 RETIREE	MEDICAL AFTER RETIREMENT	1,088.53
920584 RETIREE	MEDICAL AFTER RETIREMENT	810.00
920586 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920588 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920598 RETIREE	MEDICAL AFTER RETIREMENT	1,090.04
920602 RETIREE	MEDICAL AFTER RETIREMENT	810.00
920603 RETIREE	MEDICAL AFTER RETIREMENT	219.32
920615 RETIREE	MEDICAL AFTER RETIREMENT	173.37
920618 RETIREE	MEDICAL AFTER RETIREMENT	219.32
920620 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920621 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920622 RETIREE	MEDICAL AFTER RETIREMENT	130.73

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920629 RETIREE	MEDICAL AFTER RETIREMENT	173.37
920646 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920648 RETIREE	MEDICAL AFTER RETIREMENT	553.63
920658 RETIREE	MEDICAL AFTER RETIREMENT	496.30
920659 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920661 RETIREE	MEDICAL AFTER RETIREMENT	887.95
920671 RETIREE	MEDICAL AFTER RETIREMENT	553.63
920681 RETIREE	MEDICAL AFTER RETIREMENT	173.32
920684 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920688 RETIREE	MEDICAL AFTER RETIREMENT	553.63
920698 RETIREE	MEDICAL AFTER RETIREMENT	553.63
920700 RETIREE	MEDICAL AFTER RETIREMENT	193.61
920702 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26

578 Post Retirement Medical-Misc Fund

Non Departmental

348031 PERS	MEDICAL AFTER RETIREMENT	6,099.06
348071 RETIREE	MEDICAL AFTER RETIREMENT	239.69
348076 RETIREE	MEDICAL AFTER RETIREMENT	239.69
348077 RETIREE	MEDICAL AFTER RETIREMENT	121.69
348078 RETIREE	MEDICAL AFTER RETIREMENT	387.26
348079 RETIREE	MEDICAL AFTER RETIREMENT	594.38
348084 RETIREE	MEDICAL AFTER RETIREMENT	239.69
348087 RETIREE	MEDICAL AFTER RETIREMENT	239.69
348090 RETIREE	MEDICAL AFTER RETIREMENT	121.69
348092 RETIREE	MEDICAL AFTER RETIREMENT	121.69
348094 RETIREE	MEDICAL AFTER RETIREMENT	594.38
348095 RETIREE	MEDICAL AFTER RETIREMENT	121.69
348097 RETIREE	MEDICAL AFTER RETIREMENT	239.69
348101 RETIREE	MEDICAL AFTER RETIREMENT	519.26
348199 RETIREE	MEDICAL AFTER RETIREMENT	238.42
920566 RETIREE	MEDICAL AFTER RETIREMENT	255.43
920567 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920568 RETIREE	MEDICAL AFTER RETIREMENT	146.32
920570 RETIREE	MEDICAL AFTER RETIREMENT	358.51
920573 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920577 RETIREE	MEDICAL AFTER RETIREMENT	239.69
920579 RETIREE	MEDICAL AFTER RETIREMENT	239.69
920581 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920587 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920589 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920592 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920594 RETIREE	MEDICAL AFTER RETIREMENT	239.69
920597 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920600 RETIREE	MEDICAL AFTER RETIREMENT	173.37
920601 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920605 RETIREE	MEDICAL AFTER RETIREMENT	173.37

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920608 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920609 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920611 RETIREE	MEDICAL AFTER RETIREMENT	531.64
920612 RETIREE	MEDICAL AFTER RETIREMENT	163.02
920617 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920619 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920624 RETIREE	MEDICAL AFTER RETIREMENT	239.69
920625 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920628 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920631 RETIREE	MEDICAL AFTER RETIREMENT	239.69
920633 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920636 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920639 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920641 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920645 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920654 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920655 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920663 RETIREE	MEDICAL AFTER RETIREMENT	239.69
920666 RETIREE	MEDICAL AFTER RETIREMENT	239.69
920670 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920675 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920683 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920685 RETIREE	MEDICAL AFTER RETIREMENT	255.43
920687 RETIREE	MEDICAL AFTER RETIREMENT	173.37
920691 RETIREE	MEDICAL AFTER RETIREMENT	709.38
920697 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920699 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920701 RETIREE	MEDICAL AFTER RETIREMENT	84.28
920703 RETIREE	MEDICAL AFTER RETIREMENT	121.69

579 Post Retirement Medical-Mgmt Fund

Non Departmental

348031 PERS	MEDICAL AFTER RETIREMENT	9,054.58
348070 RETIREE	MEDICAL AFTER RETIREMENT	239.69
348074 RETIREE	MEDICAL AFTER RETIREMENT	964.95
348075 RETIREE	MEDICAL AFTER RETIREMENT	179.69
348080 RETIREE	MEDICAL AFTER RETIREMENT	121.69
348082 RETIREE	MEDICAL AFTER RETIREMENT	239.69
348083 RETIREE	MEDICAL AFTER RETIREMENT	400.00
348086 RETIREE	MEDICAL AFTER RETIREMENT	358.38
348088 RETIREE	MEDICAL AFTER RETIREMENT	759.38
348091 RETIREE	MEDICAL AFTER RETIREMENT	121.69
348093 RETIREE	MEDICAL AFTER RETIREMENT	255.43
348099 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920572 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920575 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920576 RETIREE	MEDICAL AFTER RETIREMENT	256.89

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920578	RETIREE	MEDICAL AFTER RETIREMENT	179.70
920580	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920582	RETIREE	MEDICAL AFTER RETIREMENT	898.90
920585	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920590	RETIREE	MEDICAL AFTER RETIREMENT	625.86
920591	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920593	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920595	RETIREE	MEDICAL AFTER RETIREMENT	474.38
920596	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920599	RETIREE	MEDICAL AFTER RETIREMENT	255.43
920604	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920606	RETIREE	MEDICAL AFTER RETIREMENT	898.90
920607	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920610	RETIREE	MEDICAL AFTER RETIREMENT	860.52
920613	RETIREE	MEDICAL AFTER RETIREMENT	408.20
920614	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920616	RETIREE	MEDICAL AFTER RETIREMENT	461.74
920623	RETIREE	MEDICAL AFTER RETIREMENT	315.64
920626	RETIREE	MEDICAL AFTER RETIREMENT	724.38
920627	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920630	RETIREE	MEDICAL AFTER RETIREMENT	255.43
920632	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920634	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920635	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920637	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920638	RETIREE	MEDICAL AFTER RETIREMENT	239.69
920640	RETIREE	MEDICAL AFTER RETIREMENT	239.69
920642	RETIREE	MEDICAL AFTER RETIREMENT	159.02
920643	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920644	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920647	RETIREE	MEDICAL AFTER RETIREMENT	964.95
920649	RETIREE	MEDICAL AFTER RETIREMENT	173.37
920650	RETIREE	MEDICAL AFTER RETIREMENT	255.43
920651	RETIREE	MEDICAL AFTER RETIREMENT	146.32
920652	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920653	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920656	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920657	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920660	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920662	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920664	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920665	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920667	RETIREE	MEDICAL AFTER RETIREMENT	239.69
920668	RETIREE	MEDICAL AFTER RETIREMENT	146.32
920669	RETIREE	MEDICAL AFTER RETIREMENT	379.69
920672	RETIREE	MEDICAL AFTER RETIREMENT	898.90

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920673 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920674 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920676 RETIREE	MEDICAL AFTER RETIREMENT	255.43
920677 RETIREE	MEDICAL AFTER RETIREMENT	625.86
920678 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920679 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920680 RETIREE	MEDICAL AFTER RETIREMENT	759.38
920682 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920686 RETIREE	MEDICAL AFTER RETIREMENT	255.43
920689 RETIREE	MEDICAL AFTER RETIREMENT	2,051.22
920690 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920692 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920693 RETIREE	MEDICAL AFTER RETIREMENT	1,111.84
920694 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920695 RETIREE	MEDICAL AFTER RETIREMENT	1,623.44
920696 RETIREE	MEDICAL AFTER RETIREMENT	255.43
611 Water Fund		
Non Departmental		
347878 FASTENAL CO	SUPPLIES	893.02
347919 ROBERTS AND BRUNE CO	SUPPLIES	2,233.75
347962 COLE SUPPLY CO INC	SUPPLIES	1,559.25
347985 FASTENAL CO	SUPPLIES	1,040.24
348049 STATEWIDE SAFETY AND SIGNS INC	SUPPLIES	517.55
348065 WESCO RECEIVABLES CORP	SUPPLIES	93.53
348107 AMERICAN WATER WORKS ASSOCIATION	MEMBER DUES	2,752.50
348178 ROBERTS AND BRUNE CO	SUPPLIES	6,801.81
920553 HAMMONS SUPPLY COMPANY	SUPPLIES	327.22
920704 CRYSTAL CLEAR LOGOS INC	SUPPLIES	1,809.82
Water Supervision		
348013 NEXTEL SPRINT	CELL PHONE	104.98
348039 RT LAWRENCE CORP	LOCKBOX PROCESSING FEE	763.16
348107 AMERICAN WATER WORKS ASSOCIATION	MEMBER DUES	2,753.50
348133 FONG, LISA	CHECK REPLACEMENT	10.15
Water Production		
202897 CDPH OCP	RENEWAL-NG	90.00
202898 UNITED STATES POSTAL SERVICE	POSTAGE	35.17
347843 BANK OF AMERICA	COMPUTER MONITOR	359.84
347863 CONTRA COSTA WATER DISTRICT	RAW WATER	1,141,180.89
347881 FOSTER, GARY A	SAFETY BOOTS REIMBURSEMENT	156.95
347900 MCCAMPBELL ANALYTICAL INC	MONITORING	261.90
347911 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	685.60
347919 ROBERTS AND BRUNE CO	SUPPLIES	710.91
347949 AT AND T MCI	PHONE	126.84
347950 AT AND T MCI	PHONE	824.21
347955 BHS MARKETING LLC	FLUORIDE	11,472.76
347956 BIGGE CRANE AND RIGGING CO INC	CRANE SERVICE	2,835.50

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347987 HACH CO	LAB SUPPLIES	173.20
347995 INLAND MARINE	BOAT REPAIR	522.74
347998 KELLY MOORE PAINT CO	SUPPLIES	1,425.72
348001 LENHART ALARM AND SECURITY	ALARM SERVICE	144.00
348004 LOWES COMPANIES INC	SUPPLIES	249.21
348013 NEXTEL SPRINT	CELL PHONE	63.85
348021 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	1,714.00
348022 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	1,666.35
348028 POLYDYNE INC	POLYMER	5,060.00
348034 QUESADA CHIROPRACTIC	DMV PHYSICAL	75.00
348042 SIEMENS INDUSTRY INC	SERVICE DI H2O SYSTEM	431.00
348061 WALTER BISHOP CONSULTING	PROFESSIONAL SERVICES	825.00
348068 XEROX CORPORATION	COPIER LEASE	69.50
348103 ACE HARDWARE, ANTIOCH	CHAIN	315.68
348109 ANTIOCH AUTO PARTS	VACUUM KITS	182.01
348116 BAY AREA AIR COMPRESSOR	EQUIPMENT REPAIR	2,819.89
348132 FISHER SCIENTIFIC COMPANY	LAB SUPPLIES	210.65
348148 LAW OFFICE OF MATTHEW EMRICK	LEGAL SERVICES	3,811.00
348161 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	857.00
348165 PETERSON	BLOCK HEATER	385.00
348178 ROBERTS AND BRUNE CO	PIPE GASKET	141.05
348187 SHUTE MIHALY AND WEINBERGER LLP	LEGAL SERVICES	94.50
348189 SPAULDING, ANN B	CONSULTING SERVICES	5,103.64
348200 VAULT ACCESS AND SOLUTIONS	STEEL VAULT DOORS	3,200.00
348205 XEROX CORPORATION	COPIER LEASE	69.50
920537 AIRGAS SPECIALTY PRODUCTS	AMMONIA	4,130.10
920540 GENERAL CHEMICAL CORP	ALUM	6,128.14
920545 3M AOSAFETY EYEWARE	SAFETY GLASSES-SARTI	239.12
920550 EUROFINS EATON ANALYTICAL INC	SAMPLE TESTING	75.00
920551 GENERAL CHEMICAL CORP	ALUM	12,169.39
920552 GRAINGER INC	SUPPLIES	294.76
920554 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	202.14
920557 LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	658.60
920560 OLIN CHLOR ALKALI PRODUCTS	CAUSTIC	6,005.41
920561 SIERRA CHEMICAL CO	CHLORINE	4,412.94
920708 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	554.28
920712 OLIN CHLOR ALKALI PRODUCTS	CAUSTIC	11,560.65
920713 SIERRA CHEMICAL CO	CHLORINE	4,412.94
920715 VINCENT ELECTRIC MOTOR CO	EQUIPMENT	26,035.66
Water Distribution		
347837 ACE HARDWARE, ANTIOCH	SUPPLIES	22.44
347841 ANTIOCH AUTO PARTS	FITTINGS	6.49
347868 DELTA DIABLO SANITATION DISTRICT	RECYCLED WATER	9,024.35
347878 FASTENAL CO	SUPPLIES	106.47
347905 MUNICIPAL MAINT EQUIPMENT INC	NOZZLE	208.27
347919 ROBERTS AND BRUNE CO	PIPE & FITTINGS	3,723.56

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347920 ROYAL BRASS INC	HOSE	70.13
347929 TYLER TECHNOLOGIES	MAINTENANCE CONTRACT	625.00
347930 UNITED STATES POSTAL SERVICE	PO BOX SERVICES	290.00
347938 ACE HARDWARE, ANTIOCH	PIPE FITTINGS	31.20
347950 AT AND T MCI	PHONE	16.14
347985 FASTENAL CO	SUPPLIES	121.24
347993 INFOSEND INC	PRINT/MAIL SERVICES	2,830.43
348004 LOWES COMPANIES INC	SUPPLIES	84.91
348012 NCBPA	WORKSHOP	320.00
348013 NEXTEL SPRINT	CELL PHONE	316.59
348037 ROBERTS AND BRUNE CO	PIPE & FITTINGS	2,915.57
348038 ROYAL BRASS INC	HOSE	73.08
348068 XEROX CORPORATION	COPIER LEASE/USAGE	121.29
348127 CWEA SFBS	RENEWAL-CELONI	148.00
348154 MT DIABLO LANDSCAPE CENTERS INC	CONCRETE MIX	101.81
348160 OFFICE MAX INC	OFFICE SUPPLIES	33.44
348164 PCS MOBILE	LAP TOP COMPUTER	3,803.50
348172 QUESADA CHIROPRACTIC	DMV PHYSICAL	150.00
348178 ROBERTS AND BRUNE CO	PIPE & FITTINGS	5,550.67
348195 TRENCH PLATE RENTAL CO INC	EQUIPMENT RENTAL	444.70
348196 TYLER TECHNOLOGIES	MONTHLY INSITE FEES	340.00
348198 UNITED PARCEL SERVICE	SHIPPING	57.13
348205 XEROX CORPORATION	COPIER LEASE/USAGE	119.34
920553 HAMMONS SUPPLY COMPANY	SUPPLIES	244.85
920556 KIMBALL MIDWEST	SUPPLIES	33.69
Water Meter Reading		
348013 NEXTEL SPRINT	CELL PHONE	47.13
Public Buildings & Facilities		
347852 BROWN AND CALDWELL INC	CONSULTING SERVICES	3,240.71
348177 RMC WATER AND ENVIRONMENT	CONSULTING SERVICES	9,794.80
Warehouse & Central Stores		
348001 LENHART ALARM AND SECURITY	ALARM SERVICE	108.00
348013 NEXTEL SPRINT	CELL PHONE	51.95
348054 UNITED PARCEL SERVICE	WEEKLY PRINTER SERVICE FEE	13.00
348068 XEROX CORPORATION	COPIER LEASE/USAGE	153.69
348198 UNITED PARCEL SERVICE	WEEKLY PRINTER SERVICE FEE	2.00
348205 XEROX CORPORATION	COPIER LEASE/USAGE	147.55
621 Sewer Fund		
Sewer-Wastewater Supervision		
348013 NEXTEL SPRINT	CELL PHONE	9.55
348068 XEROX CORPORATION	COPIER LEASE/USAGE	77.10
348205 XEROX CORPORATION	COPIER LEASE/USAGE	119.34
Sewer-Wastewater Collection		
347866 CWEA SFBS	WORKSHOP	450.00
347882 GOLDEN BELL PRODUCTS INC	MANHOLE PEST CONTROL	4,120.00
347919 ROBERTS AND BRUNE CO	PIPE & FITTINGS	4,053.56

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347929 TYLER TECHNOLOGIES	MAINTENANCE CONTRACT	625.00
347930 UNITED STATES POSTAL SERVICE	PO BOX SERVICES	290.00
347938 ACE HARDWARE, ANTIOCH	SUPPLIES	13.09
347950 AT AND T MCI	PHONE	63.66
347972 CWEA SFBS	RENEWAL-PORTER	148.00
347993 INFOSEND INC	PRINT/MAIL SERVICES	2,830.44
347994 INFRASTRUCTURE TECHNOLOGIES LLC	IT PIPE CORE LICENSE	8,078.00
348001 LENHART ALARM AND SECURITY	ALARM SERVICE	324.00
348013 NEXTEL SPRINT	CELL PHONE	162.70
348039 RT LAWRENCE CORP	LOCKBOX PROCESSING FEE	763.16
348064 WECO INDUSTRIES INC	HOSES	686.06
348103 ACE HARDWARE, ANTIOCH	PIPE & FITTINGS	9.27
348110 ANTIOCH BUILDING MATERIALS	ASPHALT MATERIALS	367.57
348154 MT DIABLO LANDSCAPE CENTERS INC	CONCRETE MIX	101.81
348180 ROOTX	ROOT CLEARING CHEMICAL	1,794.93
348196 TYLER TECHNOLOGIES	MONTHLY INSITE FEES	340.00
622 Sewer Facilities Expansion Fund		
Wastewater Collection		
348036 RMC WATER AND ENVIRONMENT	CONSULTANT SERVICES	10,444.75
631 Marina Fund		
Non Departmental		
347847 BECKER, CHRIS	BERTH DEPOSIT REFUND	377.00
347872 DOLAN, KEVIN	BERTH DEPOSIT REFUND	161.00
347935 WILKINS, DEANNA	BERTH DEPOSIT REFUND	370.30
348206 ROCKFORD CORP	SALES TAX JUL-SEP 2013	736.45
Marina Administration		
347909 NAUTICAL SOFTWARE SOLUTION	ANNUAL SOFTWARE	1,225.00
347950 AT AND T MCI	PHONE	79.88
348001 LENHART ALARM AND SECURITY	ALARM SERVICE	523.63
348068 XEROX CORPORATION	COPIER LEASE	69.50
348131 FASTENAL CO	SUPPLIES	19.62
348142 HULL CLEANING BY HAWKE	VESSEL INSPECTION	250.00
348205 XEROX CORPORATION	COPIER LEASE	69.50
Marina Maintenance		
347897 LENHART ALARM AND SECURITY	ALARM SERVICE	109.00
348159 ODYSSEY LANDSCAPE CO INC	LANDSCAPE SERVICES	938.00
920542 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	220.87
920557 LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	1,355.14
Major Projects		
347879 FEDEX	SHIPPING	59.51
641 Prewett Water Park Fund		
Non Departmental		
347960 CIMARRA, FLOR	DEPOSIT REFUND	500.00
347990 HURTADO, SANDRA	DEPOSIT REFUND	500.00
348191 STATE BOARD OF EQUALIZATION	SALES TAX	5,891.88

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Recreation Aquatics

347856 COLE SUPPLY CO INC	SUPPLIES	83.69
347904 MUIR, ROXANNE	AEROBIC INSTRUCTOR	70.00
348009 MUIR, ROXANNE	AEROBIC INSTRUCTOR	70.00

Recreation Water Park

347844 BANK OF AMERICA	SUPPLIES	365.74
347846 BAY CITIES PYROTECTOR	SPRINKLER INSPECTION	271.70
347856 COLE SUPPLY CO INC	SUPPLIES	171.89
347921 ROYAL WHOLESALE ELECTRIC	LAMPS	1,237.15
347931 UNIVAR USA INC	CHEMICALS	600.00
347950 AT AND T MCI	PHONE	47.17
347962 COLE SUPPLY CO INC	SUPPLIES	940.63
348001 LENHART ALARM AND SECURITY	ALARM SERVICE	360.00
348004 LOWES COMPANIES INC	SUPPLIES	51.55
348050 STERICYCLE INC	WASTE DISPOSAL	228.68
348068 XEROX CORPORATION	COPIER LEASE/USAGE	269.41
348123 CONTRA COSTA COUNTY	FY14 HAZMAT PERMIT	1,368.00
348143 KELLY MOORE PAINT CO	PAINT SUPPLIES	209.28
348205 XEROX CORPORATION	COPIER LEASE/USAGE	303.53
920541 GRAINGER INC	SUPPLIES	762.63
920542 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	340.71

Recreation Community Cnter

348167 PITCHER, JUSTIN WILLIAM	EXPENSE REIMBURSEMENT	104.09
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Rec Prewett Concessions

347950 AT AND T MCI	PHONE	46.83
348001 LENHART ALARM AND SECURITY	ALARM SERVICE	72.00
348057 US FOODSERVICE INC	CONCESSION SUPPLIES	865.83

721 Employee Benefits Fund

Non Departmental

347848 EMPLOYEE	CHECK REPLACEMENT	14.78
347918 EMPLOYEE	CHECK REPLACEMENT	88.12
347924 EMPLOYEE	CHECK REPLACEMENT	10.35
347961 CLAYTON FITNESS CENTER	PAYROLL DEDUCTIONS	35.99
347967 CONTRA COSTA COUNTY	PAYROLL DEDUCTIONS	400.00
347968 CONTRA COSTA COUNTY	PAYROLL DEDUCTIONS	50.00
347975 DELTA PARK ATHLETIC CLUB	PAYROLL DEDUCTIONS	37.00
347976 DELTA VALLEY ATHLETIC CLUB	PAYROLL DEDUCTIONS	54.00
347992 IN SHAPE HEALTH CLUBS	PAYROLL DEDUCTIONS	854.00
348002 LINA	PAYROLL DEDUCTIONS	4,596.23
348010 MUNICIPAL POOLING AUTHORITY	PAYROLL DEDUCTIONS	2,432.22
348017 OPERATING ENGINEERS LOCAL NO 3	PAYROLL DEDUCTIONS	2,223.00
348018 OPERATING ENGINEERS TRUST FUND	PAYROLL DEDUCTIONS	3,431.03
348024 PARS	PAYROLL DEDUCTIONS	2,462.86
348025 PERS LONG TERM CARE	PAYROLL DEDUCTIONS	56.90
348030 PERS	PAYROLL DEDUCTIONS	299,847.41
348031 PERS	PAYROLL DEDUCTIONS	271,196.85

Prepared by: Georgina Meek
 Finance Accounting

11/7/2013

CITY OF ANTIOCH
 CLAIMS BY FUND REPORT
 FOR THE PERIOD OF
 OCTOBER 17 - NOVEMBER 6, 2013
 FUND/CHECK#

348032 PUBLIC EMPLOYEES UNION LOCAL 1	PAYROLL DEDUCTIONS	2,064.25
348044 SOLAR SWIM AND GYM	PAYROLL DEDUCTIONS	27.00
348045 STANDARD LIFE INSURANCE	PAYROLL DEDUCTIONS	989.10
348046 STATE OF CALIFORNIA	PAYROLL DEDUCTIONS	200.00
348047 STATE OF CALIFORNIA	PAYROLL DEDUCTIONS	214.00
348048 STATE OF FLORIDA DISBURSE UNIT	PAYROLL DEDUCTIONS	150.00
348052 TEXAS CHILD SUPPORT DISBURSE UNIT	PAYROLL DEDUCTIONS	422.77
348053 RECIPIENT	PAYROLL DEDUCTIONS	112.15
348056 US DEPT OF EDUCATION	PAYROLL DEDUCTIONS	258.76
348069 XTREME FITNESS	PAYROLL DEDUCTIONS	104.00
348105 AFLAC	PAYROLL DEDUCTIONS	7,459.04
348117 EMPLOYEE	CHECK REPLACEMENT	113.71
348118 BLUE SHIELD LIFE	PAYROLL DEDUCTIONS	1,952.35
348128 DELTA DENTAL	PAYROLL DEDUCTIONS	25,600.37
348166 EMPLOYEE	CHECK REPLACEMENT	245.89
920546 ANTIOCH PD SWORN MGMT ASSOC	PAYROLL DEDUCTIONS	536.75
920547 APOA	PAYROLL DEDUCTIONS	11,352.67
920559 NATIONWIDE RETIREMENT SOLUTIONS	PAYROLL DEDUCTIONS	73,127.77
920562 VANTAGEPOINT TRANSFER AGENTS	PAYROLL DEDUCTIONS	5,467.13

**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF NOVEMBER 12, 2013**

Prepared by: Mike Bechtholdt, Deputy Public Works Director
Approved by: Ron Bernal, Public Works Director/City Engineer *RBB*
Date: November 5, 2013
Subject: Four Person Tree Trimming Crew Bid Award (Bid No. 988-1016-13A)

RECOMMENDATION

Staff recommends City Council authorize the City Manager to execute a contract and issue a purchase order for the Four Person Tree Trimming Crew (Bid No. 988-1016-13A) to the lowest bidder: Stewart's Tree Service, Inc., Antioch, CA not to exceed \$125,000 per year for a period of three years with the option to extend this contract an additional two years.

BACKGROUND

The Department of Public Works published the request for bids on October 2, 2013. The bid closed on October 16, 2013. Four contractors submitted qualifying bids.

The four person crew will perform professional tree trimming work on a scheduled and as-needed basis in an effort to reduce the liability of tree related issues. With the City's reduced landscape maintenance staffing levels, utilizing a contracted four person tree trimming crew provides a cost effective way of addressing the City's numerous tree issues such as height, safety and encroachment on an as required basis. The contractor is responsible for providing tools, equipment, vehicles, traffic control and insurance for their employees. Public Works staff will direct the contractor's work.

FISCAL IMPACTS

Funds are allocated in FY13/14 Lighting and Landscape Districts budgets, Council will approve subsequent years out of the same funds. There are no impacts to the approved budgets.

OPTIONS

Council may choose to not approve the bid award. This option is not recommended. Not awarding this contract will limit City staff's ongoing efforts to provide the most cost effective service of tree related issues.

ATTACHMENT

A: Bid tabulation



BID TABULATION

4 PERSON TREE TRIMMING CREW BID NO. 988-1016-13A

	1	2	3	4	NO BID	NO BID
FY 2013/14	Stewart's Tree Service P.O. Box 93 Antioch, CA 94509 \$1,400.00	Hamilton Tree Service, Inc. 4949 Pacheco Blvd. Martinez, CA 94553 \$1,850.00	West Coast Arborists 2200 E. Via Burton St. Anaheim, CA 92806 \$1,920.00	Atlas Tree Service, Inc. P.O. Box 23343 Pleasant Hill, CA 94523 \$3,785.00	Davey Tree 500 C Deenwood Road San Ramon, CA 94583	Evergreen Tree Care 4464 Lone Tree Way Suite 610 Antioch, CA 94531
FY 2014/15	\$1,600.00	\$1,850.00	\$1,920.00	\$4,110.00		
FY 2015/16	\$1,800.00	\$2,050.00	\$1,920.00	\$4,475.00		
Optional Years:						
FY2016/17	No Bid	\$2,150.00	\$2,080.00	No Bid		
FY2017/18	No Bid	\$2,250.00	\$2,080.00	No Bid		

**STAFF REPORT TO THE MAYOR AND CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF NOVEMBER 12, 2013**

PREPARED BY: Scott Buenting, Associate Engineer, Capital Improvements Division *SB*

APPROVED BY: Ron Bernal, Public Works Director/City Engineer *Rob*

DATE: October 28, 2013

SUBJECT: Resolution Accepting Work and Authorizing the Public Works Director/City Engineer to File a Notice of Completion for the Antioch Community Park Synthetic Turf Fields, (P.W. 394-7F)

RECOMMENDATION

It is recommended that the City Council adopt the attached resolution accepting work, authorizing the Public Works Director/City Engineer to File a Notice of Completion and authorizing the Director of Finance to make a retention payment of \$68,631.98 to be paid 35 days after recordation of the Notice of Completion and upon completion of all contractual landscape maintenance obligations.

BACKGROUND INFORMATION

On January 22, 2013, the City Council awarded a contract to Goodland Landscape Construction, Inc. in the amount of \$1,295,000.00 for the construction of a synthetic turf field complex at Antioch Community Park.

This project included the removal of the existing natural turf soccer fields on the eastern portion of Community Park and constructing a base over which new synthetic turf was installed. Storm drainage and irrigation facilities were modified to accommodate the new fields. Decorative perimeter fencing and field lighting was installed around the facility and a new electrical/storage building was constructed adjacent to the soccer fields. Cables and conduit were installed for security cameras.

On October 16, 2013, the contractor completed all work associated with this project.

FINANCIAL IMPACT

The final construction contract price for this project is \$1,372,639.62. The final contract price varies from the amount awarded predominately due to additional irrigation, storm drainage and electrical work performed at the site. Funding for this project was provided through the Measure WW Park Bond and Park-In-Lieu Funds.

OPTIONS

No options are suggested at this time.

ATTACHMENTS

- A: Resolution Accepting Work
- B: Notice of Completion

RESOLUTION NO. 2013/**

**RESOLUTION ACCEPTING WORK AND DIRECTING
THE PUBLIC WORKS DIRECTOR/CITY ENGINEER
TO FILE A NOTICE OF COMPLETION AND AUTHORIZING FINAL
PAYMENT TO GOODLAND LANDSCAPE CONSTRUCTION, INC. FOR THE
ANTIOCH COMMUNITY PARK SYNTHETIC TURF FIELDS
(P.W. 394-7F)**

WHEREAS, the Public Works Director/City Engineer, has certified the completion of all work provided to be done under and pursuant to the contract between the City of Antioch and Goodland Landscape Construction, Inc. and;

WHEREAS, it appears to the satisfaction of this City Council that said work under said contract has been fully completed and done as provided in said contract and the plans and specifications therein referred to;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Antioch, that:

1. The above-described work is hereby accepted.
2. The Public Works Director/City Engineer is directed to execute and file for record with the County Recorder, County of Contra Costa, a Notice of Completion thereof.
3. The Director of Finance is hereby directed to pay the Contractor a retention payment in \$68,631.98 to be paid 35 days after recordation of the Notice of Completion and upon completion of all contractual landscape maintenance obligations.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof held on the 12th day of November, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ARNE SIMONSEN, City Clerk

Recorded at the request
of and for the benefit
of the City of Antioch

When recorded, return
to City of Antioch
Capital Improvements Department
P.O. Box 5007
Antioch, CA 94531-5007

NOTICE OF COMPLETION

FOR

**ANTIOCH COMMUNITY PARK SYNTHETIC TURF FIELDS
IN THE CITY OF ANTIOCH
(P.W. 394-7F)**

NOTICE IS HEREBY GIVEN that the work and improvements hereinafter described, the contract for which was entered into by and between the City of Antioch and Goodland Landscape Construction, Inc. was completed on October 16, 2013.

The surety for said project was The Guarantee Company of North America USA.

The subject project consisted of installing synthetic turf in the soccer fields located at 801 James Donlon Boulevard in Antioch, California.

**THE UNDERSIGNED STATES UNDER PENALTY OF
PERJURY THAT THE ABOVE IS TRUE AND CORRECT**

Date

RON BERNAL, P.E.
Public Works Director/City Engineer

CITY OF ANTIOCH
ANTIOCH COMMUNITY PARK
SYNTHETIC TURF SOCCER FIELDS
P.W. 394-7F

ITEM	BID QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED PRICE	WORK COMPLETED	% COMPL.	DIF. FRM BID QTY.	PAYMENT DUE
Change Orders								
1	1	LS Attach header board to edge band with wedge anchors in lieu of screws	\$2,327.13	\$2,327.13	100 %	100%		\$2,327.13
2	1	LS Furnish & install additional 6" storm drain pipe along southern and western field perimeters	\$22,383.19	\$22,383.19	100 %	100%		\$22,383.19
3	1	LS Modify electrical connection facilities	\$6,908.32	\$6,908.32	100 %	100%		\$6,908.32
4	1	LS Furnish & install additional irrigation lateral piping	\$3,344.69	\$3,344.69	100 %	100%		\$3,344.69
5	1	FA Perform additional exploratory utility excavations	\$2,703.77	\$2,703.77	100 %	100%		\$2,703.77
6	1	LS Increase northern edge band width	\$1,141.00	\$1,141.00	100 %	100%		\$1,141.00
7	1	LS Deletion of irrigation mainline restraints	-\$2,550.00	-\$2,550.00	100 %	100%		-\$2,550.00
8	1	LS Replace & raise irrigation valves	\$2,797.61	\$2,797.61	100 %	100%		\$2,797.61
9	1	LS Furnish & install additional 10" storm drain pipe along northern field perimeter	\$3,765.04	\$3,765.04	100 %	100%		\$3,765.04
10	1	LS Installation of native soil hydroseed	\$3,841.94	\$3,841.94	100 %	100%		\$3,841.94
11	1	FA Additional adjustments to storm drain boxes	\$4,130.33	\$4,130.33	100 %	100%		\$4,130.33
12	1	LS Gate relocation and additional concrete placement	\$9,097.73	\$9,097.73	100 %	100%		\$9,097.73
13	1	LS Furnish & install safety railing	\$3,052.35	\$3,052.35	100 %	100%		\$3,052.35
14	1	LS Furnish & install additional 5 gallon shrubs	\$640.34	\$640.34	Item Deleted			\$0.00
15	1	LS Perform Risk Level 2 SWPPP related activities	\$5,267.36	\$5,267.36	100 %	100%		\$5,267.36
16	1	LS Remove & replace broken pathway concrete	\$2,331.25	\$2,331.25	100 %	100%		\$2,331.25
17	1	LS Furnish & install additional sod	\$5,598.51	\$5,598.51	100 %	100%		\$5,598.51
18	1	LS Remove & replace damaged fence panel	\$1,499.40	\$1,499.40	100 %	100%		\$1,499.40
					TOTAL CHG ORDERS			\$77,639.62
					WORK COMPLETED			\$1,372,639.62
					Less 5% Retention			\$68,631.98
					Subtotal			\$1,304,007.64
					Less Progress Payment #1			\$116,311.35
					Less Progress Payment #2			\$442,397.57
					Less Progress Payment #3			\$549,442.43
					Less Progress Payment #4			\$96,319.51
					Less Progress Payment #5			\$85,997.47
					TOTAL PAYMENT DUE			\$13,539.31
<p>Goodland Landscape Construction, Inc 2455 N. Naglee Road, Suite 402 Tracy, CA 95304-7324 Phone: (209) 835-9956 FAX (209) 835-9554</p> <p style="text-align: right;">Account Code: 3117615-73000</p> <p>PREPARED BY: _____ CHECKED BY: _____</p> <p>CONTRACTOR _____ DATE _____</p> <p style="text-align: right;">RON BERNAL PUBLIC WORKS DIRECTOR / CITY ENGINEER</p> <p style="text-align: right;">DATE _____</p>								

CITY OF ANTIOCH
ANTIOCH COMMUNITY PARK
SYNTHETIC TURF SOCCER FIELDS
P.W. 394-7F

ITEM	BID QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED PRICE	WORK COMPLETED	% COMPL.	DIF. FRM BID QTY.	PAYMENT DUE
1	1 LS	Mobilization, complete and in place	\$30,000.00	\$30,000.00	100 %	100%		\$30,000.00
2	1 LS	Site preparation and demolition, complete and in place	\$76,700.00	\$76,700.00	100 %	100%		\$76,700.00
3	1 LS	Site drainage, complete and in place	\$88,800.00	\$88,800.00	100 %	100%		\$88,800.00
4	1 LS	Earthwork and soccer field base preparation, complete and in place	\$444,000.00	\$444,000.00	100 %	100%		\$444,000.00
5	1 LS	Hardscape paving and edgeband, complete and in place	\$93,000.00	\$93,000.00	100 %	100%		\$93,000.00
6	1 LS	Ornamental fencing and netting, complete and in place	\$236,000.00	\$236,000.00	100 %	100%		\$236,000.00
7	1 LS	Site furnishings, complete and in place	\$18,000.00	\$18,000.00	100 %	100%		\$18,000.00
8	1 LS	Site electrical, complete and in place	\$136,700.00	\$136,700.00	100 %	100%		\$136,700.00
9	1 LS	Irrigation, complete and in place	\$38,300.00	\$38,300.00	100 %	100%		\$38,300.00
10	1 LS	Planting, complete and in place	\$29,800.00	\$29,800.00	100 %	100%		\$29,800.00
11	1 LS	Musco coordination and lighting, complete and in place	\$17,000.00	\$17,000.00	100 %	100%		\$17,000.00
12	1 LS	Security lighting, complete and in place	\$5,700.00	\$5,700.00	100 %	100%		\$5,700.00
13	1 LS	Prefabricated building, complete and in place	\$81,000.00	\$81,000.00	100 %	100%		\$81,000.00
TOTAL ORIGINAL CONTRACT				\$1,295,000.00				\$1,295,000.00

**STAFF REPORT TO THE MAYOR AND CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF NOVEMBER 12, 2013**

for RG

PREPARED BY: Ryan Graham, Deputy Director of Community Development and Recreation
REVIEWED BY: Scott Buenting, Associate Engineer, Capital Improvements Division
APPROVED BY: Ron Bernal, Public Works Director/City Engineer *RB*
DATE: October 23, 2013
SUBJECT: Resolution Accepting Work and Authorizing the Public Works Director/City Engineer to File a Notice of Completion for the Prewett Family Water Park Filter Replacement and Resurfacing (P.W. 567-5)

RECOMMENDATION

It is recommended that the City Council adopt the attached resolution accepting work, authorizing the Public Works Director/City Engineer to File a Notice of Completion and authorizing the Director of Finance to make a final payment of \$23,981.45 plus retention of \$34,886.96 to be paid 35 days after recordation of the Notice of Completion.

BACKGROUND INFORMATION

On February 12, 2013, the City Council awarded a contract to Western Water Features, Inc. in the amount of \$666,000.00. This project consisted of the removal and replacement of the water treatment systems, plastering surfaces and the addition of energy efficiency measures to the Antioch Water Park. In total, eleven (11) sand filters were replaced by three (3) energy efficient media filters resulting in a substantial amount of water use reductions. Three pools received new plastering. Variable Frequency Drives were installed to improve efficiency and reduce power usage.

The final project cost includes additional work to replace a collapsed underground conduit and modifications to the original plans in order to bring anti-entrapment drains in order to comply with SB1020.

The contractor completed all work associated with this project on October 9, 2103.

FINANCIAL IMPACT

The final contract price for this project is \$697,739.26. The budget includes \$337,727.00 of Measure WW Grant funding and \$360,012.26 of Community Park Funds for design, engineering and construction of this project.

OPTIONS

None recommended.

ATTACHMENTS

- A: Resolution Accepting Work
- B: Notice of Completion

RESOLUTION NO. 2013/**

**RESOLUTION ACCEPTING WORK AND DIRECTING
THE PUBLIC WORKS DIRECTOR/CITY ENGINEER
TO FILE A NOTICE OF COMPLETION AND AUTHORIZING FINAL
PAYMENT TO WESTERN WATER FEATURES, INC. FOR THE PREWETT FAMILY
WATER PARK FILTER REPLACEMENT AND RESURFACING
(P.W. 567-5)**

WHEREAS, the Public Works Director/City Engineer, has certified the completion of all work provided to be done under and pursuant to the contract between the City of Antioch and Western Water Features, Inc. and;

WHEREAS, it appears to the satisfaction of this City Council that said work under said contract has been fully completed and done as provided in said contract and the plans and specifications therein referred to;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Antioch, that:

1. The above-described work is hereby accepted.
2. The Public Works Director/City Engineer is directed to execute and file for record with the County Recorder, County of Contra Costa, a Notice of Completion thereof.
3. The Director of Finance is hereby directed to pay the Contractor a final payment in the amount of \$23,981.45 plus retention of \$34,886.96 to be paid 35 days after recordation of the Notice of Completion.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof held on the 12th day of November, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ARNE SIMONSEN, City Clerk

Recorded at the request
of and for the benefit
of the City of Antioch

When recorded, return
to City of Antioch
Capital Improvements Department
P.O. Box 5007
Antioch, CA 94531-5007

NOTICE OF COMPLETION

FOR

PREWETT FAMILY WATER PARK FILTER REPLACEMENT AND RESURFACING IN THE CITY OF ANTIOCH (P.W. 567-5)

NOTICE IS HEREBY GIVEN that the work and improvements hereinafter described, the contract for which was entered into by and between the City of Antioch and Western Water Features, Inc. was completed on October 9, 2013.

The surety for said project was American Safety Casualty Insurance Company.

The subject project consisted of pool filter replacement and resurfacing located at 4701 Lone Tree Way in Antioch, California.

**THE UNDERSIGNED STATES UNDER PENALTY OF
PERJURY THAT THE ABOVE IS TRUE AND CORRECT**

Date

RON BERNAL, P.E.
Public Works Director/City Engineer

**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF NOVEMBER 12, 2013**

From: Tina Wehrmeister, Community Development Director *AW*
Date: November 7, 2013
Subject: Amend the Fiscal Year 2014 Budget for Consultant Services Contracts

RECOMMENDATION

Amend the Fiscal Year 2014 Residential Development Allocation (RDA) expenditure budget by \$10,600. This amendment will cover increased consultant costs for the completion of the Development Impact Fee Study and Analysis.

BACKGROUND INFORMATION

On February 9, 2010 the City Council authorized the City Manager to enter into a contract with Economic and Planning Systems, Inc. to prepare a Development Impact Fee Study and Analysis. \$49,700 was originally budgeted for this project from RDA funds. As staff has received an amendment to the scope of work for the Fee Study it is necessary to request a budget amendment in the amount of \$10,600 of available RDA funds. This amendment includes attendance at public hearings and response to comments in the consultant's scope.

FINANCIAL IMPACT

There is \$10,600 of RDA funds available. This action will increase the amount of the contracts budget available to pay for the increased cost. This request will not impact the General Fund.

OPTIONS

1. Approve the amendment to the Fiscal Year 2014 Budget.
2. Do not approve the budget amendment.

**STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE
COUNCIL MEETING OF NOVEMBER 12, 2013**

FROM: Allan Cantando, Chief of Police

REVIEWED BY: Jim Jakel, City Manager 

DATE: November 6, 2013

SUBJECT: Kelly's Card Room

RECOMMENDED ACTION:

1. Adopt the resolution memorializing the expiration of the City's Card Room License associated with Kelly's Card Room at 408 O Street held by Albert Cianfichi (Attachment A).

Exhibit A to Attachment A – California Gambling Control Commission Stipulation and Order

Exhibit B to Attachment A – Letter dated August 30, 2013 from the California Gambling Control Commission

OTHER ACTIONS FOR CITY COUNCIL CONSIDERATION:

2. Resolution approving Anthony Keslinke's application to operate a Card Room as ancillary to a full-service restaurant at 408 O Street with no more than 6 card tables subject to conditions of approval and approving a Parking Lot Lease between Anthony Keslinke and the City of Antioch for APN 066-124-002 (Attachment B)

Exhibit A to Attachment B – Conditions of Approval

Exhibit B to Attachment B – Parking Lot Lease

SUMMARY

Kelly's Card Room obtained a Use Permit from the Planning Commission on August 21, 2013 (Attachment L), which was not appealed despite a lengthy letter submitted in opposition from the law firm of Remcho, Johnson & Purcell (Attachment K). Once a use permit is obtained (which runs with the land regardless of the business owner), most businesses do not require an additional license from the City or the Police Department other than a business license. However, some businesses do raise additional public safety concerns, such as liquor establishments, stores selling drug paraphernalia, gun stores, adult businesses, massage establishments, and gambling establishments. The negative impacts of these businesses often occur at night, when police staffing is at its lowest and darkness creates additional challenges for law enforcement. Therefore, the Antioch Municipal Code requires additional review and action before such businesses can operate.

Public Safety Concerns

Historically, the public safety issues raised by card rooms and gambling in general are criminal activities such as loan sharking, money laundering, prostitution, robberies, extortion, and sometimes drug-related activities. Although the Police Department ran a criminal records check on Mr. Keslinke that did not raise issues, the Department is not currently staffed to do any kind of more in-depth investigation. The Department must rely on the California Gambling Control Commission and Attorney General's Office to undertake a more thorough investigation of activities and associates. However, to date, staff understands that the State investigation of Mr. Keslinke and his proposed operations has not begun (*See Attachment E – letter from the California Gambling Control Commission*). In addition, Mr. Keslinke has not identified anyone who may be "financially interested" in the card room or any "Key Employees" as defined in State law, so those individuals have not been investigated. Accordingly it may be appropriate to wait for Mr. Keslinke to receive his State Card Room license (or at least a temporary license) before issuing a City license. If the Council chooses to act now, then the City's Card Room license must be conditioned upon Mr. Keslinke obtaining a State Card Room license.

Antioch Police Department's current staffing is 85 sworn officers. The current authorized staffing is 102 sworn. With the passage of Measure C, Police Department staffing will increase. The Department believes that the increased Police staffing should be adequate to address calls for service at Kelly's but only if all of the recommended conditions of approval are met, including having 2 armed security guards at all times (typically, the presence of one security guard means that person can call 9-1-1 and has less ability to resolve or prevent issues on-site).

Police Chief's Report on Findings under the Municipal Code

Specifically, the Antioch Municipal Code requires the Police Chief to provide a report to the City Council that addresses the following findings that City Council needs to make in considering the approval or denial of a card room application:

- a. Neither the Applicant nor any person financially interested in the card room, as defined in Subsection (B)(2) of Section 5-4.03 of the Code, or in the bar and restaurant at Kelly's, has been convicted of a felony;
- b. The Applicant and other person(s) financially interested in the card room, as defined in Subsection (B)(2) of Section 5-4.03 of the Code, or in the bar and restaurant at Kelly's, are of good moral character;
- c. None of the information submitted in the application was false, nor was there information omitted with the intent to conceal the facts;
- d. The proposed location for the card room is compatible with the uses of the property in the immediate vicinity of the Property, and the location of the card room would not be injurious to the health, safety or morals of the people of the City; and

- e. In accordance with Section 5-4.05 of the Code, the card room will be established and may operate only in an established place of business of sufficient size and volume that the already established business is the major business of the place rather than the business of operating such card room.

As to findings (a) through (c) above, the information provided by the Applicant appears to be corroborated by the cursory background check completed by the Police Department, if the City's License is not effective until the State issues a License that addresses more fully the criminal background and moral character of the Applicant. Alternatively, the City Council could wait to issue a City License until the State completes a more thorough background check and at least issues a temporary State license to Mr. Keslinke.

As to findings (d) and (e) above, with the recommended conditions of approval, the City Council could determine to approve the card room application. Likewise, the City Council could find that the location for this use would be injurious to the health, safety or morals of the people of the City particularly given the City's existing crime issues and police staffing; and/or determine that the card room will not be an ancillary business to an existing business. At this time, it is City Council's decision to accept or deny the Applicant's request for a City license to operate a Card Room at 408 O Street.

BACKGROUND:

Card Rooms in Antioch

Antioch historically had a number of card rooms and until recently, two had State and City licenses to operate: Kelly's at 408 O Street and The Nineteenth Hole at 2746 West Tregallas. Under the City's current ordinance, each card room is limited to four tables with the Council having the discretion to allow up to 6 tables per card room. In the 1980s both card rooms were allowed to increase to six tables. Pursuant to Municipal Code section 5-4.05, no license shall be issued for a card room other than in an established place of business and the other business (e.g. restaurant) is the "major business of the place rather the business of operating such card room." (Attachment C is the entire chapter 4 of Title 5 addressing card rooms)

State Regulation of the Card Room Industry

Card rooms (sometimes called card clubs or poker clubs) existed in California from the 1800's but in 1860 house-banked games were prohibited by the State. From then, the card room was not to have a stake in a game, but act as the "neutral overseer" with players charged a fee by time period or hand played. This contrasts to the approach at Nevada-style house-banked casinos.

In 1984, the California Legislature required the Attorney General's office to provide uniform, minimum regulation of California card rooms. In 1997, the California Legislature enacted the Gambling Control Act ("Act") to provide more comprehensive oversight of California's gambling industry. The Act created a bifurcated system involving the Division of

Gambling Control within the Attorney General's Office and the five-member California Gambling Control Commission appointed by the Governor.

In 2000, California voters amended the California Constitution to permit Class III (casino-style) gaming on Indian land subject to a gaming compact between the Tribe and the State. However, card rooms continue to be limited as to the kinds of games that can be played. In addition, through January 2020, California generally has a moratorium on new card rooms beyond those authorized in January 1996, but does allow for up to a 25% expansion in certain areas such as gambling tables, hours of operation, etc. if approved by the City Council.

According to the website for the California Gambling Control Commission, in 2013 there were 88 card rooms in 69 jurisdictions in California, not including tribal gaming establishments (Attachment D). The Attorney General's Office prepared a report with more details about gambling in California, including card rooms that can be found at this website:
<http://ag.ca.gov/gambling/pdfs/GS98.pdf>.

State's Enforcement Action regarding Mr. Cianfichi's Card Room License

In 2011, when the City Council was considering Municipal Code amendments to transfer the responsibility for issuing individual card room worker/dealer permits to the Commission, Kelly's owner Albert Cianfichi requested further Municipal Code revisions and expressed a desire to move to a larger location with more tables. While these issues were being discussed, the City learned that Mr. Cianfichi as owner of Kelly's was the subject of a significant enforcement action by the California Attorney General's Office before the Commission. The Settlement and Order reached in that enforcement action required the payment of fines, closure of Kelly's and the revocation of Mr. Cianfichi's gambling license unless he found a bona fide buyer approved by the Commission within a certain time period. (See Exhibit A to Attachment A – Stipulation and Order of the California Gambling Control Commission)

Kelly's was closed by Commission Order on January 23, 2012. The City had expected the Commission to revoke outright Mr. Cianfichi's State license and not allow its transfer. However, despite no objections from the City, the Commission has continued to hold the State license open for Mr. Cianfichi to sell it. (See Attachment E- Letter dated August 30, 2013 from the State Gambling Control Commission)

Blarney LLC interest in Kelly's License in 2012 and Expiration of Card Room License

In 2012, the limited liability company of Blarney LLC had an application pending before the Commission for the purchase of the Kelly's building and card room license. Richard Shindle, who already had an approved ownership interest in the 101 Casino in Petaluma, put together the investor group of Blarney LLC and made a presentation at the July 10, 2012 City Council meeting.

Under the City's Municipal Code, the card room license issued by the City for Kelly's would automatically expire after six months of no activity on July 23, 2012, unless the City Council

approved the relocation of the business by then or granted an additional six months for a relocation application. The City Council's action is memorialized in a letter dated July 11, 2012 (Attachment F). The parties were unable to finalize negotiations for the purchase of the State license and Kelly's building by July 20, 2012, at which point Al Cianfichi threatened legal action against the City which has not been pursued to date (Attachment G).

The City's Card Room license to Al Cianfichi expired pursuant to the terms of Antioch Municipal Code section 5-4.09, when it remained closed for more than 6 months. Thus, at a minimum, it is recommended that the City Council memorialize this action with the adoption of the first resolution (Attachment A).

Mr. Keslinke's New Application for a Card Room Use Permit

With the demise of the deal between Mr. Cianfichi and Blarney's LLC, in July 2012, the City later learned that Mr. Cianfichi and Mr. Keslinke had entered into a Purchase Agreement for 408 O Street on August 3, 2012. Mr. Keslinke told the California Gambling Control Commission that the City of Antioch supported his application to operate Kelly's Card Room despite no action by the City Council (*See* Attachment H – Transcript of October 25, 2012 hearing). Mr. Keslinke had submitted a letter to the City from his legal counsel indicating why the City still had a card room license to grant him. (Attachment I)

Staff indicated that before the Police Department would consider whether to recommend issuance of a Card Room License, Kelly's needed a use permit, which is a zoning entitlement, to determine if the Planning Commission thought that a card room was an appropriate land use at that location, in addition to the public safety and welfare issues that the Police Department would consider with a Card Room License.

On February 25, 2013, Mr. Keslinke submitted a use permit application to the Community Development Department. Given staffing workloads, a contract planner was hired to review the application, whose staff report is Attachment J. A number of people spoke in favor of Mr. Keslinke and a letter was submitted opposing the project (Attachment K). The Planning Commission ultimately approved the use permit subject to conditions of approval (Attachment L). The minutes from that meeting are also attached (Attachment M).

At the Planning Commission meeting, the applicant circulated a flyer that inappropriately used the Police Department's logo and inaccurately indicated that the Police Department was recommending approval of the Use Permit (Attachment N). In fact, the Police Department had not made such a recommendation regarding the use permit; had yet to make a recommendation on the Card Room License; and the Police Captain present at the Planning Commission meeting on August 21, 2013 spoke against 24/7 operations that Mr. Keslinke was seeking.

Mr. Keslinke's Application for a City Card Room License

On October 15, 2013, the Police Department sent Anthony Keslinke an incomplete letter regarding his application for a City Card Room License (Attachment O). Mr. Keslinke's response dated October 25, 2013 is Attachment P. Following a meeting with City staff, Mr. Keslinke also sent the City Manager a letter dated November 4, 2013, which is Attachment Q.

Pursuant to the City's Municipal Code, only one card room license shall be issued in the downtown area given the prior finding that an undue concentration of card rooms in the downtown area "has helped lead to blighting conditions." In addition, Antioch Municipal Code section 5-4.05 requires that a card room license be issued only to an "established place of business of sufficient size and volume that the already established business is the major business of the place rather than the business of operating such card room." Mr. Keslinke maintains that the restaurant and bar at Kelly's are currently operating, but with a limited menu. [See Attachment P, pages 6, 11] City staff was aware of the current bar operations, but not the restaurant operations.

Based on square footage, the gaming area would occupy 2,000 square feet or 28% of the 7,100 square-foot building. According to the staff report to the Planning Commission, the applicant initially has indicated the card room operations would employ 34 employees, which is more than twice the 15 people anticipated to be employed by the restaurant and bar. This raised questions about the ancillary nature of the card room to the restaurant use. Mr. Keslinke's letter of October 25, 2013 indicates now that "[i]t is difficult in this licensure phase to know exactly how many employees I will need for the restaurant vs. the bar vs. the card room." [see Attachment P, pages 7-8] This leaves the square footage calculation, along with conditions regarding the kind of restaurant service (full service, at least two meals a day, etc.) as the primary means to regulate the ancillary nature of the card room in relation to the restaurant.

As part of the card room license application submitted under oath, the applicant is to include the names of all persons financially interested in the business along with their names, criminal records, fingerprints and photographs (Antioch Municipal Code section 5-4.03) The Chief of Police has also suggested that Mr. Keslinke submit everything to the City that he submitted with his application to the State Gambling Control Commission. Mr. Keslinke has indicated in his response on October 25, 2013 that he has not submitted an application to the State Gambling Control Commission yet; that he will be the sole owner and investor in Kelly's bar, restaurant and card room; and he will have contractors, managers and employees, who have not been identified yet. [Attachment P, pages 5, 6 and 8]

Pursuant to the Municipal Code, after reviewing the application for a City card room license, the Chief of Police then provides a report to the City Council, which has the discretion to grant or deny the City Card Room License.

Public Safety Issues Raised by Mr. Keslinke's Application

Criminal Activities – As described above, gambling has historically raised issues about criminal activities such as loan harking, money laundering, prostitution, robberies, extortion, and drug related activities. Since the closure of the card room in 2012, the bar at Kelly's has averaged approximately 2 calls for service per month, which is not excessive. As with any bar, casino, night club, etc., the calls for service to such businesses directly correlates to the management of such establishments. Some of these uses have very high calls for service and are a significant drain on limited Police services. However, the Police Department believes with proper management and oversight, it would be possible to have a low number of calls for service at a card room, bar, restaurant such as Kelly's. In order to assure the business is responsible to the City and surrounding neighborhoods, it is imperative that the Police Department have the authority to continue to regulate/modify provisions in the card room license.

Although the Police Department ran a criminal records check on Mr. Keslinke that did not raise issues, one approach would be to wait for Mr. Keslinke to receive even a temporary State Card Room license before issuing a City license. If the City Council chooses to act now, then the City's Card Room license should be conditioned upon Mr. Keslinke obtaining a State Card Room license.

24/7 Operation – Antioch Municipal Code section 5-4.14(K) requires the approval of the Chief of Police for the card room's schedule of operations. There are concerns about 24/7 operation and public safety impacts during the hours with the City has least number of law enforcement personnel available. However, the Police Chief is willing to allow the card room to start with 24/7 operations with the explicit condition of approval that the Chief could restrict those hours should circumstances warrant (such as police staffing or criminal activities at Kelly's).

Security Plan -- Antioch Municipal Code section 5-4.14(M) makes a card room responsible and liable "for its patrons' safety and security in and around the card room. Each card room shall adopt a plan to provide for the safety and security of patrons, after the plan has been approved by the Chief of Police."

The Police Chief recommends metal detectors and an identification scanner to decrease the likelihood of criminal activities occurring including underage drinking and gambling; to increase the security of patrons; and to decrease the likelihood of calls for service to the Antioch Police Department particularly during the night hours when Department staffing is at its lowest. He also recommends two armed security guards at all times the Card Room is operating as well as valet parking service for special events and at night on weekend and holidays.

Conditions to the City Card Room License

If the Council were inclined to grant the City Card Room License, then the conditions of approval attached to the draft resolution approving the license are strongly recommended (Exhibit A to Attachment B). A few of those conditions are highlighted below:

1. City Card Room License is not effective until certain conditions are met, including Mr. Keslinke obtaining a State Card Room License and purchasing the Card Room from Mr. Cianfichi by November 12, 2014.
2. Due to the lack of on-site parking, Mr. Keslinke must enter into a Parking Lease with the City of Antioch for shared use of a parking lot at Fifth and O Streets (Exhibit 2 to Attachment B). Under state law, this lease must be recorded and thus the applicant must prepare the "metes and bounds" property description. For both parking and security reasons, a condition regarding valet parking service has also been included.
3. Given that the card room is required to be ancillary to the restaurant use under the Antioch Municipal Code, the restaurant shall operate fully for at least 30 days before the card room begins operations, have seating for at least 50, provide hot food service and provide sit-down, table served meal service at least twice a day.
4. The License is personal to Mr. Keslinke and he will annually submit to the Police Chief a statement under penalty of perjury indicating his sole ownership of the business (Card Room, restaurant and bar). Should anyone else become financially interested in the business (Card Room, restaurant or bar), including any corporate or limited liability company, then this License may be suspended or revoked and a new Card Room application must be submitted. The City retains the discretion to grant or deny any new application.
5. A Card Room License is issued to a specific person (unlike a land use approval that typically runs with the land). Given the personal nature of the Card Room License and the unique nature of card rooms that can become magnets for criminal activity if not managed appropriately, a condition of approval requires Mr. Keslinke to be present during the operating hours of the card room for at least 5 hours a day, three days a week during regular operating hours, at least 48 weeks per year. Mr. Keslinke has indicated that he intends to be an "active, hands-on" owner, but does object to this condition of approval. [Attachment P, page 5 and Attachment Q, pages 1-3]

Accordingly, after discussions, staff limited this condition of approval to the first year of operation of the card room, which is critical for the successful launch of any business particularly those in the restaurant, bar, service industry.

6. The Chief must approve annually the Operations and Security Plan for the Card Room. Mr. Keslinke is adamant that the card room remain open 24/7. [Attachment P, page 8] Under state law, the bar shall be closed from 2:00 a.m. to 6:00 a.m. daily.

The Police Chief is willing to allow 24/7 card room operations in the beginning if the restaurant will likewise be open, given the Municipal Code requirements that the card room operations be ancillary to the restaurant operations. However, the Police Chief retains the absolute discretion to restrict those hours should circumstances warrant (such as police staffing or criminal activities at Kelly's).

The Police Chief has also indicated that there should always be two armed security guards when the Card Room is operating, to which Mr. Keslinke objects. [Attachment Q, page 2]. The Police Department is offering no further compromise on this recommendation, believing that two security guards are critical to minimize impacts to the City's Police Department and to increase safety to patrons and employees of the establishment.

7. The business, including the Card Room, shall pay the business license tax based on gross receipts as set forth in Chapter 1 of Title 3 of the Antioch Municipal Code, as it may be amended in the future, as well as any regulatory fee established by the Police Department in the City's Master Fee Schedule.
8. As is standard, the applicant must indemnify the City should the Council approve the application and there is a legal or voter challenge. This condition protects the City (and ultimately the City's taxpayers) from subsidizing a private, for-profit business, as lawsuits and even elections can be quite costly. Mr. Keslinke has raised concerns about this requirement, particularly as to an initiative or referendum regarding the Council's action and requests that this obligation terminate after 18 months. (Attachment Q, p. 2).

After discussions, the condition of approval is written to terminate the obligation to pay the costs of an election after 18 months from when the card room opens. This time frame seems more appropriate than 18 months from the date of Council approval, given the likely time delays to commence operations because Mr. Keslinke has not obtained his State Gambling Control License yet.

Parking Lease

As discussed in detail in the staff report to the Planning Commission (Attachment J), the on-site parking for the 7,100 square foot building that currently houses a restaurant and bar, and would include the card room, is insufficiently parked. Further review since the Planning Commission meeting has indicated that the applicant's proposed parking plan will not meet police and fire standards so there are even fewer on-site parking spaces for patrons and employees. Accordingly, the Planning Commission conditioned the use permit on the applicant entering into a long-term parking arrangement to use the nearby City parking lot for the additional needed parking.

Staff has negotiated a parking lot lease with Mr. Keslinke (Exhibit B to Attachment B). The financial terms of this lease include a base annual rent of \$15,000, as well as some initial improvements (sealing, restriping, lighting) to the area to be leased. Staff sought a no-termination provision for the parking lot lease for the first five years. Mr. Keslinke insisted that he have the right to terminate the parking lot lease. The attached lease allows no termination during the first 24 months.

FINANCIAL IMPACTS:

The City's Police Department previously collected a regulatory annual fee of \$260 per table, but has not been collecting a gross revenues business license tax as well. Thus, card room revenue is a small portion of the City's revenues (less than 1/10th of 1%).

In contrast, some cities receive 1/3 or more of revenues from card rooms. For example, the City of Emeryville has a 9% gross receipts tax or \$1,000 per table per month, whichever is greater, on the 40 tables at The Oaks Card Club. Contra Costa County's fee is \$500 per table per year for card rooms licensed before 1995 and 13 ½ % of the monthly gross revenue for newer or expanded card rooms. An increased business license tax must be approved by the voters.

The conditions to the Card Room License require the applicant to pay a gross receipts business license business license tax on its operations, in addition to any fee that may be imposed by the Police Department given its role in issuing and enforcing the Card Room License. Staff intends to reinstitute the Police Department's regulatory fees that was inadvertently removed from the Master Fee Schedule when the State started issuing card room dealer permits instead of the City, which is different from the license to the Card Room operator that the City still issues.

In addition, the City will be receiving an annual rent for the off-side parking lot; although, Mr. Keslinke desires the right to terminate that lease.

OPTIONS:

1. Not approve a City Card Room License to Mr. Keslinke
2. Wait to consider whether to issue a City Card Room License to Mr. Keslinke until after he obtains a State Card Room License or at least a temporary license from the State
3. Modify the conditions of approval to the City Card Room License
4. Modify the terms of the Parking Lease

ATTACHMENTS:

- A. Resolution memorializing the expiration of the City's Card Room License granted to Al Cianfichi to operate Kelly's Card Room at 408 O Street

Exhibit A– California Gambling Control Commission Stipulation and Order

Exhibit B – Letter dated August 30, 2013 from the California Gambling Control Commission

- B. Resolution approving Anthony Keslinke's application to operate a Card Room at a full-service restaurant at 408 O Street with no more than 6 card tables subject to conditions of approval and approving a parking lot lease
 - Exhibit A – Conditions of Approval
 - Exhibit B – Parking Lot Lease
- C. Chapter 4 of Title 5 of the Antioch Municipal Code, "Card Rooms"
- D. Information on Card Rooms from State Gambling Control Commission website
- E. Letter dated August 30, 2013 from the State Gambling Control Commission
- F. Letter dated July 11, 2012 from City Attorney to Richard Shindle and Albert Cianfichi
- G. Letter dated July 21, 2012 to City Attorney from Paul B. Justi on behalf of Albert Cianfichi
- H. Transcript of State Gambling Control Commission hearing dated October 25, 2012
- I. Letter dated January 16, 2013 from Wilson Wendt, legal counsel for Anthony Keslinke, to City Attorney and City Manager
- J. Staff Report for the August 21, 2013 Planning Commission meeting
- K. Letter dated August 20, 2013 from the law firm of Remcho, Johansen & Purcell
- L. City of Antioch Planning Commission Resolution No. 2013-12/Use Permit dated August 21, 2013
- M. Minutes of City of Antioch Planning Commission on August 21, 2013
- N. Applicant's Flyer distributed at the Planning Commission meeting on August 21, 2013
- O. Notice of Incomplete Application Letter from the Antioch Police Department to Mr. Keslinke dated October 15, 2013
- P. Letter from Anthony Keslinke dated October 25, 2013
- Q. Letter from Anthony Keslinke dated November 4, 2013

RESOLUTION NO. 2013/

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
REGARDING THE EXPIRATION OF THE CARD ROOM
LICENSE ASSOCIATED WITH KELLY'S CARD ROOM
HELD BY ALBERT CIANFICHI**

WHEREAS, Kelly's Card Room ("Kelly's") had been operating at 408 O Street in the City of Antioch ("the Property") since approximately the mid- to late-1980s under the authority of a State-issued gambling license (number GEGE-000407, formerly number 99002) and a local license from the City of Antioch under the authority of Title 5, Chapter 4 of the Antioch Municipal Code; and

WHEREAS, in 2011 and 2012, Kelly's then-owner and operator, Albert Cianfichi, was the subject of enforcement action by the State of California Gambling Control Commission (the Commission") for various reasons, including alleged failure to maintain security controls at the Property and on the premises of the card room; alleged unlawful allowing of individuals not licensed by the State to receive a share of gaming revenue, in violation of applicable law and regulations; alleged irregular and serious financial problems, including failure to pay employees, borrowing money from employees and patrons and failure to pay debts and failure to adequately fund the operations of the card room; and alleged inappropriate commingling of his personal finances and funds with those of Kelly's; and

WHEREAS, on September 22, 2011, the Commission revoked Mr. Cianfichi's State-issued gambling license, but the revocation was stayed and Mr. Cianfichi was placed on probation subject to express terms and conditions. A copy of the Commission's Stipulation and Order is attached to this Resolution as Exhibit A; and

WHEREAS, the stay on the revocation of the State-issued license remains in effect, according to a letter dated August 30, 2013 from the Commission, a copy of which is attached as Exhibit B; and

WHEREAS, as a result of Mr. Cianfichi's failure to meet the terms and conditions of the probation, the Commission issued an emergency order suspending Mr. Cianfichi's license pursuant to Business and Professions Code section 19931, subdivision (a) and the emergency order was filed with the Commission on or about January 24, 2012, which had the effect of closing Kelly's and prohibiting Kelly's from operating as a card room from and after January 23, 2012; and

WHEREAS, Kelly's has remained closed and has not operated as a card room since January 23, 2012; and

WHEREAS, section 5-4.09 of the Antioch Municipal Code provides in relevant part as follows:

“If a card room license is not used by the operation of card tables on the premises to which the card room license is attached for a period of six consecutive months, the card room license shall automatically expire.”

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ANTIOCH:

1. Expiration of Local Card Room License. The City Council hereby acknowledges that by operation of local law (Antioch Municipal Code section 5-4.09), Kelly’s local card room license automatically expired on July 23, 2012 and since that time was no longer of any force or effect.

2. Status of State License. The City Council hereby acknowledges that the State Gambling Control Commission has indicated that the State gambling license associated with Kelly’s remains in effect, though subject to a revocation which has been stayed, as set forth in Exhibit B to this Resolution.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the ____ day of ____ 2013, by the following vote:

AYES:
NOES:
ABSENT:

CITY CLERK, CITY OF ANTIOCH

EXHIBIT A

1 KAMALA D. HARRIS
Attorney General of California
2 SARA J. DRAKE
Senior Assistant Attorney General
3 JENNIFER T. HENDERSON
Deputy Attorney General
4 State Bar No. 206231
1300 I Street, Suite 125
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Sacramento, CA 94244-2550
6 Telephone: (916) 324-5366
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7 E-mail: jennifer.henderson@doj.ca.gov
Attorneys for Complainant, Chief of Bureau of
8 *Gambling Control, Department of Justice*

9
10 BEFORE THE
11 CALIFORNIA GAMBLING CONTROL COMMISSION
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:
14
15 ALBERT CIANFICHI, Sole Proprietor
KELLY'S CARDROOM
16 408 "O" Street
Antioch, CA 94509
17
18 License Number GEGE-000407
19

OAH No. 2010050095
STIPULATION AND ORDER

20
21 The parties to the above-captioned proceeding agree and stipulate as follows:

22 PARTIES

23 1. Albert Cianfichi (Respondent Owner) owns, as a sole proprietor, the gambling
24 enterprise presently known and doing business as Kelly's Cardroom, located at 408 "O" Street,
25 Antioch, California 94509 (Cardroom). Respondent Owner is presently the holder of gambling
26 license number GEGE-000407, formerly number 990002, for the gambling enterprise issued by
27 the California Gambling Control Commission (Commission) pursuant to the Gambling Control
28

1 Act (Bus. & Prof. Code, § 19800, et seq., the "Act"). Albert Cianfichi's state gambling license
2 was in full force and effect at all times relevant to the facts set forth herein. This license will
3 expire on June 30, 2011, unless renewed.

4 2. Martin Horan, Jr. (Complainant) is the Acting Chief of the Bureau of Gambling
5 Control, California Department of Justice (Bureau), and is hereby substituted in as the
6 Complainant in this proceeding. His involvement in this action was solely in his official capacity
7 under the Act and is represented in this matter by Kamala D. Harris, Attorney General of the State
8 of California, by Jennifer T. Henderson, Deputy Attorney General.

9 **PROCEDURAL BACKGROUND**

10 3. On April 7, 2006, the Bureau, then designated the Division of Gambling Control,
11 caused to be filed with the Commission and served upon Respondent a First Amended Accusation
12 which referred the matter for an evidentiary hearing.

13 4. Prior to the hearing, the parties entered into a stipulated settlement and disciplinary
14 order and on September 14, 2006, the Commission voted to adopt the Stipulated Settlement and
15 Disciplinary Order (2006 Commission Decision).

16 **JURISDICTION**

17 5. On or about January 19, 2010, pursuant to Business and Professions Code section
18 19930, the Bureau caused to be filed with the Commission and served upon Respondent an
19 Accusation and Petition to Revoke Probation. A copy of the Accusation and Petition to Revoke
20 Probation with attachments, including the 2006 Commission Decision, is attached hereto and
21 incorporated by reference herein as Exhibit A. Respondent timely filed a Notice of Defense with
22 the Commission.

23 6. This matter was set for hearing on May 16 and 17, 2011 before an administrative law
24 judge pursuant to the Administrative Procedure Act, Government Code section 11500 et seq.

25 7. The parties agree that the Commission has jurisdiction over this matter and has
26 authority to approve this Stipulation and Order under Business and Professions Code sections
27 19823, 19824, and 19930, and Government Code section 11415.60.

28 **PURPOSE**

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possible.

- b. Respondent will have until the end of the probationary period to find a bonafide purchaser, who will be able to be licensed by the California Gambling Control Commission.
- c. A purchase and sale agreement and an application for licensure by the proposed purchaser must be submitted to the Commission by the purchaser within the probationary period. Respondent will use due diligence in attempting to find a purchaser who is already licensed by the California Gambling Control Commission, in order to expedite the licensing of the new owner.
- d. The purchase and sale agreement must contain a provision that a portion (\$112, 000) of the purchase price must be set aside as a reserve fund to pay for the penalty and costs agreed to in this Stipulation and will be paid to the Bureau out of escrow at the time of sale.
- e. If a purchase and sale agreement and an application for licensure by the proposed purchaser are not submitted to the Commission on or before November 25, 2011, the Cardroom shall be closed by operation this Stipulated Settlement and Disciplinary Order. After closure of the Cardroom, the Respondent shall have until May 26, 2012 to find a purchaser who may be licensed.
- f. If a purchase and sale agreement and an application for licensure by the proposed purchaser are not submitted to the Commission before May 26, 2012, the Respondent's gambling license shall be revoked by operation of this Stipulated Settlement and Disciplinary Order. Notwithstanding any other provision hereof, during the period of November 25, 2011 to May 26, 2012, the Respondent may apply for an extension of time to file a purchase and sale agreement for up to six (6) months upon a showing of good cause such as, but not limited to, license processing delays by the Bureau or Commission, or the

- 1 rejection of a buyer by the Commission.
- 2 g. Respondent acknowledges that the Bureau seeks to have him to divest himself
- 3 of his interest in the Cardroom as soon as possible.
- 4 h. Respondent hereby agrees to employ an outside compliance consultant who
- 5 will be responsible for ensuring that the Cardroom is in complete compliance
- 6 with the regulations promulgated by the Commission and the Bureau.
- 7 i. The outside consultant shall have expertise in the above-referenced regulations
- 8 and the operations of the Commission and the Bureau.
- 9 j. Respondent will practice suitable methods of operation, including, but not
- 10 limited to, only employing individuals who hold a valid work permit or license
- 11 as required by the Act.
- 12 k. Respondent agrees that he will minimize his activities in the gambling
- 13 establishment, and will charge a validly licensed key employee with the day-
- 14 to-day operation of the Cardroom.
- 15 l. Respondent shall obey all state and federal laws and regulations substantially
- 16 related to, or governing the practices and operation of gambling
- 17 establishments. Respondent shall report any of the following occurrences to
- 18 the Commission, in writing, within seventy-two (72) hours of such occurrence:
- 19 1. An arrest or issuance of a criminal complaint for violation of any
- 20 provision of the Gambling Control Act;
- 21 2. A plea of guilty or nolo contendere, or conviction, in any state or federal
- 22 criminal proceeding involving any crime other than traffic violations.
- 23 15. Respondent and Complainant mutually agree that this stipulation and order is in
- 24 complete and final settlement of the allegations contained herein. Respondent has been fully
- 25 advised by his legal counsel, Rodney J. Blonien, as to the effect of this Stipulation and Order in
- 26 that it binds Respondent to the terms and conditions contained herein. By the terms of this
- 27 agreement, Respondent shall not have the right to further contest and/or appeal the sanctions
- 28 provided herein. Respondent recognizes that he is entering into this Stipulation in lieu of a

1 hearing and the ability to contest these allegations. Respondent enters into this Stipulation with
2 the advice of counsel, voluntarily, knowingly, and intelligently, and agrees to be bound by this
3 Stipulation and the terms of the Decision and Order upon adoption by the Commission.

4 16. The parties agree that in the event the Commission refuses to accept this Stipulation,
5 it shall become void and null, within 15 business days after the Commission meeting at which
6 this Stipulation is rejected.

7 17. Respondent agrees that in the event the Commission rejects the Stipulation as its
8 decision and order and an evidentiary hearing, pursuant to Business & Professions Code Section
9 19930 becomes necessary, no member of the Commission, nor the Executive Director, shall be
10 disqualified because of prior consideration of the Stipulation.

11 18. This Stipulated Settlement shall be subject to approval by the Commission.
12 Respondent specifically agrees that, at any time following execution of this Stipulated Settlement,
13 but prior to the Commission's decision whether to adopt this Stipulated Settlement as its decision
14 and enter the Disciplinary Order, counsel for Complainant and the staff of the Division may
15 communicate directly with the Commission regarding this stipulation and settlement without
16 notice to, or participation by, Respondent or his counsel, and that no such communications shall
17 be deemed a prohibited ex parte communication.

18 19. By signing the Stipulated Settlement and Disciplinary Order, Respondent understands
19 and agrees that he may not withdraw this agreement or seek to rescind the stipulation prior to the
20 time the Commission considers and acts upon it.

21 20. The parties agree should this Stipulation become void, nothing in the Stipulation, or
22 the fact that the parties entered into the Stipulation, shall be admissible in any subsequent hearing
23 on the merits of the violation that is the subject of the Stipulation.

24 WAIVER AND ADVISEMENT

25 21. This Stipulation has been fully discussed between Respondent Albert Cianfichi-
26 Kelly's Cardroom and its attorney, Rodney Bionien, and Respondent Albert Cianfichi has been
27 fully advised of the effect of this Stipulation as it waives any rights it may have to: (a) an
28 administrative hearing on the Accusation; (b) any judicial challenge to this Stipulation and Order;

6
Settlement and Order

1 and (c) collaterally challenge the terms of this Stipulation and Order. Respondent Albert
2 Cianfichi enters into this Stipulation voluntarily, knowingly, and intelligently, and agrees to be
3 bound by this Stipulation and Order upon adoption by the Commission.

4 22. Respondent understands that nothing in this Stipulation shall preclude the Bureau
5 during the probationary period from issuing any order necessary under Business and Professions
6 Code section 19331.

7 23. The parties understand and agree that facsimile copies of this Stipulation and Order,
8 including facsimile signatures thereto, shall have the same force and effect as the originals.

9 24. This Stipulation constitutes the entire understanding between the parties concerning
10 the subject matter that it covers. Any oral representations or modifications made prior to or after
11 execution of this Stipulation concerning the subject matter of this Stipulation shall have no force
12 or effect.

13 25. In consideration of the foregoing stipulations, the parties agree that the Commission
14 may, without further notice or formal proceeding, issue and enter the Order set forth below.

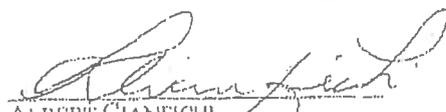
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ACCEPTANCE

I have carefully read the foregoing Stipulation and Proposed Order and have fully discussed it with my attorney, Rodney Blonien. I understand the Stipulation and Proposed Order and the effect it will have on State Gambling License Number GEGE-000407, formerly number 990002. I enter into this Stipulation and Proposed Order voluntarily, knowingly, and intelligently, and agree to be bound by the Order of the Commission.

Alan
Dated: May 17, 2011


ALBERT CIANFICHI
Respondent, Kelly's Cardroom

APPROVED AS TO FORM

I have read the terms and conditions and other matters contained in the above Stipulation and Proposed Order and approve it as to form.

June 22, 2011
Dated: May 22, 2011


RODNEY BLONIEN
Attorney for Respondent

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COMPLAINANT'S ACCEPTANCE

I have carefully read the foregoing Stipulation and Proposed Order and have fully discussed it with attorneys from the Department of Justice Office of Attorney General. On behalf of the Bureau, I enter into this Stipulation and Proposed Order voluntarily, knowingly, and intelligently, and agree to be bound by the Order of the Commission.

Dated: June __, 2011

MARTIN HORAN JR., ACTING CHIEF
Bureau of Gambling Control

ENDORSEMENT

The foregoing Stipulation and Order are hereby respectfully submitted for consideration by the California Gambling Control Commission.

Dated: June __, 2011

KAMALA D. HARRIS
Attorney General of the State of California

By: _____
JENNIFER T. HENDERSON
Deputy Attorney General
Attorneys for Complainant

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Dated: June 22, 2011


MARTIN HORAN JR., ACTING CHIEF
Bureau of Gambling Control

ENDORSEMENT

The foregoing Stipulation and Order are hereby respectfully submitted for consideration by the California Gambling Control Commission.

Dated: June ___, 2011

KAMALA D. HARRIS
Attorney General of the State of California

By: _____
JENNIFER T. HENDERSON
Deputy Attorney General
Attorneys for Complainant

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Dated: June __, 2011

MARTIN HORAN JR., ACTING CHIEF
Bureau of Gambling Control

ENDORSEMENT

The foregoing Stipulation and Order are hereby respectfully submitted for consideration by the California Gambling Control Commission.

Dated: June 22, 2011

KAMALA D. HARRIS
Attorney General of the State of California

By: 
JENNIFER T. HENDERSON
Deputy Attorney General
Attorneys for Complainant

DECISION AND ORDER

DECISION AND ORDER OF THE COMMISSION:

The foregoing Stipulation of the parties "In the Matter of the Accusation Against Albert Cianfichi, Sole Proprietor, Kelly's Cardroom, License Number GEGE-000407" OAH Case No. 2010050095 has been adopted by a majority vote of the Commission as its final decision and order in this matter and is effective upon execution below by the Commission members.

IT IS SO ORDERED

Dated: 9/22/11

Signature: Stephanie Shimazu
Stephanie Shimazu, Chairperson

Dated: 9/22/2011

Signature: Tiffany E. Conklin
Tiffany E. Conklin, Commissioner

Dated: 9/22/11

Signature: Lauren R. Hammond
Lauren Hammond, Commissioner

Dated: 9/22/11

Signature: Richard Schuetz
Richard Schuetz, Commissioner

EXHIBIT B



STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

GAMBLING CONTROL COMMISSION

RICHARD J. LOPES, CHAIRMAN
TIFFANY E. CONKLIN
LAUREN HAMMOND
RICHARD SCHUETZ

2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231
(916) 263-0700 Phone
(916) 263-0499 Fax
www.cgcc.ca.gov

August 30, 2013

Mr. Ruben Duran
Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953

Re: Kelly's Card Room—OAH Case No. 2010050095

Dear Mr. Duran,

Thank you for your letter of August 15, 2013, regarding Kelly's Card Room. In that letter, you sought information about the status of Kelly's State License and the extent of the background check the state undertakes of applicants for a state gambling license.

On August 20, 2013, California Gambling Control Commission (Commission) staff and Deputy Attorney General, Jennifer Henderson, spoke to you by phone to discuss the issues raised in your letter. The purpose of this letter is to memorialize that conversation.

With regard to the issue of the scope or extent of the background investigation, you were referred to the Bureau of Gambling Control because they are the agency responsible for performing background investigations for applicants seeking a state gambling license.

On the question of the status of the state license, you were advised that the state license is not currently revoked by the Commission because the September 11, 2011, Stipulated Settlement and Order (Order) stayed the revocation. The stay remains in effect because the Commission has not yet determined whether or not the condition precedent to revocation by operation of the Order has been met.

I am attaching a copy of the last Order issued by the Commission on this matter and a copy of the audio of the meeting of October 25, 2012, for your records. At that meeting, the Commission indicated a preference to allow the local government the opportunity to evaluate its options and possibly take the steps necessary to grant local authorization to a business which could conduct controlled gaming within the city of Antioch. Commission staff continues to monitor the issue and will likely present the matter to the Commission for consideration when it becomes clearer how the issue will be resolved at the local level.

Mr. Ruben Duran
August 30, 2013
Page 2

Do not hesitate to contact Paras Modha or Marianne Estes of my staff should you have any additional questions regarding this matter. You can reach Mr. Modha at (916) 263-4793 and Ms. Estes at (916) 274-6069.

Sincerely,



TINA M. LITTLETON
Executive Director

cc: Mr. Wayne Quint, Bureau Chief, Bureau of Gambling Control
Ms. Stacey Luna-Baxter, Assistant Chief, Bureau of Gambling Control
Ms. Jennifer Henderson, Deputy Attorney General, Indian and Gaming Law Section
Mr. Anthony Keslinke, Applicant
Mr. Albert Cianfichi

Enclosures (Mr. Duran only)

RESOLUTION NO. 2013/

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING THE ISSUANCE TO ANTHONY KESLINKE FOR A LOCAL CARD
ROOM LICENSE AS ANCILLARY TO A FULL-SERVICE RESTAURANT AT 408 O
STREET WITH NO MORE THAN 6 CARD TABLES
AND SUBJECT TO CONDITIONS OF APPROVAL PURSUANT TO
TITLE 5, CHAPTER 4 OF THE ANTIOCH MUNICIPAL CODE AND
APPROVING A PARKING LOT LEASE**

WHEREAS, Title 5, Chapter 4 of the Antioch Municipal Code (the “Code”) and the California Gambling Control Act (Business and Professions Code Division 8, Chapter 5, Article 13) govern the establishment and regulation of card rooms within the City of Antioch; and

WHEREAS, Section 5-4.02, subsection (A) of the Code provides that there shall be no more than five (5) licensed card rooms permitted in the City; and

WHEREAS, in 2011 the California Legislature adopted AB 241, which was signed into law by the Governor and extended until the year 2020 a state-wide moratorium on the issuance of State card room licenses; and

WHEREAS, there is currently only one (1) licensed and operating card room located in the City of Antioch, which card room is known as “The 19th Hole”; and

WHEREAS, the City Council is authorized to consider an application for a local card room license pursuant to Section 5-4.04, subsection (B) of the Code, and shall either grant or deny the application according to the standards set forth in that subsection; and

WHEREAS, Anthony Keslinke (the “Applicant”) submitted an application for a local license to operate a card room at 408 “O” Street in the City of Antioch (the “Property”) and the Applicant has represented to the City that he intends to submit an application to the California Gambling Control Commission (the “Commission”) for a State license to operate a card room on the Property; and

WHEREAS, a card room known as “Kelly’s Card Room” had been operated on the Property until approximately January 2012 under a previous owner and pursuant to validly-issued state and City licenses; and

WHEREAS, the previous owner of Kelly’s was the subject of several proceedings before the Commission, including an Accusation and Petition to Revoke Probation, which resulted in a decision by the Commission to revoke the State-issued license; however, that decision has been stayed by the Commission pending the City’s decision on this current application for a local license pursuant to Section 5-4.04 of the Code; and

WHEREAS, the previous owner's City-issued local card room license has expired under the terms of Section 5-4.09, subsection (A) of the Code; and

WHEREAS, the Applicant applied for and obtained Use Permit UP-13-02 to operate a card room in conjunction with a restaurant and bar on the Property. UP-13-02 was approved by the Antioch Planning Commission on August 21, 2013. The Planning Commission's approval included a requirement that the Applicant provide for adequate parking for the use by making arrangements for shared parking with the City of Antioch; and

WHEREAS, the Applicant has requested that the City Council approve a lease with the City at APN 066-124-002 including a portion of the West Fifth Street right-of-way, pursuant to which the Applicant will satisfy the parking conditions for the card room; and

WHEREAS, the City Council conducted a duly-noticed public meeting on November 12, 2013 during which it heard and considered the Applicant's request for a City-issued card room license in light of the staff report and other documentary and testamentary evidence provided at and prior to the meeting;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ANTIOCH:

1. Grant of Local License. The City Council hereby approves a local card room license to Applicant Anthony Keslinke for a card room as ancillary to a full-service restaurant at 408 O Street with no more than 6 card tables, subject to the conditions set forth on the attached Exhibit A – "Kelly's Card Room 2013 Local Card Room License and Conditions."

2. Findings. In approving the Card Room License to Anthony Keslinke for 408 O Street, the City Council makes the following findings based on the evidence presented to it, including the report from the Chief of Police, the staff report presented to the City Council and all other documentary and testamentary evidence presented to the City Council in these proceedings:

- a. Neither the Applicant nor any person financially interested in the card room, as defined in Subsection (B)(2) of Section 5-4.03 of the Code, or in the bar and restaurant at Kelly's has been convicted of a felony;
- b. The Applicant and other person(s) financially interested in the card room, as defined in Subsection (B)(2) of Section 5-4.03 of the Code, or in the bar and restaurant at Kelly's are of good moral character;
- c. None of the information submitted in the application was false, nor was there information omitted with the intent to conceal the facts;
- d. The proposed location for the card room is compatible with the uses of the property in the immediate vicinity of the Property, and the location of the card room would not be injurious to the health, safety or morals of the people of the City; and

- e. In accordance with Section 5-4.05 of the Code, the card room will be established and may operate only in an established place of business of sufficient size and volume that the already established business is the major business of the place rather than the business of operating such card room. The already established business at the Property is a restaurant and bar, and the conditions related to the operation of the restaurant and bar as set forth in Exhibit A are intended by the City Council to ensure compliance with Section 5-4.05 of the Code.

3. Approval of Lease. The City Council hereby approves in substantial form the Parking Lot Lease attached hereto as Exhibit B, and authorizes and directs the City Manager to execute the Parking Lot Lease upon the satisfactory conclusion of negotiations with the Applicant.

4. CEQA. The Planning Commission determined that the card room project, including the use permit, license and parking lot lease, is categorically exempt from further environmental analysis under Section 15332 of the State CEQA Guidelines (infill development), and a Notice of Exemption was prepared and filed on September 23, 2013.

5. Local License Effective Only if State License Issued. In the Card Room License to Anthony Keslinke for 408 O Street, the City Council finds and determines that the local license shall go into effect if and only if the State Gambling Control Commission approves the pending proceedings in favor of the Applicant and issues all necessary approvals, licenses and/or permits as required by applicable State laws and regulations.

6. Failure to Comply with Conditions Grounds for Revocation. As set forth more specifically in the Conditions attached to this Resolution, the City Council finds that the adherence by the Applicant to each and every one of the conditions of approval is of paramount importance to the City and to the promotion and protection of the general health, safety and welfare of the public. Accordingly, the City Council has included in those Conditions provisions for the revocation of this License upon a showing of failure by the Licensee to comply with the conditions set forth in this Resolution and the attached Conditions.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the ____ day of _____ 2013, by the following vote:

AYES:

NOES:

ABSENT:

CITY CLERK, CITY OF ANTIOCH

Exhibit A

**Kelly's
2013 Local Card Room License and Conditions**

The following operational requirements and conditions have been established by the City Council of the City of Antioch in accordance with the authority granted in Title 5, Chapter 4 of the Antioch Municipal Code (the "Code") and the California Gambling Control Act (Business and Professions Code Division 8, Chapter 5, the "State Law"). The Applicant, Anthony Keslinke, agrees that each and every one of the provisions and conditions set forth and is done so specifically pursuant to the authority cited above and generally pursuant to the City's police power as conferred by Article XI, Section 7 of the California Constitution.

These operational requirements and conditions apply to the business known as "Kelly's" located at 408 "O" Street, Antioch, California.

Conditions of Approval

1. Conditions to Card Room License becoming Effective. Local Card Room License for Kelly's at 408 O Street, Antioch is not and shall not become effective until all of the following conditions are met:
 - a. The State has issued a Card Room License to Applicant Anthony Keslinke and Applicant has purchased Kelly's from the prior owner, both within one year from the City Council's approval of this License.
 - b. Applicant submits the list of key personnel of the Card Room, including the key personnel for the other operations at Kelly's as applicable, and they each obtain a license from the State.
 - c. Applicant enters into the Parking Lot Lease with the City of Antioch for APN 066-124-002 at O and Fifth Streets, Antioch, with such agreement recorded.
 - d. The restaurant at Kelly's is operating fully under the conditions below for at least 30 days.
2. Operational Standards
 - a. Card room must be incidental to the restaurant and bar use, as reasonably determined by the Community Development Director based on documentary evidence and/or physical observation, and in accordance with Antioch Municipal Code Section 5-4.05, which provides: "In addition to the other requirements contained in this chapter, no license shall be issued for a card room other than in an established place of business of sufficient size and volume that the already established business is the major business of the place rather than the business of operating such card room."

- i. At all times there shall be restaurant seating capacity for no less than 50, exclusive of seating at the bar or card room.
 - ii. Kitchen, restaurant dining room and bar shall occupy at least 55% of the square footage of the building.
 - iii. Hot food service, which does not include just microwaved food or meals, shall be available to patrons at all times that the bar or card room is open;
 - iv. The restaurant must offer sit-down, table served meal service at least twice a day, seven days a week with full menu options as approved by the Director of Community Development.
- b. The card room shall be responsible and liable for its patrons' safety and security in and around the card room. The card room shall adopt and implement an "Operations, Security and Surveillance Plan" (the "Plan") as set forth in the Planning Commission's approval of UP-13-02 to provide for the safety and security of patrons, after the plan has been approved by the Chief of Police, in the Chief's sole and reasonable discretion. The Chief shall review the Plan no less than once every year, upon written application by the Applicant for such review, which application must be submitted by the Applicant no later than the anniversary date of this License approval. Applicant shall comply at all times with every provision of the adopted Security and Surveillance Plan, which at a minimum shall include:
- i. Two (2) State-licensed, uniformed and armed guards, one inside the card room and one patrolling the parking areas, shall be present at all times that the card room is in operation.
 - ii. The name of the Security Company, proof of liability insurance including a copy of all exceptions, their State license number, the guard registration numbers and training records for the employed guards..
 - iii. Digital security cameras shall be installed inside, covering all areas of the business, the rear, front and leased parking areas. Said cameras shall record onsite activities. Recordings shall be kept on hand for no less than 30 days and be made available to the City of Antioch upon demand.
 - iv. Metal detectors/wanding of patrons after 10:00 p.m. unless deemed unnecessary by the Police Chief given history of calls for service after operation for one year. The Police Chief may require additional hours of metal detectors/wanding at any time.
 - v. A dress code for patrons.
 - vi. An identified security station located at the entrance to the card room.

- vii. Prior to commencing operations, Applicant shall submit and obtain approval from the Chief of Police and City Engineer for an outdoor lighting plan to ensure that all areas of the parking lot, leased parking lot and building are illuminated.
- viii. Notwithstanding the yearly review set forth in condition of approval above, the Chief of Police may at any time upon a showing of need require revisions to the Plan to protect the safety of the card room's patron and the general public.
- c. For at least the first 12 months of operation of the Card Room, Applicant Anthony Keslinke shall be required to be physically present at the card room site no less than three (3) days per week, for no less than five (5) hours per day during regular operating hours, including at least 2 hours on a weekend night each week, for a minimum of 48 weeks per year. He shall provide time logs under penalty of perjury to the Police Chief monthly.
- d. No live entertainment and no amplified music, unless a special event permit is obtained in advance from the City.
- e. No one under the age of 21 shall be allowed in the card room or bar at any time and no one under the age of 21 shall be allowed in the restaurant after 10:00 p.m.
- e. After 10:00 p.m. and until closing, all patrons of the business shall be verified using a license scanner/reader to ensure patrons are of lawful age and not using altered or false identification. The scanner database shall be retained for no less than 30 days and shall be made available to the Antioch Police Department upon demand. Applicant shall provide a procedure, approved by the Police Chief, from checking the identification of those already in the business at 10:00 p.m.
- f. No adult entertainment as defined in section 9-5.203 of the Antioch Municipal Code. This is to include, but not limited to, "go-go" dancers, exotic dancers, strippers, lingerie shows, etc.
- g. All activities shall be conducted entirely inside the building. Loitering is prohibited. Business shall post conspicuous signs stating "No loitering, no open containers, no drinking, no littering" on the building, parking lot and City's parking lot.
- h. No intoxicated person shall be permitted in the card room. All alcohol beverage servers must attend and successfully complete a Responsible Beverage Server Course which is sponsored by ABC within 6 months of employment.

3. Gambling Standards

- a. The Applicant, every Key Employee and every person financially interested in the card room and every Card Room Employee as defined in Sections 5-4.01 and 5-4.03(B)(1) of the Antioch Municipal Code shall obtain the required State License and Work Permit and comply at all times with all applicable provisions of Title 5, Chapter 4 of the Code.

- b. Card room shall only be open when the restaurant is open. The Police Chief retains the absolute discretion to limit the hours of the card room.
- c. The number of card tables allowed under this License is 6.
- d. The number of players permitted at one card table shall be as prescribed by State law.
- e. The card room shall be open to police inspection during all hours of operation.
- f. Each card table, during the time of play at such table, shall have assigned to it a person holding a valid work permit. Such person shall be in charge of, supervise, and conduct the game strictly in accordance with the laws of the State and the provisions of Title 5, Chapter 4 of the Antioch Municipal Code.
- g. Only games authorized by State law to be played shall be permitted to be played in any card room.
- h. No player in shall be permitted to wager or raise a wager by more than the following amounts:
 - i. \$200 for individual bets in Blackjack or California games that feature a rotating player-dealer position, except for games described in division (c) which shall have higher limits;
 - ii. \$200 for individual bets in Limit Poker games;
 - iii. \$500 for individual bets in No Limit and Double Hand Poker games; and
 - iv. \$50 for individual bets in any other card room game permitted by California law.
- i. Only table stakes shall be permitted.
- j. No person under the age of 21 shall be permitted at any card table, or participate in any game, or enter the card room.
- k. The Applicant shall post in every card room, in letters plainly visible throughout the room, signs stating the hourly rate or cost per hand charged for the use of the tables in such card room and each other of the regulations set forth in this section as the Chief of Police may require.
- l. During hours of operation, the card room shall clearly post the wagering limit rules at the tables where the games are offered, to provide patrons adequate notice of those rules.
- m. No computer gaming or internet access business, as defined in the Antioch Municipal Code as it may be amended, shall operate at the business (not in the card room, restaurant or bar).

4. Site Standards

- a. Applicant shall comply with all applicable provisions of the Antioch Municipal Code, including but not limited to stormwater management and discharge control (Title 6, Chapter 9) building, electrical and plumbing code requirements and fire code regulations (Title 8).
- b. All windows providing a line of sight into any area where card tables are located shall be clear glass so as to allow viewing of gaming activities by Public Safety personnel from outside of the building housing the card room. The outside doors shall also be clear glass and unobstructed to allow Public Safety personnel to view inside.
- c. **Parking Requirements:** Applicant shall comply at all times with parking requirements and regulations imposed pursuant to UP-13-02, including but not limited to the requirement to enter into a Parking Lot Lease Agreement with the City of Antioch for the use of the City's lot at APN 066-124-002. Prior to commencing operations, Applicant shall submit a modified parking plan that includes striping, signage and landscaping for the Applicant's on-site parking and the City's parking lot to be approved by the Community Development Director and City Engineer. Actions shall be taken and signs posted to allow the Police Department to enforce the Antioch Municipal Code and other laws in the parking lots.
- d. In addition to the requirements above, Applicant shall make available to patrons of the card room and the restaurant and bar valet parking starting at 6:00 p.m. until closing and Friday and Saturday, every day preceding a federal holiday, and every day when Applicant has a special event or tournament. The required licensed, armed security guard may also act as a valet, unless prohibited by the Police Chief in his absolute discretion. Vehicles parked by the valet service attendants may be parked on site at the Property or in the City's parking lot; at no time shall vehicles be parked or stored in the public right of way. Signs shall be posted to notify customers about the valet parking.
- e. Applicant shall identify and cordon off according to plans and with materials approved by the Community Development Director a designated and suitable location outside the building for smokers to engage in legal smoking activities. Such area shall be taken into consideration in the Security and Surveillance Plan.
- f. Applicant shall remove or caused to be removed any and all graffiti found on the Property within 48 hours of discovery or report of such graffiti.
- g. Applicant shall maintain the perimeter fencing and shall include an additional deterrent to prevent people from climbing over it such as razor wire.
- h. The site shall be kept clean of all debris (boxes, junk, garbage, etc) at all times.
- i. All requirements of the Contra Costa County Fire Protection District shall be satisfied. At no time shall the posted occupancy limit be exceeded.

- j. All other codes and regulations of the City of Antioch Municipal Code shall be complied with.
- k. Prior to commencing operations, Applicant shall submit and obtain approval from the Chief of Police and City Engineer for an outdoor lighting plan ensure that all areas of the parking lot, leased parking lot and building are illuminated.

5. Miscellaneous Provisions

- a. In accordance with Section 5-4.09 of the Code, the City Council may suspend or revoke a card room license on any of the grounds set forth in Section 5-4.04 of the Code, on the ground that the card room business has become the main business of the establishment, or on the ground that the Applicant has violated a provision of Chapter 5-4. For purposes of this License, any of the following occurrences is deemed evidence that (i) the applicant or any person financially interested in the business is not of good moral character, or (ii) the proposed location for the card room is incompatible with the uses being made of the property in the immediate vicinity and injurious to the health, safety, or morals of the people of the city:
 - i. The Applicant's State license is suspended or revoked for any reason by the Commission or other regulatory agency with jurisdiction over the card room;
 - ii. Any law enforcement or regulatory agency for any reason closes the card room for any period of time;
 - iii. The card room is operating as a nuisance;
 - iv. The card room is operating in violation to any condition of approval, including but not limited to any requirement of the Operations, Security and Surveillance Plan, or any local, state or federal ordinance or statute or law;
 - v. The Applicant is no longer the sole owner of the business, including being the sole owner of the Card Room, restaurant and bar or fails to submit evidence annually of his continuing ownership interest to the City.
 - vi. The Applicant or any Key Employee or anyone having an ownership interest in the card room, restaurant or bar is arrested for any felony, or a misdemeanor relating to loan sharking, drugs, embezzlement, extortion, theft, prostitution, money laundering, robbery or weapons violations.
- b. Applicant must pay a business license tax based on gross receipts pursuant to Chapter 1 of Title 3 of the Code, as it may be amended from time-to-time, as well as any regulatory fee established by the Police Department in the City's Master Fee Schedule.
- c. Applicant acknowledges the provisions of Section 5-4.08 of the Code with respect to the non-transferability of this License. The License is personal to Anthony Keslinke and he will annually submit to the Police Chief a statement under penalty of perjury indicating his sole ownership of the business, including being the sole owner of the Card Room, restaurant and bar. Should anyone else become financially interested in the business (Card Room, restaurant or bar) including any corporate or limited liability company, then

a new Card Room application must be submitted and the City retains the discretion to grant or deny it.

- d. If the Antioch Police Department determines that the conditions of approval of the license or use permit are not met or the use has become a public nuisance or otherwise a threat to the public health, safety or welfare, the Police Chief may shut down the business and it will not be reopened until the Police Chief determines that all issues have been resolved. The Applicant shall be responsible for the costs of such Police response. Failure to pay such costs shall be grounds for immediate revocation of the Card Room license.
- e. The Applicant releases the City of Antioch from any claims related to this card room license or use permit and shall defend, indemnify and hold harmless the City, its agents, officers and employees from any claim, action or proceeding to challenge, set aside or void the license or any approval granted by the City. Applicant shall enter into an agreement to effectuate this condition of approval as required by the City Attorney, which shall include advance deposit for staff and other costs that may be incurred by the City. For 18 months following the commencement of the operations at the Card Room, Applicant shall also be responsible for election costs, including staff costs, if a referendum (if applicable) or initiative petition is presented related to this card room license or use permit.

Exhibit B

Parking Lot Lease

(attach next page)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City Attorney's Office
City of Antioch
P.O. Box 5007
Antioch, CA 94531-50017

PARKING LOT LEASE

This Parking Lot Lease (the "**Lease**") is entered into as of _____, 2013, by and between the CITY OF ANTIOCH, a general law city ("**Landlord**"), and ANTHONY KESLINKE, an individual ("**Tenant**"), who agree as follows:

1. **Lease.** Landlord leases to Tenant and Tenant leases from Landlord a portion of the real property located a O and Fifth Streets, in Antioch, California 94531 (APN 066-124-002) and a portion of the west Fifth Street right-of-way, which portion consists of the paved automobile parking area generally depicted and outlined in blue on attached Exhibit "A" (the "**Premises**") for parking of patrons and employees of Tenant's nearby restaurant, bar and card room at 408 O Street, Antioch, California ("**Kelly's**").

2. **Term.**

(a) The term (the "**Term**") of this Lease shall be for a period of five (5) years, commencing at 12:01 A.M. thirty days after the State Gambling Control Commission grants Tenant a temporary or permanent license to operate a Card Room at 408 O Street (the "**Commencement Date**"), and ending at 12:01 A.M. five (5) years later (the "**Expiration Date**"), or on such earlier date upon which the Term may expire or be cancelled or terminated pursuant to any of the provisions of this Lease. If Tenant does not obtain the necessary approvals from the State Gambling Control Commission by November 12, 2013, then he will have no City License to operate the Card Room at 408 O Street and this Lease shall be void unless the parties mutually amend the lease to extend it.

(b) **Extension of Term.** If Tenant desires an extension of the Term, Tenant shall provide written notice to Landlord no earlier than one hundred twenty (120) days and no later than sixty (60) days prior to the Expiration Date. Landlord, at its election in its sole discretion, may grant Tenant an extension of the Term and, upon such election, shall provide written notice (the "**Landlord Notice**") to Tenant, at least thirty (30) days prior to the Expiration Date, of the term, rent and other provisions under which Landlord

is willing to extend the Term. Within fifteen (15) days following Tenant's receipt of the Landlord Notice, Tenant may give Landlord written notice (the "Acceptance Notice") of acceptance of the terms of the extension set forth in the Landlord Notice, in which case the Term will be extended on the terms provided in the Landlord Notice and Landlord and Tenant shall enter into a separate written amendment to this Lease executed by Landlord and Tenant. If Tenant fails to so give an Acceptance Notice, this Lease shall terminate upon the Expiration Date.

(c) Holding Over. Tenant agrees to surrender the Premises to Landlord in accordance with the terms of this Lease on the Expiration Date. If Tenant remains in possession of the Premises after the expiration of the Term without Landlord's express written consent, Tenant's continued possession of the Premises shall be on the basis of a tenancy at sufferance. In addition, Tenant shall defend, indemnify and hold Landlord harmless from and against all claims, liability, damages, costs or expenses, including reasonable attorneys' fees and the costs of defending the same, incurred by Landlord and arising directly or indirectly from Tenant's failure to timely surrender the Premises, including: (i) any rent payable by or any loss, costs or damages, including lost profits, claimed by any prospective tenant of the Premises or any portion thereof, and (ii) Landlord's damages as a result of such prospective tenant's rescinding or refusing to enter into the prospective lease of the Premises or any portion thereof, because of Tenant's holding over.

(d) Termination. Landlord has the right to terminate the Lease with 12 months of advance notice to Tenant. Tenant has no right to terminate the Lease during the first 24 months of its Term, and then needs to provide 12 months advance notice of its intent to terminate the Lease.

3. Use; Compliance with Laws.

(a) The Premises are to be used by Tenant for the purpose of shared automobile parking by patrons and employees of Kelly's and for no other purpose: only 25 spaces from 6 a.m. to 6 p.m. Monday through Friday and the entire approximately 40 spaces available at other times. In connection with its use of the Premises, Tenant may make minor modifications to the Premises in order to accommodate access to the Premises by Tenant's patrons and customers if approved in advance in writing by the City's Public Works Director/City Engineer.

(b) Tenant agrees that its use of the Premises will at all times be in compliance with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the Premises.

(c) Environmental Compliance. Tenant represents, warrants and covenants to Landlord that Tenant shall at no time use, or permit the Premises to be used by anyone under Tenant's control, in violation of any federal, state or local law, ordinance or regulation relating to the environmental conditions on, under or about the Premises, including, but not limited to, air quality, soil and surface and subsurface water conditions.

Tenant shall assume sole and full responsibility and cost to remedy any such violations caused by Tenant or anyone under Tenant's control that may affect the Premises so long as the violations are not directly caused by Landlord and/or its successors and assigns. Tenant further represents, warrants and covenants to Landlord that Tenant shall at no time, generate, store or dispose of or allow or permit any third party under Tenant's control to use, generate, store or dispose of on, under or about the Premises, or transport to or from the Premises, any hazardous wastes, toxic substances or related materials ("Hazardous Materials") except for those Hazardous Materials which are customarily found in households (such as aerosol cans containing insecticides, toner for copies, paints, paint remover, and cigarettes). Tenant represents, warrants and covenants that it shall provide Landlord with written notification immediately upon (i) the discovery or notice by Tenant, its successors, assigns, licensees, invitees, employees or agents or any other third party, that any representation or warranty of Tenant under this paragraph is inaccurate, incomplete, or untrue in any way, or (ii) any failure to fully and completely perform any covenant of Tenant under this paragraph.

(d) No Warranties. Tenant agrees that it takes the Premises "AS-IS". Tenant expressly waives all implied warranties including implied warranties of merchantability and fitness, if any. Tenant understands and acknowledges that the Premises may be subject to earthquake, fire, floods, erosion, high water table, dangerous underground soil and water conditions and similar occurrences that may alter its condition or affect its suitability for any proposed use. Landlord shall have no responsibility or liability with respect to any such occurrence. Tenant represents and warrants that it is acting, and will act only, upon information obtained by it directly from its own inspection of the Premises.

(e) Tenant shall permit Landlord's employees and contractors to enter upon the Property at reasonable times and upon reasonable notice, for the purpose of inspecting the same.

4. **Rent.** Tenant shall pay an annual rent in no more than quarterly installments in advance for the use of the Premises during the entire Term in addition to all (i) taxes (including but not limited to possessory interest taxes), assessments (whether general, special, ordinary or extraordinary) of every kind imposed or which relate in any way to the Premises and Tenant's use of the Premises, and (ii) costs and expenses incurred by Tenant to use the Premises for parking purposes, including, without limitation, fire protection, telephone service, heating, air conditioning, sewer service, waste removal and other utilities and services supplied to or consumed in or upon the Premises during the Term. The rent for the first year shall be \$15,000, which is due in full upon execution of this Agreement and is nonrefundable. Rent for the subsequent years shall increase by \$2500 each year with the payment due on the Commencement Date or one year after the execution of this Agreement, whichever occurs first.

5. **Shared Use.**

(a) Tenant, at its sole cost and expense, agrees promptly to install signage at the Premises alerting Tenant's customers and employees at Kelly's that they are parking their vehicles at their own risk and that parking is for customer convenience only and is offered only temporarily. The signage shall also indicate that identified spaces are reserved for the City of Antioch from 6 a.m. to 6 p.m. Monday through Friday and any cars in those spaces at such times will be towed by Tenant. Tenant, at its sole cost and expense, agrees to maintain all such signage in good condition and repair.

(b) Tenant shall ensure that by 5:00 a.m. each morning Monday through Friday that the City identified spaces are available and to make arrangements with a tow company to have cars towed that may be parking in those spaces if Tenant can't identify the vehicle owner or the owner is unwilling or unable to move the vehicle. Any towing or related costs shall be borne by Tenant or the vehicle owners.

6. **Lighting.** During the Term, Tenant shall install lighting to the City's standard induction lighting and keep the Premises well lighted during all evening/night hours of operation of Kelly's.

7. **Security Guard Services.** Tenant shall employ security guard services in connection with Kelly's and such services will also be provided to the Premises such that there will be monitoring and patrolling of the Premises on a regular basis when the card room at Kelly's is operating pursuant to the Security and Operations Plan to be presented to the Police Chief annually for approval.

8. **Valet Parking.** Tenant shall make available valet parking to patrons of Kelly's starting at 6:00 p.m. until closing and Friday and Saturday, every day preceding a federal holiday, and every day when Applicant has a special event or tournament. Vehicles parked by the valet service attendants may be parked on-site at Kelly's, at 408 O Street, Antioch, California or the Premises. At no time shall vehicles be parked or stored in the public right of way.

9. **Landscaping.** Tenant shall install and maintain landscaping including plants on both sides of the entry driveway to the Premises and the front of the Shared Parking Lot, as approved by the Public Works Director/City Engineer and Community Development Director. Height of landscaping shall not exceed 30 inches as required by Antioch Municipal Code section 9-5.1602.

10. **Maintenance.** Tenant agrees that it will, at its sole cost and expense: (a) maintain the Premises in a clean and litter-free condition, (b) maintain in good condition the existing and required landscaping located on the Premises, (c) maintain the surfacing on the Premises, fencing, signage and the lighting; and (d) promptly (within 48 hours of discovery or reporting) remove any graffiti from the Premises. During the Term, Tenant

shall arrange and pay for trash removal from the Premises. Each morning, Tenant shall inspect the Premises and remove all garbage and litter.

Prior to the Commencement Date, Premises shall be slurry sealed and striped at Tenant's expense, including the western portion of the Fifth Street right-of-way. Tenant shall also provide striping and red zones on O Street, as approved by the City Engineer. Tenant will arrange for the work to be done by a licensed, bonded and insured contractor paying prevailing wages. Tenant or his contractor shall obtain an encroachment permit from the City before commencing this work and will do all work to City standards.

Signage regarding the parking hours, valet service and parking enforcement shall be installed and maintained by Tenant. The signage shall include appropriate Municipal Code citations to allow enforcement.

11. **Insurance.** Tenant shall maintain during the term of this Lease insurance against claims or injuries to persons or damages to property arising from or in connection with Tenant's operation and use of the premises. The cost of such insurance shall be borne by the Tenant. Tenant shall maintain insurance as follows:

A. General Liability, in the amount of \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the occurrence limit.

The General Liability policy is to contain, or be endorsed to contain, the following provisions:

i. The City of Antioch, its officers, officials, agents, employees and volunteers are to be covered as additional insureds by endorsement as respects to liability arising out of premises owned, occupied or used by the Tenant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Antioch, its officers, officials, agents, employees or volunteers.

ii. The Tenant's insurance coverage shall be primary insurance with regard to the City of Antioch, its officers, officials, agents, employees and volunteers. Any insurance maintained by the City of Antioch, its officers, officials, agents, employees and volunteers shall be excess of Tenant's insurance and shall not contribute to it.

iii. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, or cancelled, or reduced in coverage or in limits except after thirty (30) days prior written notice by mail has been given to the Landlord.

B. **Property Insurance.** The Tenant will also maintain property insurance covering personal property on the Premises with the exception of any City trailer, truck or vehicles parked on the Premises.

C. **Worker's Compensation Insurance & Employer's Liability.** Tenant shall also maintain Workers' Compensation Insurance as required by state law. Tenant shall also maintain \$1,000,000 in Employer's Liability Insurance.

D. **General Requirements.**

i. Any deductibles or self-insured retentions must be declared to and approved by the Landlord. At the option of the Landlord, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to the Landlord, or the Tenant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses as approved by the City Attorney.

ii. Coverage shall state that the Tenant's insurance shall apply separately to each insured against which claim is made or suit is brought, except with respect to the limits of the insurer's liability.

iii. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

iv. USER shall furnish to the Landlord certificates of insurance and endorsements as required by this clause.

12. **Indemnification.** Tenant agrees to indemnify, protect, defend and hold Landlord harmless from and against any and all claims, losses, liabilities, actions, judgments, costs and expenses (including attorneys' fees and costs) (collectively, "Claims") due to injury to or death of, or damage to the property arising out of or in any way connected to Tenant's use, maintenance and repair of Premises or performance of this Agreement. Negligent or criminal acts by members of the public at the Premises shall not be deemed to be the liability or responsibility of Landlord. The indemnity provision of this section shall survive the expiration or cancellation of this Lease.

13. **Utilities.** Landlord shall pay for all water and electricity at the Premises, unless due to negligence of the Tenant. Tenant shall pay, before delinquency, for all other utilities or services of any kind supplied to the Premises.

14. **Tenant's Property.** All trade fixtures, equipment and personal property of Tenant, if any, located at the Premises will remain the property of Tenant during the Term and may be removed by Tenant at any time. Upon expiration or termination of the Lease, these trade fixtures, equipment and personal property shall be removed from the Premises, unless Tenant is directed otherwise by the Director of Public Works. Tenant,

at Tenant's cost and expense, must promptly repair all damage to the Premises occasioned by the removal of its trade fixtures, equipment and personal property.

15. **Default.** Upon the occurrence of a default by Tenant under this Lease, Landlord shall have the rights and remedies set forth in this Lease, in addition to any and all other rights and remedies available to Landlord at law or in equity, including without limit those provided under California Civil Code Sections 1951.2 and 1951.4, as amended or recodified from time to time. Tenant will not be considered to be in default under this Lease unless (a) in the case of any obligation requiring the payment of money by Tenant to Landlord, Tenant fails to make such payment within the time specified in this Lease or otherwise within five (5) days following written notice from Landlord and (b) in the case of any other alleged default, Tenant fails to cure such default within thirty (30) days following written notice from Landlord, provided that if the nature of the alleged default is such that it cannot reasonably be cured within thirty (30) days, Tenant shall have a reasonable time in which to cure such alleged breach or default.

16. **Surrender of Premises.** Upon the expiration or other termination of the Term, Tenant agrees to surrender possession of the Premises to Landlord in the same condition in which Tenant received the Premises, ordinary wear and tear and damage by casualty or the elements excepted, except as indicated in Section 14 above.

17. **Notices.** Except as otherwise provided, all notices required or permitted to be given under this Lease must be in writing and addressed to the parties at their respective notice addresses set forth below. Notices must be given by personal delivery (including by commercial delivery service) or by first-class mail, postage prepaid. Notices will be deemed effectively given, in the case of personal delivery, upon receipt (or if receipt is refused, upon attempted delivery), and in the case of mailing, three (3) business days following deposit into the custody of the United States Postal Service. The notice addresses of the parties are as follows:

If to Landlord: City of Antioch
 PO Box 5007
 Antioch, California 94531
 Attention: City Manager

If to Tenant: Anthony Keslinke
 Kelly's Card Room
 2006 A Street
 Antioch, California 94509

18. **General.**

(a) The titles to the sections of this Lease are for convenience of reference only and are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. Any exhibits attached to this Lease are, however, a part of this Lease. This Lease shall be governed by and construed in accordance with the

laws of the State of California, without regard to any otherwise governing principles of conflicts of law. In construing this Lease, none of the parties to it shall have any term or provision construed against it solely by reason of its having drafted the same.

(b) Any provision of this Lease that is invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating, diminishing or rendering unenforceable the rights and obligations of the parties under the remaining provisions of this Lease.

(c) No term or provision of this Lease may be amended or modified, except by an instrument in writing signed by the parties to this Lease.

(d) This Lease and all exhibits attached to it constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements (whether written or oral) with respect to that subject matter, except for land use approvals and licenses granted by the City regarding the operations of Kelly's.

(e) This Lease may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(f) If either party hereto brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in such action, on trial or appeal, shall be entitled to reasonable attorneys' fees to be paid by the losing party as fixed by the court.

(g) Tenant shall at all times keep the Premises free from any liens arising out of any work performed or allegedly performed, materials furnished or allegedly furnished or obligations incurred, by or for Tenant. Tenant agrees to indemnify and hold Landlord harmless from and against any and all claims for mechanics', materialmen's or other liens in connection with any Improvements, repairs or any work performed or allegedly performed, materials furnished allegedly furnished or obligations incurred or allegedly incurred, by or for Tenant.

(h) Tenant shall not assign this Lease without the prior written consent of the City Manager. Any such assignment without consent shall be void and, at the option of Landlord, may terminate the Lease.

(i) No member, official or employee of Landlord shall be personally liable in the event of any default or breach of this Lease.

(j) Tenant agrees that its use of Property or this Agreement shall not entitle Tenant to any relocation benefits pursuant to federal, state or local law and waives any such claim against Landlord.

Executed as of the date first set forth above.

CITY OF ANTIOCH

ANTHONY KESLINKE

By: _____
James M. Jakel
City Manager

By: _____

Attest:

Arne Simonsen, City Clerk

Approved as to Form:

By: _____
Lynn Tracy Nerland, City Attorney

(signatures to be notartized)

Attachments:

EXHIBIT "A"

Depiction of the Premises

[To Be Attached]

CHAPTER 4: CARD ROOMS

Section

- 5-4.01 Definitions
- 5-4.02 Number of location and licenses limited
- 5-4.03 License application
- 5-4.04 License; denial
- 5-4.05 License; issuance to established businesses only
- 5-4.06 License fee
- 5-4.07 Failure to pay fees; revocation of licenses
- 5-4.08 License nontransferable; exceptions
- 5-4.09 Suspension and revocation of license
- 5-4.10 Card room work permit required
- 5-4.11 Card room work permit application; fee
- 5-4.12 Card room work permit nontransferable
- 5-4.13 Card room work permit; suspension and revocation
- 5-4.14 Rules and regulations
- 5-4.15 Conducting unlicensed card rooms unlawful
- 5-4.16 Games prohibited by state laws unlawful
- 5-4.17 Exemptions

§ 5-4.01 DEFINITIONS.

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

ACT. Cal. Bus. and Prof. Code, Division 8, Chapter 5, known as The Gambling Control Act.

CARD ROOM. Any room, enclosure, or space furnished with a table or tables used, or intended to be used, as a card table for the playing of cards and similar games, the use of which table is available to the public, or any portion of the public.

CARD ROOM EMPLOYEE. Any natural person employed in the operation of a card room, including, without limitation, dealers, floor personnel, security employees, countroom personnel, cage personnel, collection

personnel, surveillance personnel, data-processing personnel, maintenance personnel (but not personnel involved only in maintenance of the exterior of the premises), waiters and waitresses, and secretaries, or any other natural person whose employment duties require or authorize access to card rooms.

COMMISSION. The California Gambling Control Commission.

LICENSE. Any license issued by the Commission pursuant to the Act and regulations adopted pursuant to the Act authorizing the holder to operate a card room operation or be employed in the operation of a card room in a supervisory capacity.

WORK PERMIT. Any card, certificate, or permit issued by the Commission, authorizing the holder to be employed as a card room employee.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.02 NUMBER OF LOCATION AND LICENSES LIMITED.

It is hereby found and determined that the public health, safety, and welfare require that the number and location of licensed card rooms in the city be limited, and the following regulations are required to fulfill such objectives:

(A) The total number of licensed card rooms permitted in the city shall be five, unless otherwise limited by the Act or subsequent state law. Licensed card rooms in existence on March 26, 1985, may be allowed to continue in operation. However, no card room license shall be issued which would cause the number of card rooms to exceed five. This restriction shall not apply to transfers of a license at an existing licensed location.

(B) When, pursuant to the provisions of this section, a card room license can be granted, it shall be granted or denied in the numerical order in which the application was made, all applications being subject to the provisions of this chapter.

(C) No card room license shall be granted, nor shall the transfer of the location of an existing card room license be authorized, until a use permit has first been obtained. A use permit may be granted if the proposed location will be desirable to the public convenience or welfare and will be in harmony with the zoning provisions, the General Plan, and any specific plan and if the location is proper in relation to adjacent uses.

(D) No more than one card room license shall be issued for the downtown area. The downtown area is described as that territory bounded by the San Joaquin River to Sixth Street and L to A Streets. The Council finds that in the past an undue concentration of card rooms in the downtown area has helped lead to blighting conditions.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.03 LICENSE APPLICATION.

(A) *Application to Commission; requirements.* Every person making an application for a card room license shall submit an application under oath to the Commission for review and consideration, pursuant to the procedure and fee schedule in the Act and regulations set by the Commission.

(B) *Application to city; requirements.* Every person making an application for a card room license shall submit an application, under oath, to the Chief of Police, which shall include the following:

(1) The true names and addresses of the applicant and of all persons financially interested in the business. **PERSONS FINANCIALLY INTERESTED** shall include all persons who share in the profits of the business in

any form;

- (2) The criminal record, if any, of any of the persons named in the application;
- (3) The fingerprints and photographs of the applicant and of all persons financially interested in the business;
- (4) Any other information required by the Chief of Police; and
- (5) Any application fee and/or deposit required under the Master Fee Schedule.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.04 LICENSE; DENIAL.

(A) *Denial by Commission; grounds.* The Commission, upon the receipt of the application, shall either grant or deny the application. Denial may be upon one or more of the grounds in the act and/or regulations set by the Commission.

(B) *Denial by the Council; grounds.* The Council, upon the receipt of the report of the Chief of Police, shall either grant or deny the application. Denial may be upon one or more of the following grounds:

- (1) That the applicant or any person financially interested in the business has been convicted of a felony;
- (2) That, in the opinion of the Council, the applicant or any person financially interested in the business is not of good moral character;
- (3) That any of the information furnished or required in the application was false or omitted with the intent to conceal the facts; and
- (4) That, in the opinion of the Council, the proposed location for the card room would be incompatible with the uses being made of the property in the immediate vicinity and injurious to the health, safety, or morals of the people of the city.

(C) *Denial; effect.* Denial of the application shall cause the applicant to lose his place on the numerical ranking list. If the applicant desires future consideration, he shall file a new application, which shall be placed at the bottom of the numerical ranking of applicants.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.05 LICENSE; ISSUANCE TO ESTABLISHED BUSINESSES ONLY.

In addition to the other requirements contained in this chapter, no license shall be issued for a card room other than in an established place of business of sufficient size and volume that the already established business is the major business of the place rather than the business of operating such card room.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.06 LICENSE FEE.

(A) Every person conducting, using, and/or maintaining on premises owned, used, or leased by him any card room or card tables which may be used by patrons of the premises shall pay a license fee in the amount established

in the Master Fee Resolution and the fee schedule in the Act and regulations set forth by the Commission.

(B) The license fees for card tables shall be in addition to any other license fees or taxes imposed upon the established business therein.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.07 FAILURE TO PAY FEES; REVOCATION OF LICENSES.

If any person conducting a card room shall fail to pay the fees specified by § 5-4.06 of this chapter following notice from the Finance Department that such fees are delinquent, the Director of Financial Services shall so notify the Chief of Police. The Chief of Police shall notify the licensee of the intention of the Chief of Police to revoke the card room license for failure to pay the fees. If such fees are not then paid within ten calendar days after such notice, the Chief of Police shall revoke such license. During the ten calendar day time period, the licensee may have the opportunity to present to the Chief of Police evidence that the amount of fees being assessed is incorrect. The Chief of Police may order the adjustment of the fees being imposed. If payment is made prior to revocation, a 50% penalty shall be added to the fees due and owing. The remedy of revocation shall be in addition to the civil or criminal remedies available to the city.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.08 LICENSE NONTRANSFERABLE; EXCEPTIONS.

(A) Except as provided in § 5-4.08 of this chapter, no card room license shall be assignable or transferable, except that such license may be transferable to the purchaser of that established business where the license is used and operated; however, the transferee, before operating the card room, shall obtain permission for the card room license transfer from the Council in the same manner as for an original issuance, the Chief of Police forwarding his report and recommendation to the Council prior to action being taken. The approval or disapproval of any card room license transfer permitted by this section shall be within the sole discretion of the Council based on the criteria established by this chapter. If a request for a transfer has not been made within 60 days after the business sale takes place, the card room license may be distributed to another person.

(B) In the event the existing business to which the card room license is necessarily attached reverts to the former card room license holder because of the nonpayment of the purchase price or by reason of contract, operation of law, or otherwise, the card room license may be transferred to the former card room license holder subject to Council approval as specified for all transfers. In all other cases, the license shall automatically expire. The provisions of this section shall be broadly construed so as to give effect to the intent thereof.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.09 SUSPENSION AND REVOCATION OF LICENSE.

(A) The Council may suspend or revoke a card room license on any of the grounds set forth in § 5-4.04 of this chapter, on the ground that the card room business has become the main business of the establishment, or on the ground that the licensee has violated a provision of this chapter. If a card room license is not used by the operation of card tables on the premises to which the card room license is attached for a period of six consecutive months, the card room license shall automatically expire.

(B) However, a card room license may be moved from one established business location to another by the

licensee provided the new location has been first approved by the Council within six months after card room activity has ceased at the premises to which the card room license was last attached. The Council may grant an additional six months for a business relocation upon a showing of hardship by the licensee.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.10 CARD ROOM WORK PERMIT REQUIRED.

No person shall work as a card room employee without first obtaining a work permit from the Commission, nor shall any licensee of a card room employ any person as a card room employee who does not possess a valid work permit.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.11 CARD ROOM WORK PERMIT APPLICATION; FEE.

An applicant for a card room work permit shall submit his or her application to the Commission for review and consideration, pursuant to the procedures and fee schedule in the act and regulations set by the Commission.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.12 CARD ROOM WORK PERMIT NONTRANSFERABLE.

No card room work permit shall be assignable or transferable.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.13 CARD ROOM WORK PERMIT; SUSPENSION AND REVOCATION.

The Chief of Police may temporarily suspend a work permit on the ground that the permittee has violated any provision of this chapter or the Act, pending action by the Commission.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.14 RULES AND REGULATIONS.

No person, either as a licensee or employee, shall maintain, operate, or permit any act within a card room in violation of any of the following regulations:

- (A) Not more than one card room shall be located at one business location.
- (B) Four card tables shall be automatically allowed per card room. The Council, in its discretion, may allow up to six card tables per card room.
- (C) The number of players permitted at one card table shall be as prescribed by state law.
- (D) Card rooms shall be open to police inspection during all hours of operation.

(E) Each card table, during the time of play at such table, shall have assigned to it a person holding a valid work permit. Such person shall be in charge of, supervise, and conduct the game strictly in accordance with the laws of the state and the provisions of this chapter.

(F) Only game authorized by state law to be played shall be permitted to be played in any card room.

(G) Only table stakes shall be permitted.

(H) No person under the age of 21 shall be permitted at any card table, or participate in any game, or remain in a card room.

(I) No intoxicated person shall be permitted in any card room.

(J) The licensee shall post in every card room, in letters plainly visible throughout the room, signs stating the hourly rate or cost per hand charged for the use of the tables in such card room and each other of the regulations set forth in this section as the Chief of Police may require.

(K) Each card room shall adopt a schedule of the hours of operation, after the schedule has been approved by the Chief of Police. Such approved schedule of hours shall be clearly posted at the gambling establishment so as to give law enforcement and patrons adequate notice of the hours of operation. Unless otherwise restricted, a card room may be allowed to operate 24 hours each day.

(L) (1) No player in any licensed Antioch card room shall be permitted to wager or raise a wager by more than the following amounts:

(a) \$200 for individual bets in Blackjack or California games that feature a rotating player-dealer position, except for games described in division (c) which shall have higher limits;

(b) \$200 for individual bets in Limit Poker games;

(c) \$500 for individual bets in No Limit and Double Hand Poker games; and

(d) \$50 for individual bets in any other card room game permitted by California law.

(2) Any licensed card room may increase their current wagering limits as stated above, provided, however, that no card room may increase its wager limit in any amount for any game until it has received prior approval from the Chief of Police. During hours of operation, card rooms shall clearly post the wagering limit rules at the tables where the games are offered, to provide patrons adequate notice of those rules.

(M) Each card room shall be responsible and liable for its patrons' safety and security in and around the card room. Each card room shall adopt a plan to provide for the safety and security of patrons, after the plan has been approved by the Chief of Police.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.15 CONDUCTING UNLICENSED CARD ROOMS UNLAWFUL.

No person shall play, deal, carry on, open, or cause to be opened, conduct, or bet at or against any game not prohibited by the laws of the state with cards, dice, or any device for money, checks, credit, or other representative of value, except when played in a card room licensed pursuant to the provisions of this chapter.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.16 GAMES PROHIBITED BY STATE LAWS UNLAWFUL.

The provisions of this chapter shall not be construed to permit the licensing of any card room for the playing of any game prohibited by the laws of the state.

(Ord. 2051-C-S, passed 10-25-11)

§ 5-4.17 EXEMPTIONS.

Any nonprofit society, club, or fraternal, labor, or other organization, having adopted bylaws and duly elected directors and members, may be excluded from compliance with the provisions of this chapter by applying to the Council and if the Council finds that the tables are for the exclusive use of the members of the organization and that no charge is made for the use of card room facilities.

(Ord. 2051-C-S, passed 10-25-11)

LIST OF ALL GAMBLING CONTROL COMMISSION LICENSED ENTITIES

To view currently active licenses, please choose a license type from the drop down menu below.

Click the text in the header rows to sort by that column.

Selected License Type: Gambling Establishment

License Number	Name	City	State	Zip Code	License Status
GEGE-001007	Artichoke Joe's Casino	San Bruno	CA	94066	Active
GEGE-001297	Bankers Casino	Salinas	CA	93901	Active with Conditions
GEGE-000989	Bay 101	San Jose	CA	95112	Active
GEGE-001043	Black Sheep Casino Company	Cameron Park	CA	95682	Active
GEGE-000493	Bruce's Bar and Casino	Blythe	CA	92225	Active
GEGE-001296	California Club Casino	San Ramon	CA	94583	Active with Conditions
GEGE-000450	California Grand Casino	Martinez	CA	94553	Active
GEGE-000340	Cameo Club	Stockton	CA	95207	Active
GEGE-000404	Capitol Casino	Sacramento	CA	95814	Active
GEGE-001322	Casino 580	Livermore	CA	94550	Active
GEGE-000438	Casino 99	Chico	CA	95928	Active
GEGE-000951	Casino Club	Redding	CA	96002	Active
GEGE-000410	Casino M8trix (Formerly Garden City Casino)	San Jose	CA	95110	Active with Conditions
GEGE-001280	Casino Marysville	Marysville	CA	95901	Active
GEGE-000501	Casino Real	Manteca	CA	95336	Active
GEGE-001295	Casino Royale	Sacramento	CA	95815	Active
GEGE-000485	Ceasar's Club	Watsonville	CA	95076	Active
GEGE-001029	Central Coast Casino (GB)	Grover Beach	CA	93433	Active
GEGE-001013	Clovis 500 Club	Clovis	CA	93612	Active
GEGE-001327	Club Caribe Casino	Cudahy	CA	90201	Active with Conditions
GEGE-001121	Club One Casino Inc.	Fresno	CA	93721	Active with Conditions
GEGE-000962	Club San Rafael	San Rafael	CA	94901	Active with Conditions
GEGE-001093	Commerce Casino	Commerce	CA	90040	Active
GEGE-001300	Cordova Restaurant and Casino	Rancho Cordova	CA	95670	Active
GEGE-001282	Crystal Casino & Hotel	Compton	CA	90220	Active
GEGE-001314	Delta Casino	Stockton	CA	95207	Active with Conditions
GEGE-001313	Delta Casino downtown	Stockton	CA	95202	Active with Conditions
GEGE-000236	Diamond Jim's Casino	Rosamond	CA	93560	Active with Conditions
GEGE-000990	Empire Sportsmen's Association	Modesto	CA	95356	Active
GEGE-001173	Garlic City Club	Gilroy	CA	95020	Active
GEGE-001169	Golden State Casino	Marysville	CA	95901	Active
GEGE-000426	Golden West Casino	Bakersfield	CA	93307	Active with Conditions
GEGE-000392	Hawaiian Gardens Casino	Hawaiian Gardens	CA	90716	Active
GEGE-001335	Hollywood Park Casino	Inglewood	CA	90303	Temporary with Conditions
GEGE-000484	Hotel Del Rio & Casino	Isleton	CA	95641	Active
GEGE-000518	Hustler Casino	Gardena	CA	90247	Active
GEGE-000969	Jalisco Pool Room	Guadalupe	CA	93434	Active with Conditions
GEGE-000421	Kelly's	Antioch	CA	94509	Active
GEGE-001030	La Fuerza	Woodlake	CA	93286	Active
GEGE-000408	La Primavera Pool Hall & Cafe	Madera	CA	93638	Active with Conditions
GEGE-000354	Lake Bowl Cardroom	Folsom	CA	95630	Active
GEGE-001149	Lake Elsinore Hotel and Casino	Lake Elsinore	CA	92530	Active
GEGE-000391	Limelight Card Room	Sacramento	CA	95816	Active
GEGE-001107	Livermore Casino	Livermore	CA	94550	Active with Conditions
GEGE-001299	Lodi Casino (fka Wine Country Casino and Restaurant)	Lodi	CA	95240	Active
GEGE-001321	Lotus Casino	Sacramento	CA	95824	Active
GEGE-001108	Lucky Chances Casino	Colma	CA	94014	Active with Conditions
GEGE-001336	Lucky Derby Casino	Citrus Heights	CA	95610	Temporary with Conditions
GEGE-000950	Lucky Lady Card Room	San Diego	CA	92115	Active
GEGE-001317	Marina Club	Marina	CA	93933	Active with Conditions
GEGE-001328	Merced Poker Room	Merced	CA	95340	Active
GEGE-000811	Mike's Card Casino	Oakdale	CA	95361	Active

GEGE-001304	Mortimer's Card Room	Marina	CA	93933	Active with Conditions
GEGE-001279	Napa Valley Casino	American Canyon	CA	94503	Active with Conditions
GEGE-000967	Nineteenth Hole	Antioch	CA	94509	Active with Conditions
GEGE-000448	Normandie Club	Gardena	CA	90247	Active with Conditions
GEGE-001309	North Coast Casino	Eureka	CA	95501	Active with Conditions
GEGE-001063	Oaks Card Club	Emeryville	CA	94608	Active
GEGE-001127	Oasis Card Room	Ridgecrest	CA	93555	Active
GEGE-001025	Ocean View Cardroom	Santa Cruz	CA	95060	Active
GEGE-000473	Ocean's Eleven Casino	Oceanside	CA	92054	Active
GEGE-001301	Oceana Cardroom	Oceano	CA	93445	Active
GEGE-000440	Old Cayucos Tavern	Cayucos	CA	93430	Active with Conditions
GEGE-001176	Outlaws Card Parlour	Atascadero	CA	93422	Active
GEGE-001302	Palace Poker Casino LLC	Hayward	CA	94542	Active
GEGE-001008	Palomar Card Club	San Diego	CA	92104	Active with Conditions
GEGE-001329	Paso Robles Central Coast Casino	Paso Robles	CA	93446	Active
GEGE-001337	Phoenix Casino and Lounge	Citrus Heights	CA	95621	Temporary with Conditions
GEGE-001276	Poker Flats Casino	Merced	CA	95340	Active with Conditions
GEGE-001338	Racxx (fka Deuces Wild Casino)	Lincoln	CA	95648	Temporary with Conditions
GEGE-001094	Rancho's Club	Rancho Cordova	CA	95670	Active
GEGE-001081	Rogelio's	Isleton	CA	95641	Active
GEGE-000206	S&K Cardroom	Eureka	CA	95501	Active with Conditions
GEGE-001310	St. Charles Place	Downieville	CA	95936	Active
GEGE-001082	Star's Casino (formerly Comstock Card Room)	Tracy	CA	95376	Active with Conditions
GEGE-000441	Sundowner Cardroom	Visalia	CA	93292	Active
GEGE-000005	The 101 Casino	Petaluma	CA	94954	Active
GEGE-001305	The Aviator Casino	Delano	CA	93215	Active
GEGE-001028	The Bicycle Casino	Bell Gardens	CA	90201	Active
GEGE-001325	The Deuce Lounge & Casino	Visalia	CA	93291	Active
GEGE-000224	The Mint	Porterville	CA	93257	Active with Conditions
GEGE-001323	The Player's Casino	Ventura	CA	93003	Active
GEGE-001092	The River Card Room	Petaluma	CA	94953	Active
GEGE-001091	Tommy's Casino & Saloon	El Centro	CA	92243	Active with Conditions
GEGE-001318	Towers Casino	Grass Valley	CA	95945	Active
GEGE-001263	Turlock Poker Room	Turlock	CA	95380	Active
GEGE-001168	Ven-A-Mexico	Soledad	CA	93960	Active
GEGE-000466	Village Club	Chula Vista	CA	91910	Active



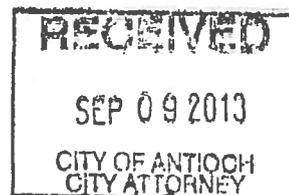
STATE OF CALIFORNIA

GAMBLING CONTROL COMMISSION

2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231
(916) 263-0700 Phone
(916) 263-0499 Fax
www.cgcc.ca.gov

Edmund G. Brown, Jr., Governor

RICHARD J. LOPES, CHAIRMAN
TIFFANY E. CONKLIN
LAUREN HAMMOND
RICHARD SCHUETZ



August 30, 2013

Mr. Ruben Duran
Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953

Re: Kelly's Card Room—OAH Case No. 2010050095

Dear Mr. Duran,

Thank you for your letter of August 15, 2013, regarding Kelly's Card Room. In that letter, you sought information about the status of Kelly's State License and the extent of the background check the state undertakes of applicants for a state gambling license.

On August 20, 2013, California Gambling Control Commission (Commission) staff and Deputy Attorney General, Jennifer Henderson, spoke to you by phone to discuss the issues raised in your letter. The purpose of this letter is to memorialize that conversation.

With regard to the issue of the scope or extent of the background investigation, you were referred to the Bureau of Gambling Control because they are the agency responsible for performing background investigations for applicants seeking a state gambling license.

On the question of the status of the state license, you were advised that the state license is not currently revoked by the Commission because the September 11, 2011, Stipulated Settlement and Order (Order) stayed the revocation. The stay remains in effect because the Commission has not yet determined whether or not the condition precedent to revocation by operation of the Order has been met.

I am attaching a copy of the last Order issued by the Commission on this matter and a copy of the audio of the meeting of October 25, 2012, for your records. At that meeting, the Commission indicated a preference to allow the local government the opportunity to evaluate its options and possibly take the steps necessary to grant local authorization to a business which could conduct controlled gaming within the city of Antioch. Commission staff continues to monitor the issue and will likely present the matter to the Commission for consideration when it becomes clearer how the issue will be resolved at the local level.

Mr. Ruben Duran
August 30, 2013
Page 2

Do not hesitate to contact Paras Modha or Marianne Estes of my staff should you have any additional questions regarding this matter. You can reach Mr. Modha at (916) 263-4793 and Ms. Estes at (916) 274-6069.

Sincerely,



TINA M. LITTLETON
Executive Director

cc: Mr. Wayne Quint, Bureau Chief, Bureau of Gambling Control
Ms. Stacey Luna-Baxter, Assistant Chief, Bureau of Gambling Control
Ms. Jennifer Henderson, Deputy Attorney General, Indian and Gaming Law Section
Mr. Anthony Keslinke, Applicant
Mr. Albert Cianfichi

Enclosures (Mr. Duran only)

ATTACHMENT A



BURKE, WILLIAMS & SORENSEN, LLP

444 South Flower Street - Suite 2400
Los Angeles, California 90071-2953
voice 213.236.0600 - fax 213 236.2700
www bwslaw.com

Direct No.: 213.236.2723
rduran@bwslaw.com
BWS No: 05601-005

August 15, 2013

BY EMAIL & U.S. MAIL

Joe Dhillon, General Counsel
California Gambling Control Commission
2399 Gateway Oaks Drive
Suite 220
Sacramento, CA 95833

Re: Kelly's Card Room / BGC Case No: SA2011-00012

Dear Mr. Dhillon:

This office represents the City of Antioch as special counsel with respect to a pending application for a land use permit and other entitlements for operation of a card room at the site formerly known as "Kelly's" at 408 "O" Street, in the City of Antioch. I write to inquire about the status of the State proceedings with respect to the card room's State-issued gambling license:

The applicant, Mr. Anthony Keslinke, has applied for a use permit and local card room license pursuant to the provisions of Title 5, Chapter 4 of the Antioch Municipal Code. As you may know, the proposed card room site has previously been licensed by the State Gambling Control Commission under license number GEGE-000407. It is the City's understanding that the State license held by the previous owner of the card room was revoked by the Commission on date, but that the revocation was stayed by the Commission pending the prior licensee's sale of the card room.

The current applicant has represented to the City that the State licensing proceedings continue in abeyance until the City acts on the applications for a use permit and for a local card room license.

It is the City's understanding that the local decision whether to approve a local license is separate and independent from the State's decision on the State license, although in this case the State is waiting for the City's decision before it acts on the applicant's State application.

LA #4821-5205-3269 v1

Joe Dhillon, General Counsel
August 15, 2013
Page 2

As the City continues with the processing of the local license and use permit, (two separate proceedings), we would appreciate any information the State could offer with respect to the status of the State license, and confirmation that the City can and should proceed with its own independent assessment of the applications. We would also appreciate any information about the extent of the background check that the State undertakes of applicants for a card room license.

Thank you in advance for your assistance and cooperation. You may reach me by email rduran@bwslaw.com or phone number (213) 236-2723.

Sincerely,



RUBEN DURAN

RD:ljv
cc: Lynn Tracy Nerland,
City Attorney, City of Antioch

Thomas B. Brown, Esq.

ATTACHMENT B

STATE OF CALIFORNIA

GAMBLING CONTROL COMMISSION

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Sacramento, CA 95833-4231
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Edmund G. Brown, Jr., Governor

STEPHANIE SHIMAZU, CHAIRPERSON
TIFFANY E. COIN
LAUREN HAMM
RICHARD SCHUETZ

September 26, 2011

Jennifer Henderson
Deputy Attorney General
Department of Justice, Indian Gaming Law Section
1300 I Street Suite 125
Sacramento CA 95814

Rodney J. Blonien
Blonien & Associates, Inc.
1121 L Street, Suite 507
Sacramento, CA 95814

Attached is the Stipulation Decision and Order adopted by the Commission at its September 22, 2011 meeting in the Matter of the Accusation against Albert Cianfichi, Sole Proprietor of Kelly's Cardroom (OAH No. 2010050095).

PROOF OF SERVICE

Pam Ramsay declares:

I am over the age of 18 years, am employed by the California Gambling Control Commission, and my business address is 2399 Gateway Oaks Drive, Suite 220, Sacramento, California, 95833, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 26, 2011 at my place of business in Sacramento, California, a copy of the Stipulation and Order in the Matter of the Accusation Against Albert Cianfichi, Sole Proprietor of Kelly's Cardroom (OAH No. 2010050095) was placed for certified and regular mail deposit, as specified below, in the United States Postal Service in a sealed envelope, with postage fully prepaid, addressed to:

Jennifer Henderson
Deputy Attorney General
Department of Justice, IGLS
1300 I Street Suite 125
Sacramento CA 95814

Rodney J. Blonien
Blonien & Associates, Inc.
1121 L Street, Suite 507
Sacramento, CA 95814

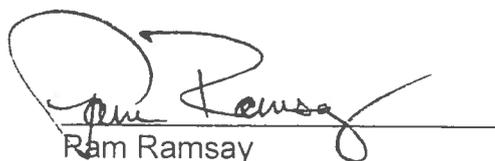
CERTIFIED MAIL

and Regular Mail

That sealed envelope was placed for collection and mailing following ordinary business practices.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: September 26, 2011


Pam Ramsay

1 KAMALA D. HARRIS
Attorney General of California
2 SARA J. DRAKE
Senior Assistant Attorney General
3 JENNIFER T. HENDERSON
Deputy Attorney General
4 State Bar No. 206231
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5366
Fax: (916) 327-2319
7 E-mail: jennifer.henderson@doj.ca.gov
Attorneys for Complainant, Chief of Bureau of
8 Gambling Control, Department of Justice

9
10 **BEFORE THE**
CALIFORNIA GAMBLING CONTROL COMMISSION
11
12 **STATE OF CALIFORNIA**

13 **In the Matter of the Accusation Against:**

14
15 **ALBERT CIANFICHI, Sole Proprietor**
KELLY'S CARDROOM
16 **408 "O" Street**
Antioch, CA 94509

17 **License Number GECE-000407**
18

OAH No. 2010050095

STIPULATION AND ORDER

19
20
21 The parties to the above-captioned proceeding agree and stipulate as follows:

22 **PARTIES**

23 1. Albert Cianfichi (Respondent Owner) owns, as a sole proprietor, the gambling
24 enterprise presently known and doing business as Kelly's Cardroom, located at 408 "O" Street,
25 Antioch, California 94509 (Cardroom). Respondent Owner is presently the holder of gambling
26 license number GECE-000407, formerly number 990002, for the gambling enterprise issued by
27 the California Gambling Control Commission (Commission) pursuant to the Gambling Control.
28

1
Settlement and Order

1 Act (Bus. & Prof. Code, § 19800, et seq., the "Act"). Albert Cianfichi's state gambling license
2 was in full force and effect at all times relevant to the facts set forth herein. This license will
3 expire on June 30, 2011, unless renewed.

4 2. Martin Horan, Jr. (Complainant) is the Acting Chief of the Bureau of Gambling
5 Control, California Department of Justice (Bureau), and is hereby substituted in as the
6 Complainant in this proceeding. His involvement in this action was solely in his official capacity
7 under the Act and is represented in this matter by Kamala D. Harris, Attorney General of the State
8 of California, by Jennifer T. Henderson, Deputy Attorney General.

9 **PROCEDURAL BACKGROUND**

10 3. On April 7, 2006, the Bureau, then designated the Division of Gambling Control,
11 caused to be filed with the Commission and served upon Respondent a First Amended Accusation
12 which referred the matter for an evidentiary hearing.

13 4. Prior to the hearing, the parties entered into a stipulated settlement and disciplinary
14 order and on September 14, 2006, the Commission voted to adopt the Stipulated Settlement and
15 Disciplinary Order (2006 Commission Decision).

16 **JURISDICTION**

17 5. On or about January 19, 2010, pursuant to Business and Professions Code section
18 19930, the Bureau caused to be filed with the Commission and served upon Respondent an
19 Accusation and Petition to Revoke Probation. A copy of the Accusation and Petition to Revoke
20 Probation with attachments, including the 2006 Commission Decision, is attached hereto and
21 incorporated by reference herein as Exhibit A. Respondent timely filed a Notice of Defense with
22 the Commission.

23 6. This matter was set for hearing on May 16 and 17, 2011 before an administrative law
24 judge pursuant to the Administrative Procedure Act, Government Code section 11500 et seq.

25 7. The parties agree that the Commission has jurisdiction over this matter and has
26 authority to approve this Stipulation and Order under Business and Professions Code sections
27 19823, 19824, and 19930, and Government Code section 11415.60.

28 **PURPOSE**

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- possible.
- b. Respondent will have until the end of the probationary period to find a bonafide purchaser, who will be able to be licensed by the California Gambling Control Commission.
 - c. A purchase and sale agreement and an application for licensure by the proposed purchaser must be submitted to the Commission by the purchaser within the probationary period. Respondent will use due diligence in attempting to find a purchaser who is already licensed by the California Gambling Control Commission, in order to expedite the licensing of the new owner.
 - d. The purchase and sale agreement must contain a provision that a portion (\$112, 000) of the purchase price must be set aside as a reserve fund to pay for the penalty and costs agreed to in this Stipulation and will be paid to the Bureau out of escrow at the time of sale.
 - e. If a purchase and sale agreement and an application for licensure by the proposed purchaser are not submitted to the Commission on or before November 25, 2011, the Cardroom shall be closed by operation this Stipulated Settlement and Disciplinary Order. After closure of the Cardroom, the Respondent shall have until May 26, 2012 to find a purchaser who may be licensed.
 - f. If a purchase and sale agreement and an application for licensure by the proposed purchaser are not submitted to the Commission before May 26, 2012, the Respondent's gambling license shall be revoked by operation of this Stipulated Settlement and Disciplinary Order. Notwithstanding any other provision hereof, during the period of November 25, 2011 to May 26, 2012, the Respondent may apply for an extension of time to file a purchase and sale agreement for up to six (6) months upon a showing of good cause such as, but not limited to, license processing delays by the Bureau or Commission, or the

- 1 rejection of a buyer by the Commission.
- 2 g. Respondent acknowledges that the Bureau seeks to have him to divest himself
- 3 of his interest in the Cardroom as soon as possible.
- 4 h. Respondent hereby agrees to employ an outside compliance consultant who
- 5 will be responsible for ensuring that the Cardroom is in complete compliance
- 6 with the regulations promulgated by the Commission and the Bureau.
- 7 i. The outside consultant shall have expertise in the above-referenced regulations
- 8 and the operations of the Commission and the Bureau.
- 9 j. Respondent will practice suitable methods of operation, including, but not
- 10 limited to, only employing individuals who hold a valid work permit or license
- 11 as required by the Act.
- 12 k. Respondent agrees that he will minimize his activities in the gambling
- 13 establishment, and will charge a validly licensed key employee with the day-
- 14 to-day operation of the Cardroom.
- 15 l. Respondent shall obey all state and federal laws and regulations substantially
- 16 related to, or governing the practices and operation of gambling
- 17 establishments. Respondent shall report any of the following occurrences to
- 18 the Commission, in writing, within seventy-two (72) hours of such occurrence:
- 19 1. An arrest or issuance of a criminal complaint for violation of any
- 20 provision of the Gambling Control Act;
- 21 2. A plea of guilty or nolo contendere, or conviction, in any state or federal
- 22 criminal proceeding involving any crime other than traffic violations.
- 23 15. Respondent and Complainant mutually agree that this stipulation and order is in
- 24 complete and final settlement of the allegations contained herein. Respondent has been fully
- 25 advised by his legal counsel, Rodney J. Blonien, as to the effect of this Stipulation and Order: in
- 26 that it binds Respondent to the terms and conditions contained herein. By the terms of this
- 27 agreement, Respondent shall not have the right to further contest and/or appeal the sanctions
- 28 provided herein. Respondent recognizes that he is entering into this Stipulation in lieu of a

1 hearing and the ability to contest these allegations. Respondent enters into this Stipulation with
2 the advice of counsel, voluntarily, knowingly, and intelligently, and agrees to be bound by this
3 Stipulation and the terms of the Decision and Order upon adoption by the Commission.

4 16. The parties agree that in the event the Commission refuses to accept this Stipulation,
5 it shall become void and null, within 15 business days after the Commission meeting at which
6 this Stipulation is rejected.

7 17. Respondent agrees that in the event the Commission rejects the Stipulation as its
8 decision and order and an evidentiary hearing, pursuant to Business & Professions Code Section
9 19930 becomes necessary, no member of the Commission, nor the Executive Director, shall be
10 disqualified because of prior consideration of the Stipulation.

11 18. This Stipulated Settlement shall be subject to approval by the Commission.
12 Respondent specifically agrees that, at any time following execution of this Stipulated Settlement,
13 but prior to the Commission's decision whether to adopt this Stipulated Settlement as its decision
14 and enter the Disciplinary Order, counsel for Complainant and the staff of the Division may
15 communicate directly with the Commission regarding this stipulation and settlement without
16 notice to, or participation by, Respondent or his counsel, and that no such communications shall
17 be deemed a prohibited ex parte communication.

18 19. By signing the Stipulated Settlement and Disciplinary Order, Respondent understands
19 and agrees that he may not withdraw this agreement or seek to rescind the stipulation prior to the
20 time the Commission considers and acts upon it.

21 20. The parties agree should this Stipulation become void, nothing in the Stipulation, or
22 the fact that the parties entered into the Stipulation, shall be admissible in any subsequent hearing
23 on the merits of the violation that is the subject of the Stipulation.

24 **WAIVER AND ADVISEMENT**

25 21. This Stipulation has been fully discussed between Respondent Albert Cianfichi-
26 Kelly's Cardroom and its attorney, Rodney Blonien, and Respondent Albert Cianfichi has been
27 fully advised of the effect of this Stipulation as it waives any rights it may have to: (a) an
28 administrative hearing on the Accusation; (b) any judicial challenge to this Stipulation and Order;

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and (c) collaterally challenge the terms of this Stipulation and Order. Respondent Albert Cianfichi enters into this Stipulation voluntarily, knowingly, and intelligently, and agrees to be bound by this Stipulation and Order upon adoption by the Commission.

22. Respondent understands that nothing in this Stipulation shall preclude the Bureau during the probationary period from issuing any order necessary under Business and Professions Code section 19331.

23. The parties understand and agree that facsimile copies of this Stipulation and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

24. This Stipulation constitutes the entire understanding between the parties concerning the subject matter that it covers. Any oral representations or modifications made prior to or after execution of this Stipulation concerning the subject matter of this Stipulation shall have no force or effect.

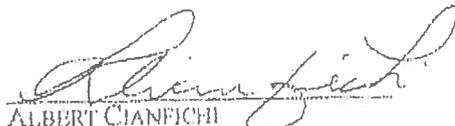
25. In consideration of the foregoing stipulations, the parties agree that the Commission may, without further notice or formal proceeding, issue and enter the Order set forth below.

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ACCEPTANCE

I have carefully read the foregoing Stipulation and Proposed Order and have fully discussed it with my attorney, Rodney Blonien. I understand the Stipulation and Proposed Order and the effect it will have on State Gambling License Number GEGE-000407, formerly number 990002. I enter into this Stipulation and Proposed Order voluntarily, knowingly, and intelligently, and agree to be bound by the Order of the Commission.

cfm
Dated: May 17, 2011


ALBERT CIANFICHI
Respondent, Kelly's Cardroom

APPROVED AS TO FORM

I have read the terms and conditions and other matters contained in the above Stipulation and Proposed Order and approve it as to form.

June 22, 2011
Dated: May _____, 2011


RODNEY BLONIEN
Attorney for Respondent

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Settlement and Order

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COMPLAINANT'S ACCEPTANCE

I have carefully read the foregoing Stipulation and Proposed Order and have fully discussed it with attorneys from the Department of Justice Office of Attorney General. On behalf of the Bureau, I enter into this Stipulation and Proposed Order voluntarily, knowingly, and intelligently, and agree to be bound by the Order of the Commission.

Dated: June ____, 2011

MARTIN HORAN JR., ACTING CHIEF
Bureau of Gambling Control

ENDORSEMENT

The foregoing Stipulation and Order are hereby respectfully submitted for consideration by the California Gambling Control Commission.

Dated: June ____, 2011

KAMALA D. HARRIS
Attorney General of the State of California

By: _____
JENNIFER T. HENDERSON
Deputy Attorney General
Attorneys for Complainant

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Bureau of Gambling Control

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Dated: June __, 2011

KAMALA D. HARRIS
Attorney General of the State of California

By: _____
JENNIFER T. HENDERSON
Deputy Attorney General
Attorneys for Complainant

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Dated: June ____, 2011

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Bureau of Gambling Control

ENDORSEMENT

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Dated: June 22, 2011

KAMALA D. HARRIS
Attorney General of the State of California

By:



JENNIFER T. HENDERSON
Deputy Attorney General
Attorneys for Complainant

DECISION AND ORDER

DECISION AND ORDER OF THE COMMISSION:

The foregoing Stipulation of the parties "In the Matter of the Accusation Against Albert Cianfichi, Sole Proprietor, Kelly's Cardroom, License Number GEGE-000407" OAH Case No. 2010050095 has been adopted by a majority vote of the Commission as its final decision and order in this matter and is effective upon execution below by the Commission members.

IT IS SO ORDERED

Dated: 9/22/11

Signature: Stephanie Shimazu
Stephanie Shimazu, Chairperson

Dated: 9/22/2011

Signature: Tiffany E. Conklin
Tiffany E. Conklin, Commissioner

Dated: 9/22/11

Signature: Lauren Hammond
Lauren Hammond, Commissioner

Dated: 9/22/11

Signature: Richard Schuetz
Richard Schuetz, Commissioner



July 11, 2012

Mr. Richard Shindle (*by email*)
Mr. Michael St. Denis (*by email*)
Mr. Paul Justi (*by email*)

Mr. A. R. Cianfichi
Kelly's Restaurant
408 "O" Street
Antioch, CA 94509

Re: Kelly's Card Room, 408 O Street, Antioch, CA

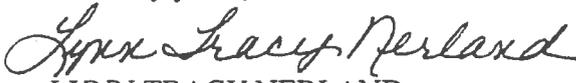
Dear Sirs:

As you know from the City Council meeting last night, the City Council approved by motion that the Card Room License issued by the City of Antioch to Mr. Cianfichi for Kelly's Card Room at 408 O Street, Antioch not expire on July 23, 2012 (6 months after cessation of card room activity on January 23, 2012) if Blarney LLC represented by Richard Shindle and Mr. Cianfichi complete the sale and purchase of Kelly's Card Room license and property by 5:00 p.m. on July 20, 2012. If the purchase occurs by that date, then Blarney LLC would have until January 23, 2013 to start card room operations at 408 O Street without the automatic expiration of the City's Card Room License pursuant to Section 5-4.09 of the Antioch Municipal Code.

However, before such card room activity occurs and pursuant to Section 5-4.08 of the Antioch Municipal Code, Mr. Shindle and Blarney LLC still need to obtain Council approval of the transfer of the license to them from Mr. Cianfichi. Mr. Shindle/Blarney LLC need to submit an application to the Police Chief as outlined in the Municipal Code to allow an investigation to occur and the Chief to make a recommendation to the City Council on the license transfer. The City Council's action last night was not approval of a Card Room License for Blarney LLC or Mr. Shindle in the City of Antioch. It was simply an accommodation of extra time to prevent the automatic lapsing of the Card Room License due to the lack of card room activity since January 23, 2012. The City Council's action last night also reflected no indication of whether any proposed future location for the card room would be approved by the City, assuming that card room activity is resumed at 408 O Street under the terms discussed above.

If you have any questions, please do not hesitate to contact me. The City would appreciate being kept apprised by the parties of the status of the sale, as well as related State regulatory matters.

Sincerely yours,


LYNN TRACY NERLAND
City Attorney

OFFICE OF THE CITY ATTORNEY

P.O. Box 5007, Antioch, California 94531-5007 • Telephone: 925-779-7015 • Fax: 925-779-7003 • www.ci.antioch.ca.us

Letter re Kelly's Card Room at 408 O Street, Antioch, CA
July 11, 2012
Page 2 of 2

cc: Joe Dhillon, General Counsel for the California Gambling Control Commission

Mayor and City Council
Jim Jakel, City Manager
Allan Cantando, Police Chief
Steve McConnell, Police Captain
Leonard Orman, Police Captain
Tina Wehrmeister, Community Development Director

LAW OFFICES OF PAUL B. JUSTI

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Walnut Creek, CA 94596
www.pbjusti.com
pbjusti@comcast.net

Paul B. Justi
Attorney at Law

Telephone
925.256.7900
Facsimile
925.256.9204

21 July 2012

VIA EMAIL AND REGULAR MAIL

City Attorney Lynn Tracy Nerland
City of Antioch
P.O. Box 5007
Antioch, CA 94531



Re: Kelly's Cardroom

Dear Ms. Nerland:

Please be advised that the proposed purchase and sale of Kelly's Cardroom did not close by 5:00 p.m. on Friday, July 20, 2012.

Please be further advised that the reason the transaction did not close was because of vandalism to the building by the residents of the homeless shelter that the City of Antioch located next door to the cardroom. The City of Antioch is responsible for this vandalism and the resulting failure of the transaction to close due to the prior placement of the homeless shelter next door to Kelly's by the City, the subsequent failure of the City to properly supervise and police the homeless shelter and the on-going failure of the City to trim the large tree on the property, which encroaches on Mr. Cianfichi's property and enabled the residents of the facility to gain access to the roof of Kelly's Cardroom and vandalize the HVAC, refrigeration and freezer equipment located on the roof – the destruction of which equipment was a significant and material reason why the transaction did not close. As such, Mr. Cianfichi intends to hold the City of Antioch, as well as ANKA, the operator of the facility, fully liable for the failure of the transaction to close and all associated damages, including the possible the loss of his gaming license.

I refer to the "possible" loss of his gaming license because we are contacting the Bureau of Gambling Control and the Gambling Control Commission to determine their response to the City's action. As you may recall, your July 3, 2012 staff report surmised that if Mr. Cianfichi's city license were to expire pursuant to city ordinance, "it likely cannot be 're-activated' given the state-wide moratorium on new cardrooms and depending on the status of the State-issued card room license for Kelly's." As you acknowledge in your staff report, whether or not the license can be re-activated turns largely on how the Bureau of Gambling Control and/or

City Attorney Lynn Tracy Nerland
21 July 2012
Page 2

Gambling Control Commission responds to the City of Antioch's action. If the Bureau and/or Commission does not revoke the license as a result of the City of Antioch's action, there does not appear to be any impediment to the City of Antioch "re-activating" Mr. Cianfichi's license, either pursuant to City Council action and/or amendment to the Municipal Code.

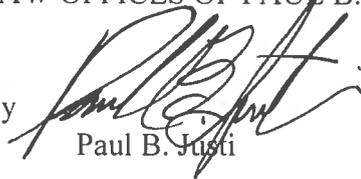
If, however, the license is not re-activated within the next 6 months (the statutory time frame for a Tort Claims Act claim against the City), we will be submitting a Tort Claims Act notice to the City for Mr. Cianfichi's damages. If and when that claim is rejected by the City, we will then file suit against the City of Antioch (and ANKA) to recover the substantial damages Mr. Cianfichi has sustained.

Thank you for your attention. Please call if you have any questions.

Very Truly Yours,

LAW OFFICES OF PAUL B. JUSTI

By



Paul B. Justi

cc: Jennifer Henderson, Bureau of Gambling Control



STATE OF CALIFORNIA

GAMBLING CONTROL COMMISSION

Edmund G. Brown, Jr., Governor
 STEPHANIE SHIMAZU, CHAIRPERSON
 TIFFANY E. CONKLIN
 LAUREN HAMMOND
 RICHARD SCHUETZ

Notice and Agenda of Commission Meeting

California Gambling Control Commission

Hearing Room 100

2399 Gateway Oaks Drive

Sacramento, CA 95833

www.cgcc.ca.gov

10:00 a.m. Thursday October 25, 2012

*Notice: The order of business reflected in the Notice and
 Agenda is subject to change by the Commission at the meeting*

OPEN SESSION

1. Call to Order and Pledge of Allegiance.
2. Roll Call of Commissioners.
3. Approval of Commission Meeting Minutes for:
September 27, 2012
4. Hollywood Park Casino:
 - A. Request for Approval of Settlement Agreement Regarding Lease Termination in Lieu of Unlawful Detainer Between Hollywood Park Casino Company, Inc. and Century Gaming Management, Inc. (Business and Professions Code sections 19824(c) and 19901):

Hollywood Park Casino:	Century Gaming Management, Inc. Leo Chu, Shareholder Ivy Chu, Shareholder
------------------------	---
 - B. Consideration and Possible Action Regarding Asset Purchase Agreement, Lease Agreement and Trademark License Agreement between Hollywood Park Casino Company, Inc. and LAX Property, LLC (Business and Professions Code sections 19824(c), 19850, 19852, 19852.2, 19853, and 19901):

Hollywood Park Casino:	LAX Property, LLC Eric Swallow, Sole Member
------------------------	--
5. Kelly's:
 - A. Request for Approval to Withdraw Application for State Gambling License (Pursuant to Business and Professions Code section 19869 and CCR, Title 4, section 12047):

Kelly's:	Blarney, LLC Richard Shindle, Member Tracey Kennedy, Member James Mullins, Member Kerry Mullins, Member
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- B. Consideration of Revocation of State Gambling License Pursuant to Decision and Order Issued September 22, 2011, in OAH Case No. 2010050095 (Business and Professions Code sections 19824, 19825, 19930 and CCR, Title 4, section 12554):
 Kelly's: Albert Cianfichi, Sole Proprietor
6. Application for Approval of Initial State Gambling License (Pursuant to Business and Professions Code section 19851 and CCR, Title 4, section 12342):
 Merced Poker Room: Tongtoua Yang, Sole Proprietor
7. Applications for Approval of Renewal of State Gambling Licenses (Pursuant to Business and Professions Code section 19876 and CCR, Title 4, section 12345):
- A. Cordova Restaurant and Casino: Cal-Pac Rancho Cordova, LLC
 John Park, Sole Member
- B. Oceana Cardroom: Mark Adam, Sole Proprietor
8. Request for Approval to Remove Condition(s) from Key Employee License (Pursuant to Business and Professions Code section 19824(b)):
 John Mugnani
9. Applications for Approval of Renewal of Third Party Provider of Proposition Services/Gambling Business Licenses (Pursuant to Business and Professions Code section 19984 and CCR, Title 4, sections 12218.8 and 12238):
- A. Certified Players, Inc.: Phillip H. LeBlanc and Patricia Ann LeBlanc Revocable Living Trust, Shareholder
 Patricia LeBlanc, President, Secretary, Treasurer, Second Trustee and Beneficiary
 Phillip LeBlanc, First Trustee and Beneficiary
 Michael LeBlanc, Shareholder
- B. California Gaming Consultants: Dog Named Blue, Inc.
 The Rick Baldaramos Trust, Shareholder
 Richard Baldaramos, Trustor, Trustee and Beneficiary
- C. Network Management Group, Inc.: John Park, President, Secretary, Treasurer, Director and Shareholder
10. Applications for Approval of Conversion of Third-Party Providers of Proposition Player Services /Gambling Business Supervisor/Player Registrations to Licenses (Pursuant to Business and Professions Code section 19984 and CCR, Title 4, sections 12218 and 12233):
- A. Banc, LLC:
 Player: Samuel Yang
- B. Certified Players, Inc.:
 Players: Eisenhower De Guzman Raymond Leoni
- C. PT Gaming, LLC:
 Players: Mary Choeun Nam Doan
 Kristine Laird Michelle Phanbandith
 Laarni Zambrano
 Supervisor: Dan Lim
- D. Qualified Player Services, LLC:
 Player: William Lee

1 Any comment from the Bureau?

2 Then we can call for the vote.

3 BOARD CLERK CHIMENTO: Commissioner Conklin?

4 COMMISSIONER CONKLIN: Aye.

5 CHAIRPERSON SHIMAZU: We're voting to take no
6 action.

7 COMMISSIONER CONKLIN: Take no action.

8 BOARD CLERK CHIMENTO: No action taken.

9 CHAIRPERSON SHIMAZU: So if we receive all the
10 information on the work chart, we can come back on the
11 15th again. Our recommendation on the 15th will be
12 decided, and at that time we can determine how long we
13 want to give them to submit the applications. And it
14 sounds like some of the applications will already be
15 submitted anyway, so we'll just see who above and beyond
16 that needs to be licensed.

17 Okay. Are we done with 4?

18 COMMISSIONER CONKLIN: My children who are going
19 to Disneyland today thank you.

20 (Laughter).

21 CHAIRPERSON SHIMAZU: That's just 4. We have a
22 few more things to do.

23 We'll let the room clear.

24 LICENSING DIVISION DEPUTY DIRECTOR ESTES: Moving
25 to item number 5, Kelly's. A. Request for approval to

1 withdraw application for State Gambling License; Kelly's,
2 A Blarney, LLC; and B., Consideration of Revocation of
3 State Gambling License, Pursuant to Decision and Order
4 Issued September 22, 2011, for Kelly's.

5 Staff is recommending the Commission take
6 separate action on Item 5.A. and 5.B. as they both relate
7 to Kelly's, however, they are presented concurrently given
8 the implications of the withdrawal of license applications
9 with respect to the Settlement Order approved by the
10 Commission on September 22, 2011. With regard to Item
11 5.A., staff is recommending the Commission approve without
12 prejudice, the state gambling license applications for
13 Blarney, LLC, Richard Shindle, Tracey Kennedy, James
14 Mullins, and Kerry Mullins. Should the Commissioners
15 approve the withdrawal request, the determination of the
16 effect of this action is provided in Item 5.B. This item
17 would provide the Commissioners the option to determine
18 the terms of the Stipulated Order are no longer in
19 compliance and allows for the immediate revocation of the
20 state gambling license.

21 The alternative option provided is to take no
22 action, and the Stipulated Order would continue the stay
23 of the revocation for an undetermined amount of time.

24 Jennifer Henderson, of IGLS, is here on behalf of
25 the Bureau. Mr. Cianfichi's counsel, Mr. Paul Justi, is

1 in trial and submitted a letter which is included in the
2 materials in your binder.

3 So with that --

4 CHAIRPERSON SHIMAZU: Commissioners, want to take
5 these up for a vote, or want a general discussion on both
6 of them?

7 COMMISSIONER SCHUETZ: Madam Chair, I believe
8 that we should allow for the withdrawal of the application
9 and the refund of his monies without prejudice for the
10 individuals who entered into negotiations to buy this
11 thing. And I would like to suggest that does keep alive
12 the option if they met the conditions, the May 25th
13 conditions of getting a seller, that that sale is still
14 open and is viable on a going forward basis. That is
15 where I want to end up.

16 COMMISSIONER CONKLIN: I have more specific
17 questions. Is there anybody from the City?

18 COMMISSION COUNSEL: From the City of Antioch,
19 no.

20 COMMISSIONER CONKLIN: Is there anybody who can
21 address the viability of reinstating the local license?

22 LICENSING DIVISION DEPUTY DIRECTOR ESTES:
23 Perhaps, Mr. Bob Lytle might be able to shed some light on
24 that.

25 COMMISSIONER CONKLIN: Okay.

1 MR. LYTLE: Good morning. I should say "so far."

2 COMMISSIONER SCHUETZ: It can change Bob.

3 MR. LYTLE: Yes, that's true. Bob Lytle,
4 L-y-t-l-e. Actually what I would like to do is -- we have
5 -- I'd like to introduce, Tony Keslinke. He has been
6 talking to the City of Antioch. He is also interested in
7 purchasing the property. So I think he could probably
8 answer questions about the City itself. And I believe
9 there is someone from the City who would be willing to
10 take a phone call if that's what you guys would like to
11 do.

12 MR. KESLINKE: Good morning. My name is Anthony
13 Keslinke, Tony Keslinke.

14 COMMISSIONER CONKLIN: Could you spell it?

15 MR. KESLINKE: K-e-s-l-i-n-k-e. And I'm a 20
16 plus year, not resident, but business owner in Antioch. I
17 have been following the trials and tribulations of
18 Kelly's. I have been acquainted with Mr. Cianfichi since
19 2009, and have been pursuing a purchase with him since
20 that time, but for one reason or another have never been
21 able to, which you may be aware of, been able to get Al to
22 agree fully. As soon as the last -- last transactions
23 started to come apart, I went and met with Al one last
24 time and said, Al, I think it's our final opportunity to
25 try to put something together. Please be cooperative

1 entering into this transaction, which he did. It was the
2 very week after the initial transaction expired.

3 Since that time, I've had many, many meetings
4 with the City of Antioch officials, City Council members,
5 the city Attorney and the city Manager. The city manager
6 is -- the city manager's office told me this morning that
7 if we're in the meeting and you wish to speak with him,
8 they'll interrupt him and put him on the phone.

9 The City is of the opinion currently that
10 provided that the State would allow the license to
11 continue, that they would consider the option. They're
12 not expressing that they will approve it at this point.
13 They obviously want to do more due diligence, and I
14 understand that. But they're very, very open and
15 receptive at this point, and they realize that shuttering
16 another business in Antioch would be very, very difficult
17 for the City, which is really going through some financial
18 troubles, and they feel that it would be a net positive to
19 continue to have Kelly's, with a different operator,
20 moving forward.

21 With that, I'm happy to answer any questions or
22 to give you Mr. Jim Jakel's phone number, office number,
23 or also Mary Rocha, one of the City Council people.

24 LICENSING DIVISION DEPUTY DIRECTOR DHILLON: Do
25 you have his number?

1 MR. KESLINKE: Mr. Jakel is (925)779-7011. I
2 believe Sharon will answer, and she will be able to --

3 COMMISSIONER SCHUETZ: We have a problem in
4 Antioch.

5 (Laughter.)

6 CHAIRPERSON SHIMAZU: What's Mr. Jakel's title
7 again?

8 MR. KESLINKE: He's City Manager.

9 COMMISSIONER CONKLIN: And then a question for
10 you while we're getting him on the line. What are the
11 contingencies on your offer?

12 MR. KESLINKE: Very, very few. I'm buying both
13 the building, as is, as well as the business operations.
14 So there's standard conditions within the contract, but
15 it's a very standard contract. It's a real estate,
16 boilerplate kind of form, kind of "fill in the blank."
17 And I did that intentionally so that there would not be a
18 lot of lawyering around it and conditions built in. And
19 it's a very straight contract, and I can provide that.

20 CHAIRPERSON SHIMAZU: I think we have that.

21 COMMISSIONER CONKLIN: Yeah. We have it, I just
22 didn't find anything. The last agreement fell through
23 because of the deterioration of the building. So I want
24 to make sure --

25 MR. KESLINKE: Right. And I'm a real estate

1 broker and developer. That's the kind of thing that I do
2 all the time. I've gone through the building thoroughly,
3 and I'm very comfortable with the condition of the
4 building. I'm very familiar with it. I've been in and
5 out of that building for the past three years.

6 LICENSING DIVISION DEPUTY DIRECTOR DHILLON: Hi,
7 Mr. Jakel. This is Joe Dhillon. I'm Chief Counsel at the
8 Gambling Control Commission. Thank you for joining our
9 meeting. We're here discussing issues related to Kelly's
10 Cardroom. Mr. Keslinke and Mr. Lytle are at the podium,
11 and the Commissioners are here, and there's a room full.
12 We understood you could speak to the current position with
13 the City of Antioch with regards to the consideration of
14 licensure of a cardroom if the State is also moving in a
15 direction to allow that.

16 MR. JAKEL: (By phone). The City hasn't had any
17 official position since what happened in July. But what I
18 can say is that Mr. Keslinke has made his interest in
19 operating a cardroom and taking over the Kelly's license
20 known to us. We have a single -- I know he has spoken
21 with at least one City Council member who has expressed an
22 informal -- again, nothing formal -- an informal interest
23 in thinking of allowing the cardroom to be operating
24 again.

25 We have -- our situation is such that we have an

1 election in which the majority of the City Council is up
2 in November, and it's possible that we'll only have two --
3 currently there's five members of City Council. It's
4 certainly a possibility that there will only be two
5 members of the Council returning who were here in July.
6 So I can't give you a firm, would we approve it, would
7 there even be the votes for reconsideration, but I also *
8 can't say that there wouldn't be -- that they couldn't
9 rule out that a future Council, after the November
10 election, wouldn't consider an ordinance change that would
11 permit the cardroom to operate. So right now, that's not
12 the case, but I can't rule it out either, and knowing
13 that, I can't predict what's going to happen in November.
14 And I know at least one member of the existing Council
15 that has indicated informally that they're open to the
16 concept.

17 COMMISSIONER CONKLIN: Thank you, very much. I
18 just wanted to state on the record that, you know, this is
19 a little bit of a precedent setting for us, because when
20 it is in a stipulated settlement that the license should
21 go away, by us reopening the possibility the way that
22 we're reading the stipulated settlement and the agreement
23 to allow for another buyer to come in, it's positive,
24 because I have spoke multiple times on the shrinking
25 number of licenses in the state, and I don't like to see

1 the numbers go away, but at the same time, this was an
2 enforcement action against them. So we are weighing those
3 two possibilities. But in this instance, I'm going to be
4 in favor as well as reading it to allow for the
5 introduction of another purchase agreement.

6 CHAIRPERSON SHIMAZU: Okay. Commissioner Hammond
7 has questions.

8 COMMISSIONER HAMMOND: Yes. This is Commissioner
9 Hammond. I left a message for you the other day. I don't
10 know if you received it. Can you hear me?

11 MR. JAKEL: Yes. I returned your call to your
12 voicemail yesterday, and I had gotten a general mailbox
13 earlier yesterday. And I tried back about 4:30, but we
14 did not have a chance to talk.

15 COMMISSIONER HAMMOND: No, we didn't. And there
16 was no message flagged on my phone, but I'm so happy that
17 you're available right now. But let me ask you, the City
18 of Antioch actually revoked the license?

19 MR. JAKEL: Well, I wish the city attorney was
20 here. Our letter on July 11th sort of indicates that when
21 the cardroom activity was occurring -- stopped occurring,
22 it had lapsed for more than six months. It's basically --
23 there's an automatic lapsing of a cardroom license because
24 the cardroom had no activity from January 23rd, 2012. So
25 that's what the ordinance says. It automatically lapses

1 if there's no activity for six months.

2 COMMISSIONER HAMMOND: Okay. Now, I don't think
3 you need your general counsel for the answer to the next
4 question. Are you a general law city or a charter city?

5 MR. JAKEL: Yes, we are.

6 COMMISSIONER HAMMOND: General law?

7 MR. JAKEL: Yes.

8 COMMISSIONER HAMMOND: And so you've got a
9 contentious election going on. You've got two Council
10 members running against each other for Mayor, and you've
11 got two other people running for Council, and on, and on.
12 So you don't know what's going to happen.

13 MR. JAKEL: It's City Council-member who is not
14 seeking reelection. So there is at least one change
15 guaranteed, with the potential of as many as three.

16 COMMISSIONER HAMMOND: So our decision really is
17 after all of the political machinations whether or not we
18 should leave things the way they are, giving a possible
19 new owner the opportunity to reinvent this cardroom. And
20 that's basically what you're saying.

21 MR. JAKEL: Right. And that would -- and that
22 reinvention would require that the new Council, or however
23 it's comprised, modify or issue a new ordinance to do it.

24 COMMISSIONER HAMMOND: So you have to write a new
25 ordinance?

1 MR. JAKEL: Right.

2 COMMISSIONER HAMMOND: And generally speaking,
3 how long does it take for an ordinance to pass in the City
4 of Antioch?

5 MR. JAKEL: Well, it's got to go through two
6 readings. It would be -- to be realistic, if the Council
7 has significant changes, we have three meetings scheduled
8 in December as sort of an orientation for them. But
9 before they even get into the meat of conducting work, if
10 there are significant changes -- I've been around a while,
11 so I would guess it will be at least January before they
12 get to any meat of it. An ordinance has two meetings. It
13 would be at least through the first quarter of next year.
14 I would say, depending on what else materializes and what
15 the priorities of the new Council are, this may not be
16 their top priority. I'm guessing it's not. We have a
17 very significant budget situation here. If anyone has
18 followed the news in Antioch, we've averted bankruptcy,
19 but we are in pretty difficult financial straits. So I
20 don't think that we would be able to process anything, if
21 that was the will of the council, even until -- it would
22 be at least the end of March of next year.

23 COMMISSIONER HAMMOND: That's actually not bad.
24 I'm a former Council member, and I have authored and
25 sponsored local legislation that I thought would take six

1 months. It wound up taking a year and a half. And our
2 chair here is a former Deputy City Attorney who has to
3 write those.

4 CHAIRPERSON SHIMAZU: It takes a long time
5 sometimes.

6 COMMISSIONER HAMMOND: Sometimes, it takes a long
7 time. So March, to us, is not bad at all.

8 MR. JAKEL: The Deputy City Attorney will
9 appreciate that. We have a city of 100,000, and we have
10 one attorney, with no deputies. So we're up to our
11 eyeballs these days.

12 COMMISSIONER HAMMOND: That one person is writing
13 all your ordinances and reviewing -- doing all the
14 analysis. Okay.

15 MR. JAKEL: Okay.

16 COMMISSIONER HAMMOND: I think I've had my
17 questions answered. One last thing, has there been any
18 other code enforcement action since the license was
19 revoked or lapsed?

20 MR. JAKEL: For code enforcement?

21 COMMISSIONER HAMMOND: Code enforcement on the
22 building, yes.

23 MR. JAKEL: Not that I'm aware of. I know that
24 there had been requests. I don't know whether it was the
25 Blarney, LLC that had building inspection go through the

1 building and take a look at it, but there has been no code
2 enforcement.

3 COMMISSIONER HAMMOND: All right. Thank you.

4 CHAIRPERSON SHIMAZU: Could we let Mr. Jakel go?
5 Anyone else? Commissioner Schuetz, would you like to ask
6 any questions to the City Manager?

7 COMMISSIONER SCHUETZ: No.

8 CHAIRPERSON SHIMAZU: Thank you, sir.

9 Well, he could stay for the vote, perhaps. I'm
10 going to give the Bureau --

11 Jennifer, would you like to chime in?

12 MS. HENDERSON: I'm Jennifer Henderson,
13 H-e-n-d-e-r-s-o-n, for the Bureau. It's not so much an
14 issue of the new purchaser, it's the effect of the
15 administrative actions that are pending for Mr. Cianfichi.
16 Through his own inaction and recalcitrance, the proposed
17 settlement that was drafted after the Commissioners gave
18 their guidelines in March, he refused to sign it. So to
19 clarify the situation, under the terms of that settlement,
20 this would not be possible. So now he's benefiting from
21 playing games earlier. I think Commissioner Hammond hit
22 the nail on the head that the current ordinance of the
23 city does not allow the license to be revived. So is it a
24 legal futility to give him more time? That's up to the
25 Commission. But as far as the Bureau is concerned, we

1 have to make sure that if the purchase agreement is
2 allowed to go forward, it has to contain the provision
3 that the Bureau intends to recover the costs that are in
4 the September 2011 order. I don't know if the purchase
5 agreement addresses that.

6 MR. KESLINKE: It's silent to that currently.
7 But that's something that we can consider. I don't know
8 what the amount of these costs are.

9 MS. HENDERSON: \$112,000 are required to be paid
10 to the Bureau out of the purchase of the building.

11 MR. KESLINKE: And I think that's something we
12 can definitely negotiate. I don't think that's a
13 problem.

14 MS. HENDERSON: The other issue is that we have
15 got a pending accusation and a pending denial. And if
16 we're going to go until March to find out what's going
17 with the City, then the Bureau's hands are tied. And
18 we've got Mr. Cianfichi's lawyers threatening legal action
19 against the Bureau for closing the cardroom, and
20 threatening legal action against the City.

21 I've talked to the city attorney, and she was not
22 aware that -- nothing formal has been presented to the
23 City, as far as she's aware, with a full setting for the
24 City Council. And her staff recommendation, which I
25 believe I attached to the Bureau's letter of September

1 25th, has -- under the current ordinance, there's no way
2 to revive an expired license. That being the City's
3 concern, but the Bureaus concern is that the revised
4 settlement that Mr. Cianfichi refused to sign after it was
5 revised pursuant to the Commissioner's guidelines, would
6 have wrapped up everything. We would have taken care of
7 the denial hearing. It would have taken care of the
8 pending accusation. But now, we're stuck in this limbo to
9 allow him another chance to sell. And I know Ms. Keslinke
10 is not at fault here, but we need some sort of assurances,
11 some way to wrap this up. Maybe another revised
12 settlement that Mr. Cianfichi has to sign for this to go
13 before the Board, because otherwise, the Bureau is stuck
14 in limbo with it's administrative actions.

15 COMMISSIONER CONKLIN: I have no problem putting
16 some kind of -- I don't know how you would do it, but I
17 don't have any problem doing what we can to put
18 Mr. Cianfichi's feet to the fire to sign something. He
19 ignores us just as much as he ignores the Bureau. So I
20 don't know.

21 MR. KESLINKE: Me too.

22 COMMISSIONER CONKLIN: And it's to the detriment
23 of himself. And honestly, if we put something in the
24 purchase order that requires all of the money to go to the
25 Bureau, he won't be signing that either.

1 MS. HENDERSON: Well, it's in there now.

2 COMMISSIONER CONKLIN: Well, I mean in the new
3 purchase order.

4 MS. HENDERSON: There's got to be some kind of
5 finality to this.

6 COMMISSIONER CONKLIN: It would probably end your
7 deal putting that in there anyway.

8 MR. KESLINKE: If I can speak to that. A couple
9 of things. There is another unrelated transaction that he
10 and I have entered into on a real estate property, and the
11 same type of things -- he has many obligations that he's
12 sort of shirked over the years, I guess. So we were able
13 to fold some of those into the existing transaction to
14 take care of some of the previous bills that he has. I
15 think along the same lines, we would be able to work that
16 into it. He knows that this is the only opportunity he
17 has to kind of square with the State, as well as come to a
18 complete global solution. I think that's something we can
19 definitely do. And as far as the threats from the
20 lawsuits, of course -- you know, you back somebody into a
21 corner and those are the kinds of things that happen. I
22 think given a solution and a path out, which is what this
23 is, makes all of those issues go away both at the city
24 level as well as at the State level.

25 LICENSING DIVISION DEPUTY DIRECTOR DHILLON:

1 Commissioners, I think we could consider a global
2 resolution that was negotiated by the buyer, the Bureau,
3 and Mr. Cianfichi at the same time, and the purchase
4 agreement wouldn't go forward unless the Commissioners
5 agreed. And I do agree with Ms. Henderson that the
6 Commissioners' order does require that the \$112,000 be
7 included in the purchase order.

8 COMMISSIONER HAMMOND: You're suggesting that
9 your leverage is what's going to bring this to a
10 finality? Because quite frankly, in the short time I've
11 been here, Mr. Cianfichi is the most recalcitrant owner
12 I've seen thus far.

13 MR. KESLINKE: I do agree that's been my
14 experience over of the past three years I've been
15 acquainted with him, but I think -- for whatever reason, I
16 think all interests of every disparate party here kind of
17 align from this kind of action, and it brings everybody in
18 and puts a nice bow on it for everybody's interest. It
19 can get the payment made. And I've already talked to
20 Mr. Justi about this. It can make the claims that they
21 have go completely away, it can make Mr. Cianfichi get out
22 of the industry, and it can allow for the City a positive
23 asset going forward. And, as Mr. Jakel just spoke of, the
24 City of Antioch does not need one more vacant building
25 that becomes a code enforcement issue. And I do know,

1 because I've been over there, that there have been broken
2 windows and some other things. Maybe they haven't become
3 code enforcement, but there is vandalism that already has
4 started happening with the building, and that will
5 continue. It's just going to be another blighted corridor
6 that they can't afford and they don't need.

7 COMMISSIONER HAMMOND: Now, you've just said two
8 different things. The City Attorney said there has been
9 no code enforcement action. You're here saying that there
10 is vandalism and broken windows.

11 MR. KESLINKE: Which Mr. Cianfichi has fixed
12 himself. And code enforcement is different. That would
13 be the City coming out to you and saying the weeds are too
14 long, you have broken windows, you need to take care of
15 those. So things have happened that Mr. Cianfichi has
16 taken upon himself to fix because he thinks there is an
17 exit strategy.

18 COMMISSIONER HAMMOND: Well; Mr. Cianfichi may
19 want to consider in his exit strategy that we are ready
20 for him to exit, and then even at the local ordinance
21 level, the Bureau is going to weigh in on that local
22 ordinance. So he might be trying to put it to the Bureau,
23 but the Bureau can still put it to him. And what we all
24 want, I think, is saving that license and having a viable
25 business there. And I think that Antioch would like to

1 see some revenue, any kind of revenue, any kind of legal
2 revenue.

3 MR. KESLINKE: And jobs.

4 COMMISSIONER HAMMOND: And jobs. Well, the jobs
5 will bring the revenue.

6 MR. KESLINKE: Absolutely.

7 MS. HENDERSON: What the Bureau would like to
8 see -- and we have nothing against the purchase agreement
9 going forward, as long as it has the provision that was
10 required by the September order, but we need some way to
11 have the outstanding administrative matters resolved.
12 Perhaps Mr. Cianfichi can withdraw his request for
13 evidentiary hearing on denial. He's not going to need
14 it. He can withdraw his Motion of Defense for the pending
15 accusation. We just want something so we're not hanging
16 around until March 2013, or going forward needlessly
17 preparing for an administrative hearing that's not going
18 to happen. The Bureau doesn't need to waste anymore
19 resources on Mr. Cianfichi.

20 CHAIRPERSON SHIMAZU: It sounds like we're all on
21 the same page in needing -- wanting to give Mr. Keslinke
22 -- to give you a shot. You seem sincere. You're a
23 respected businessman. So I would like to give you a
24 shot. Now, we're here with a stip. And I understand the
25 Bureau's concern. So also while giving you a shot, I

1 think we also want some sort of finality, and we have to
2 figure out a way to wrap up all these administrative
3 actions and issues. So how is the best way to do that in
4 terms of what we're going to do today, the action we're
5 going to take? Is it just not to deal with it right now
6 and try to work on a revised stipulation with
7 Mr. Cianfichi, or --

8 I'm looking for some --

9 MS. HENDERSON: Well, my fear is that
10 Mr. Cianfichi can gum the whole works up again by refusing
11 to sign. So if the Commission were to order that "X"
12 happen by a certain date -- not give him any wiggle room,
13 I guess.

14 MR. KESLINKE: And I welcome that. Honestly, I
15 don't want to be pursuing this over the next 12 months to
16 no avail. I want to have finality to this process. So I
17 have no problem with that.

18 MS. HENDERSON: I have the revised stipulation
19 from when Mr. Goodson was still representing Mr. Cianfichi
20 that we drew up together pursuant to the Commissions
21 guidelines. And that may be a turning point, as we talked
22 about in resolving the outstanding administrative matters,
23 but again, we have no way of forcing Mr. Cianfichi to sign
24 it.

25 CHAIRPERSON SHIMAZU: None of his representatives

1 are here?

2 LICENSING DIVISION DEPUTY DIRECTOR ESTES:
3 Mr. Justi is representing him, and he submitted the letter
4 advocating for the extension.

5 CHAIRPERSON SHIMAZU: Okay. Chief Counsel, do
6 you have any words of wisdom here on what action we could
7 take to accomplish what we're trying to do?

8 LICENSING DIVISION DEPUTY DIRECTOR DHILLON: I
9 think your suggestion is a good one, and we can order it.
10 I think the concern is the leverage if they don't comply.
11 That's the only concern that I have. Certainly, the
12 Commissions' intent here is for all of the things that
13 you've stated, to get Mr. Cianfichi to work with the
14 Bureau to present something or to take certain actions.
15 So it allows us to go forward to approve a purchase
16 agreement with that stipulation submitted.

17 COMMISSIONER SCHUETZ: Can we put, like, a 90-day
18 fuse on the need to have an executed purchase agreement?

19 COMMISSIONER HAMMOND: How about 60?

20 LICENSING DIVISION DEPUTY DIRECTOR DHILLON:
21 Well, I think -- we have a purchase agreement. The
22 problem is all of the administrative matters that
23 Ms. Henderson talks about. So the Bureau can move forward
24 with those, but that goes in a different direction than
25 everybody wants to go in.

1 MS. HENDERSON: Well, if the purchase agreement
2 doesn't include the provision to pay the Bureau the costs,
3 then the purchase agreement isn't valid in terms of the
4 order. So he really hasn't stuck his foot in the door
5 timewise?

6 COMMISSIONER HAMMOND: Can we add that to our
7 information and not -- can we add that stipulation?

8 COMMISSIONER CONKLIN: So today we cannot approve
9 the purchase agreement before us, because it doesn't
10 include what we need. It said possible action.

11 LICENSING DIVISION DEPUTY DIRECTOR DHILLON: The
12 only thing that's in front of us is the possible --

13 COMMISSIONER CONKLIN: I'm still on B.

14 COMMISSIONER HAMMOND: Can we either take a
15 2-minute break and let the legal minds think about how
16 they can do this. It would be very nice to do this
17 today. I wouldn't want this to be a three-to-one or even
18 a two-two vote, because with the two-two vote, then the
19 revocation remains.

20 COMMISSIONER CONKLIN: Meaning for us to talk, or
21 for them to talk?

22 COMMISSIONER HAMMOND: No. For them to talk, not
23 us.

24 COMMISSIONER CONKLIN: I thought I was a legal
25 mind. I'm sorry.

1 CHAIRPERSON SHIMAZU: Why don't we take up 5.A.
2 first? I think we can handle that matter.

3 COMMISSIONER SCHUETZ: I vote to approve the
4 measure 5.A., which is allowing this guy to withdraw his
5 license with this guy without prejudice.

6 COMMISSIONER CONKLIN: Second.

7 CHAIRPERSON SHIMAZU: Bureau, any comment?

8 COMMISSIONER SCHUETZ: Does this guy want to?

9 CHAIRPERSON SHIMAZU: Any public comment?

10 MR. SHINGLE: Yes. Madam Chair, Commissioners.
11 Richard Shingle, representing Blarney. The reason we
12 withdrew our application is, in meeting and working with
13 the City Attorney, working with the Chief of Police, and
14 then also working with the County Health Inspector and
15 eventually going in front of the City Council in meeting
16 with them, we asked and said that because of the time
17 stipulation they had put on us, that we could not renovate
18 the facility in time to meet their deadline, and they
19 would not extend it, and because of that, we withdrew. If
20 the City now is saying they're willing to do that in that
21 time, that becomes a whole different issue. It's now two
22 different stories. So I'm not sure what I'm hearing here
23 today. But it doesn't -- and the Commission told us
24 outright that if we didn't complete the transaction by
25 this date, the cardroom was closed, the license was

1 pulled. We had no choice, thus the reason. And the
2 building itself was a complete and total disaster. And
3 the City was aware at that point in time that all of the
4 air conditioners on top of the roof, all the brass and
5 copper had been stolen. Everything was a complete mess.

6 COMMISSIONER CONKLIN: And that's the stated
7 reason for your withdrawal is the condition of the
8 building, not the City's determination and Commission's
9 action for the settlement.

10 MR. SHINGLE: Well, because they wouldn't give us
11 the time to fix the building, because they would have
12 taken the license back, because we couldn't meet the
13 timeline. And at that point, it was six months and we
14 didn't think that we could get all of the work done in
15 time. That was the reason.

16 COMMISSIONER CONKLIN: I think both issues need
17 to be put over.

18 MS. HENDERSON: For how long? You're waiting for
19 a local license that may not come up.

20 COMMISSIONER CONKLIN: We're not going to know
21 anything until after the election.

22 MS. HENDERSON: Commissioners, when I did talk
23 to the City Attorney, she did mention that the City
24 Council would welcome having a member from the Commission
25 come to the City Council, and get their views, and talk

1 directly. So I don't know if that would help if this was
2 put off a little bit longer to allow the City and the
3 Commission to come together?

4 COMMISSIONER CONKLIN: At least until after the
5 election and then a couple weeks thereafter for the new
6 City Council members to have some hearings and understand
7 what they're dealing with would be the best timeframe.
8 And I don't want to bump you in favor of another purchaser
9 if that is in fact the case, but I also --

10 What is his agreement saying? I can't even
11 remember anymore. Is this one on the hook for all of the
12 costs?

13 MS. HENDERSON: Any purchase agreement, to meet
14 the standard, had to include the provision that they pay
15 those costs.

16 MR. SHINGLE: Yeah. In the agreement, those
17 costs were coming out of escrow.

18 COMMISSIONER CONKLIN: And he had -- okay.

19 CHAIRPERSON SHIMAZU: Let me ask you,
20 Mr. Shingle, do you still want to withdraw?

21 MR. SHINGLE: Well, I don't know what the
22 conditions are. If the conditions were to remain as the
23 City Council of Antioch told us, and they told us that we
24 were stopping the license, then yes, we want to withdraw.
25 But if the City now is saying something 100 percent

1 different than what they told us --

2 COMMISSIONER CONKLIN: Well, the license is
3 stopped and dormant.

4 MR. SHINGLE: Okay.

5 COMMISSIONER CONKLIN: What they're explaining is
6 there is the possibility for the ordinance to be changed,
7 and that's something you have to understand and take into
8 consideration. Mr. Keslinke is going to be lobbying in an
9 effort to have that done. It's not just going to happen
10 automatically. That's something that you and your
11 partners will have to do is lobby the City Council for a
12 change in the law of Antioch that will allow the license
13 to be reactivated, in a sense. So that's something you
14 have to determine, because there are additional steps on
15 your parts that have to be taken for you, basically, to
16 have another chance. If not, that's something the other
17 purchaser is willing to do.

18 MR. SHINGLE: Understood.

19 COMMISSIONER CONKLIN: So do you know if you're
20 willing to do that? Because if you're not willing to do
21 that then you might as well withdraw your request.

22 MR. SHINGLE: I would like to discuss it with my
23 partners before making that determination.

24 COMMISSIONER CONKLIN: Okay.

25 COMMISSIONER HAMMOND: Well, have you talked to

1 Mr. Cianfichi lately?

2 MR. SHINGLE: I have not.

3 COMMISSIONER HAMMOND: Well, it's been my short
4 experience with Mr. Cianfichi that he says one thing on
5 one day, and he may say something completely different on
6 the next day.

7 MR. SHINGLE: We encountered that the whole
8 course. Yes. So we are aware of that.

9 COMMISSIONER HAMMOND: So you have a purchase
10 agreement with Mr. Cianfichi, or you had one drawn up?

11 MR. SHINGLE: We did, and we had it drawn up.
12 Everything was signed, sealed, and delivered to the
13 Commission for the acquisition of both the building and
14 the license, and once we began and did due diligence, we
15 found many misrepresentations. Thus the need for more
16 time to fix the building, and thus meeting with the City
17 and going to the meetings and being told outright that
18 it's over.

19 COMMISSIONER CONKLIN: So you've already pulled
20 it then. So the purchase agreement is no longer in
21 existence?

22 MR. SHINGLE: Well, I'm assuming everything is in
23 existence until the Commission itself withdrew it. We
24 meet with -- we had money in escrow. Paul Justi refunded
25 the money. Everything has been done, with the exception

1 of the final approval. And today was the first time that
2 I heard anything about the City maybe now allowing to give
3 more time.

4 MS. HENDERSON: So your money that you deposited
5 has been refunded to you. So you no longer have an
6 agreement between you and Mr. Cianfichi?

7 MR. SHINGLE: That's correct.

8 MS. HENDERSON: So the only purchase agreement
9 that Mr. Cianfichi has right now is with Mr. Keslinke,
10 correct?

11 MR. SHINGLE: Correct, as far as I know.

12 COMMISSIONER CONKLIN: Well, that's different. I
13 thought you it still --

14 MR. SHINGLE: Well, I'm assuming our agreement
15 isn't dead until you approve it to be dead.

16 CHAIRPERSON SHIMAZU: No. It's the license
17 application.

18 MR. SHINGLE: Yes. Okay.

19 MS. HENDERSON: And with that is the purchase
20 agreement. In attachment C, it speaks to no longer
21 pursuing the purchase.

22 COMMISSIONER CONKLIN: So it would be silly for
23 you to have an application for licensure when you no
24 longer have the agreement.

25 MR. SHINGLE: That's correct.

1 COMMISSIONER CONKLIN: So I don't want to advise
2 you as to what to do, but if he has an outstanding issue
3 with the City over their representations -- but for us, we
4 should have no problems withdrawing them without
5 prejudice, correct? So is that second already on the
6 table?

7 MS. LITTLETON: That was you.

8 COMMISSIONER CONKLIN: Yeah. So, I'm good.

9 CHAIRPERSON SHIMAZU: Any further public comment
10 on 5.A.? Please call for the vote on that item then.

11 BOARD CLERK CHIMENTO: Commissioner Conklin?

12 COMMISSIONER CONKLIN: Aye.

13 BOARD CLERK CHIMENTO: Commissioner Hammond?

14 COMMISSIONER HAMMOND: Aye.

15 BOARD CLERK CHIMENTO: Chairperson Shimazu.

16 CHAIRPERSON SHIMAZU: Aye.

17 BOARD CLERK CHIMENTO: Thank you. Motion
18 carried.

19 CHAIRPERSON SHIMAZU: So now we are back to 5.B.
20 We can he just take no action on this item, because I feel
21 like I have all these thoughts in my head that I need to
22 sort out. We've heard a lot of things today. I think we
23 need to have some communications with the City as well as
24 internally. We want to work with Ms. Henderson too to
25 insure that all her administrative actions can be wrapped

1 up too, because I know there are ones hanging out there,
2 and so we don't have to have them go to hearing for no
3 reason.

4 COMMISSIONER CONKLIN: And because it is going to
5 an evidentiary hearing, we probably have to be very
6 careful on what we suggest.

7 LICENSING DIVISION DEPUTY DIRECTOR ESTES:
8 Chairperson Shimazu, option 2 does allow for you to say
9 that there is no action that is being required. If you
10 took out option 1, to deem the revocation, then that's
11 action. Item 2 requires no action, but we may need to
12 come up with a benchmark date to revisit this item just
13 for calendar purposes.

14 COMMISSIONER HAMMOND: I would really feel much
15 better if we had a date. I'm not talking about "feet to
16 the fire" but I think it will keep us focused for this
17 particular issue, because Mr. Cianfichi cannot continue to
18 get his way. Do you understand?

19 CHAIRPERSON SHIMAZU: Absolutely. In fact -- so
20 let's think of a date then. So we have November 8th and
21 November 15th, and we have one meeting date in December,
22 which, I think, is the 13th. Do you want to bring it back
23 on September 13th?

24 COMMISSIONER CONKLIN: In order to give
25 Ms. Keslinke enough time for us to learn how to pronounce

1 your name, and for him to get some preliminary
2 consideration in front of the City Council members. And
3 hopefully enough time for Mr. Justi to be able to appear
4 as well.

5 MS. HENDERSON: So I just want to clarify.
6 Mr. Keslinke, he has not submitted an application. We do
7 have a purchase agreement. We did not accept the
8 application yet, or we told him not to submit it until we
9 knew. So do we -- are you looking for an application to
10 be submitted? Are you looking for, maybe, a temporary
11 background investigation to start the -- I don't know what
12 you're looking for when it comes back in December.

13 CHAIRPERSON SHIMAZU: I think maybe we want to
14 make those determinations then.

15 MS. HENDERSON: So what happens in the meantime?
16 We're just going to -- the terms of the order require that
17 a purchase and sale agreement and an application for
18 licensure be submitted before the deadline in any event.
19 Neither of that has happened, so I still believe that it's
20 dead.

21 CHAIRPERSON SHIMAZU: Right. Well, we had the
22 other one submitted by Mr. Shingle. I understand it
23 didn't go forward, but if we want to say that event
24 happened, and --

25 MS. HENDERSON: Well, that withdrawn, and so

1 that -- the stay has collapsed. So the deadline was not
2 met by this application.

3 COMMISSIONER CONKLIN: I don't think we had a
4 deadline for subsequent applications, only the initial
5 application. What we're reading -- and we're reading the
6 interpretation --

7 I know you don't like that part, but that's how
8 we're choosing to --

9 MS. HENDERSON: Well, to keep applying and
10 submitting ad infinitum?

11 COMMISSIONER CONKLIN: Right. That was the
12 policy determination that we are making today, and I think
13 it was pretty clear that all four of us are of, in this
14 instance at least -- and that's kind of what I'm trying to
15 say. It's not going to be a blanket exception that we do,
16 but in this instance, at least, especially considering the
17 conditions in Antioch and the representations made by the
18 City Manager that we're willing to entertain a subsequent
19 purchase agreement, I do think it would be advantageous to
20 have that application be as complete as possible for when
21 it comes back before us in December.

22 CHAIRPERSON SHIMAZU: Well, Ms. Henderson, I get
23 what you're saying, because if we say that the event was
24 triggered, it's triggered. There's no end date,
25 basically, in the stip. So that's kind of a choice we

1 need to make is either we end it now, or we find that that
2 event triggered or was satisfied, and we move on and there
3 is no end date.

4 COMMISSIONER CONKLIN: As much as I hate dealing
5 with Mr. Cianfichi and I wish this item was over, and
6 that's obviously an option that we can take today, the
7 bigger policy is that we have a fixed number of licenses
8 in the State of California, and we have a willing, and
9 able, and ready person willing to take over this license.
10 And I know he's a pain, and I know all of us want this to
11 be over with, but if there is the slight possibility of
12 keeping an additional license open in the state, that's
13 what I would like to see.

14 MS. HENDERSON: And I understand the Commission's
15 position, but given the chronology of events with
16 Mr. Cianfichi, and given that Mr. Keslinke has been
17 dealing with him since 2009, I wonder if this wasn't
18 already in the back of Mr. Cianfichi's mind when he
19 refused to sign the revised settlement that addressed all
20 the concerns of the Commission. The one time there --

21 COMMISSIONER CONKLIN: Bravo for him.

22 MS. HENDERSON: And now he's benefiting from
23 that, and we're setting a president for other people to
24 come back --

25 COMMISSIONER CONKLIN: Well, not always, because

1 next time you can write that stipulated settlement just a
2 little bit different that closes that possibility maybe.

3 MS. HENDERSON: And we did, and he said he
4 wouldn't sign it.

5 CHAIRPERSON SHIMAZU: We completely understand.

6 COMMISSIONER CONKLIN: We understand and we know
7 who we're dealing with. We wish it was any other owner in
8 the State of California, but unfortunately we've got
9 Mr. Cianfichi and that's what we're stuck with.

10 CHAIRPERSON SHIMAZU: And I think in reality, at
11 the last meeting there was a license taken out. They're
12 going down. And I think the Commission is concerned.
13 Again, if there was no viable option here, and -- we have
14 the issues with the City, but if there was no buyer, I
15 wouldn't be so -- I mean, my thoughts wouldn't be where
16 they are today.

17 COMMISSIONER CONKLIN: And maybe the City would
18 come -- I mean, it really is in the hands of the City. If
19 they have their Council and they're not interested in
20 revising the ordinance, it's done, done. And then I don't
21 know how we're going to get \$112,000 out of
22 Mr. Cianfichi. But that is -- that hopefully will give us
23 time to get resolution, to get the fees and the costs
24 associated with the accusation against Mr. Cianfichi paid
25 for.

1 CHAIRPERSON SHIMAZU: So we agree we're going to
2 take no action, and we'll hear this action on November
3 15th.

4 COMMISSIONER HAMMOND: And at that point, at the
5 end of that discussion we will know whether we have to
6 find it in ourselves to have another meeting about
7 Mr. Cianfichi's cardroom.

8 COMMISSIONER CONKLIN: Well, we're going to have
9 to anyway, because we're waiting on the ordinance.

10 COMMISSIONER HAMMOND: That will be two meetings.
11 That's about all I have left in me.

12 LICENSING DIVISION DEPUTY DIRECTOR ESTES: Madam
13 Chair, may I also suggest that by the December meeting
14 that Mr. Keslinke provide the purchase agreement that has
15 the entire language. Then we'll know whether or not we
16 have enough to move forward.

17 MR. KESLINKE: I will have that amended by that
18 date and included in the -- you got it.

19 CHAIRPERSON SHIMAZU: I know this is not a
20 perfect solution and kind of messy. We're trying to deal
21 with it the best we can. All right.

22 Any comments on this matter?

23 MR. KESLINKE: Thank you, very much. I
24 appreciate it.

25 CHAIRPERSON SHIMAZU: Let's move on to number



**MILLER STARR
REGALIA**

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Wilson F. Wendt
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January 16, 2013

VIA EMAIL

Jim Jakel, City Manager
Lynn Tracy Nerland, City Attorney
City of Antioch
P. O. Box 5007
Antioch, CA 94531-5007

Re: Issuance of New City Gambling License for Kelly's Cardroom

Dear Jim and Lynn:

Our office represents Anthony Keslinke, an Antioch area businessman who is currently in contract to acquire Kelly's Cardroom and its associated gambling licenses from the current owner. The existing state license for the cardroom remains in existence and the California Gambling Commission has continued on their agenda an item seeking revocation of the State Gambling License for Kelly's pursuant to a Decision and Order issued by the Commission in September, 2011. The purpose of the continuance is to allow Mr. Keslinke the opportunity to work out with the City of Antioch suitable arrangements to continue the existing City gambling license issued for the cardroom or make alternate arrangements satisfactory to the City. I am enclosing with this letter a copy of a partial transcript of the Gambling Commission's meeting in October, 2012, in which the Commission determined to stay any action on the revocation of the underlying state license until Mr. Keslinke and the City have the opportunity to see whether a City gambling license can be provided. The Commission required that by December, Mr. Keslinke submit to the Commission a copy of a purchase agreement with the current owner of Kelly's Cardroom evidencing his right to purchase the cardroom and providing assurances that unpaid state expenses would be reimbursed at close of escrow. Mr. Keslinke has provided that material to the Commission and we are now approaching you to see if the City will support the issuance of a new license for the cardroom.

At the time of the Commission hearing in October, it was assumed that the Gambling Commission had ordered the cardroom closed in January, 2012 and that the City license expired six months from that date pursuant to section 5-4.09 of the Antioch Municipal Code, which provides that a cardroom license if not used by the operation of card tables for a period of six consecutive months shall automatically expire. That section goes on to provide that the cardroom license may be moved from one established business location to another in which case the Council may

Jim Jakel, City Manager
Lynn Tracy Nerland, City Attorney
January 16, 2013
Page 2

grant an additional six months for a business relocation upon a showing of hardship by the licensee. When the matter was discussed with the Gambling Commission in October, 2012, it was assumed that the only alternative to keep Kelly's operating in Antioch was to amend the ordinance which contains this provision to provide that automatic revocation of the license would not occur for non-use. We have reviewed the provisions of the Gambling Control Act, the Antioch Ordinance and applicable administrative regulations with Mr. Keslinke's consultant, Robert Lytle (former Executive Director of the Bureau of Gambling Control) and determined that the City can issue a new license to Mr. Keslinke for the operation of the cardroom without violating either state law or local ordinance.

I am enclosing Lynn's memorandum to the Council dated July 3, 2012 which states, in part, as follows:

"If Kelly's Cardroom license from the City expires, then it likely cannot be 'reactivated' given the statewide moratorium on new cardrooms and depending on the status of the state-issued cardroom license for Kelly's."

This advice is not entirely correct. It is correct that if the state license is terminated, then the Gambling Commission cannot issue a new license. However, the provisions of Business and Professions Code sections 19961 and 19962, the municipality is simply prohibited from not amending any Gambling Control Ordinance that would result in an expansion of gambling in the City beyond that in effect on January 1, 1996 without a vote of the people. That is not what is being proposed. Chapter 4 of the Antioch Municipal Code deals with cardrooms and provides in section 5-4.02 that the total number of licensed cardrooms permitted in the City shall be five. Currently there are two cardrooms licensed by the City in the City (Kelly's and one other). Thus, the provisions of the Business and Professions Code do not constitute a "moratorium" or otherwise prevent the City from issuing a new license to Mr. Keslinke for the operation of Kelly's Cardroom. The method of application and the contents of the application are spelled out in the Cardroom Ordinance and will be followed to the letter by Mr. Keslinke.

I am also enclosing a copy of Lynn's letter of July 11, 2012 to Mr. Richard Shindle and others, the prior proposed purchasers of Kelly's Cardroom. This spells out that the City Council on July 10, 2012 determined that the City cardroom license did not expire on July 23, 2012 and that if the purchase of Kelly's Cardroom occurred by July 20, 2012, the purchaser would have until January 23, 2013 to start operations. This did not occur and our assumption is that the City is currently treating the City cardroom license as having expired. Given the fact that the City has the ability to issue new cardroom licenses (so long as the total in the City does not exceed five), we do not think this poses a problem to going forward with Mr. Keslinke's

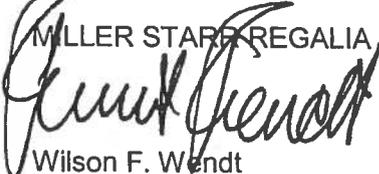
Jim Jakel, City Manager
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transaction which will be of benefit to the City and prevent the continuance of an unused and vandalizable building.

You have kindly agreed to meet with us on January 30 to go over more fully our authorities in asserting that the City has the right to issue a new license to Mr. Keslinke, the effect of which would be to allow the Gaming Commission to continue the state license in effect. Mr. Keslinke has spoken with Jim about these issues previously and a number of questions were raised. I am enclosing a copy of a letter from Mr. Keslinke addressing those preliminary questions that the City Manager raised with him. Enclosed with Mr. Keslinke's letter is a printout from the Gambling Commission's website showing the status of the state licenses on approximately 75 cardrooms throughout the state. The notation after Kelly's Cardroom is "Active Not Operating" which is the same notation shown for 11 of the 75 cardrooms on the list. Thus, you can see that an active license on cardrooms not in operation is a relatively common situation.

If you have questions, please call me on my direct dial, 925-941-3217. We look forward to meeting with you in Jim's office on Tuesday, January 30, 2013.

Very truly yours,

MILLER STARR REGALIA

Wilson F. Wendt

WFW:jj

cc: Anthony Keslinke
Robert Lytle

**STAFF REPORT TO THE PLANNING COMMISSION
FOR CONSIDERATION AT THE MEETING OF AUGUST 21, 2013**

Prepared by: Pacific Municipal Consulting
Reviewed by: Tina Wehrmeister, Community Development Director
Date: August 15, 2013
Subject: UP-13-02– Kelly's Card Room

REQUEST

The applicant, Anthony Keslinke, has applied for a Use Permit to continue operation of a 6-table card room pursuant to Section 9-5.3803 of the Municipal Code and a shared parking arrangement per Section 9-5.1705 of the Municipal Code. The Use Permit is required to reopen the historic use, due to a lapse of operation, and to allow for shared parking to satisfy City parking requirements. The card room will be regulated by both the City of Antioch and the California Gambling Control Commission. Both the City Council and California Gambling Control Commission will separately consider whether to grant a license to operate a card room separate from the land use issues to be considered with the use permit application. The site location is 408 O Street, south of W 4th Street (APN: 074-130-012) (see Attachment B).

RECOMMENDATION

Use Permit: It is recommended that the Planning Commission approve the Use Permit subject to the conditions contained in the attached resolution. The applicant has requested 24 hours a day, 7 days a week as the operating hours. Staff has questions whether the hours should be curtailed from 2:00 AM to 6:00 AM given the requirement that the card room operation be ancillary to the restaurant. The Planning Commission will want to review and consider the conditions of approval, which have laid out options in regards to the hours of operation.

Categorical Exemption: Staff further recommends that the Planning Commission find the project to be Categorically Exempt from environmental review pursuant to Section 15332, Infill Development, per the California Environmental Quality Act.

BACKGROUND

The above recommendations are supported by the following discussion of the two actions/entitlements before the Planning Commission.

Use Permit

1. A Use Permit is required to operate a card room in the C-2 (Neighborhood/Community Commercial) zone, according to Municipal Code Section 9-5.3803. Whether the City agrees to enter into a shared parking agreement will be separately considered by the City Council.
2. A Use Permit is also required under Section 9-5.1705 for shared parking serving more than one use or site and located in a district in which parking for the uses is a condition of a permitted use.

The California Gambling Control Act requires card rooms and other gambling establishments to maintain a valid state gambling license issued by the Bureau of Gambling Control (Bureau) and the California Gambling Control Commission (Commission). Kelly's Card Room has an application to own and operate a card room pending with the Bureau. The Bureau is awaiting local approval from the City of Antioch before completing their final application review. The Antioch Municipal Code also contains local licensing requirements, which will be considered by the City Council after Planning Commission action on the subject land use permit (AMC Title 5, Chapter 4). A condition of this Use Permit requires the operator to obtain both State and local licenses.

ENVIRONMENTAL

A Categorical Exemption has been prepared for the project in conformance with the California Environmental Quality Act (CEQA). A draft Notice of Exemption has also been prepared and is attached as Attachment C.

Staff is recommending that the Planning Commission determine the project is Categorically Exempt per CEQA Section 15332 (Infill Development), because it complies with all of the conditions described in the resolution approving the project.

ANALYSIS

Issue #1: Project Overview

The project site contains a 7,100-square-foot structure that presently houses a restaurant and bar. The project proposes to restore a 6-table card room consistent with the historic operations at the site. Pursuant to Section 5-4.05 of the Antioch Municipal Code, the card room must be located within an established business of sufficient size and volume such that the card room is not the primary or "major" business on the premises. The gaming area occupies approximately 2,000-square-feet or 28% of the structure and is not the primary business on the premises.

The previous card room management had licensing and enforcement issues with the California Bureau of Gambling Control and the Department of Justice that led to the eventual revocation of the State license. The previous management will not be involved with the card room business in the future. The applicant anticipates that the card room will employ 34 full-time and part-time employees once it is fully operational. The restaurant/bar will employ an additional 15 persons and will be the major business on the property in compliance with Section 5-4.05. The card room's hours of operation are requested to be 24 hours a day, 7 days a week. The restaurant portion of the business would be required to have extended hours to serve card players; however, the bar will close at 2:00 AM. A question for the Planning Commission is whether these are appropriate operational hours, given that the Municipal Code requires the card room to be ancillary to the restaurant use.

Though the card room began operations in the late 1970s, when no Use Permit was required, zoning changes implemented in 1994 now require Use Permit approval to operate a card room in a C-2 zoning district. Consequently, a Use Permit is required to re-open the card room after having ceased operation for more than 6 months. Table 1 describes the permit history at this site.

Table 1: Entitlement History

Permit/Use Activity	Date
Kelly's Card Room Established	Late 1970s
Card Room Operation Ceased	Late 2012
State License Renewed	2/2010
State License Revoked	3/2012
State License Renewal Application	Filed and pending DOJ review

As stated previously, the California Gambling Control Act requires card rooms and other gambling establishments to maintain a valid state gambling license issued by the Bureau and the Commission. As of July 1, 2013, the California Department of Justice (DOJ) is performing the review of licenses and background checks, and will report back to the Bureau. The business currently has a pending activation with the State to own and operate a card room;¹ however, due to the recent processing changes, the Bureau is awaiting local approval from the City before finalizing their review. Once all the appropriate paperwork and background checks have been conducted, a state gambling license would be cleared and reissued. In order for the application to move forward, staff is recommending a condition of approval that provisionally approves the Use Permit, subject to the Bureau reissuing the gambling license.

Subject to a separate review process under Title 5, Chapter 4 of the Municipal Code, the applicant would be required to apply for and secure all necessary approvals, licenses and permits from the City for the operation of the card room. The current

¹ <http://oag.ca.gov/gambling/cardroomlist>

application before the Planning Commission is for the Use Permit only, which is a land use entitlement and not the same as a City-issued card room license.

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

The General Plan designation for the site is Neighborhood Commercial and the zoning is C-2 (Neighborhood/Community Commercial). The Zoning Code acknowledges that card rooms are appropriate uses within the Commercial designation, and the proposed use would be allowed with a Use Permit in the C-2 zone pursuant to the Table of Land Use Regulations contained in Section 9-5.3803 of the Municipal Code. The site is currently developed and operates as a restaurant and cocktail lounge.

The surrounding land use designations are:

North: East County MSC Shelter (C-2, Neighborhood/Community Commercial)
South: Vacant Building and former location of International Christian Ministry (M-1, Light Industrial)
East: Creek and former Angelica Textile Services (C-2, Neighborhood/Community Commercial)
West: Scotto's Auto Body & Paint (M-1, Light Industrial)

The proposed use is consistent with several policies of the Antioch General Plan:

- Policy 4.3.2.b: Give priority to new development utilizing existing and financially committed infrastructure systems over development needing financing and construction of new infrastructure systems.
- Policy 5.4.11.a: Infill development should appear to be an integral part of the intended character of the neighborhood.
- Policy 6.4.2.b: Encourage the establishment and expansion of local businesses and development of commercial and other properties producing retail sales taxes, transient occupancy taxes, and high assessed valuation by providing assistance with financing, local processing, and environmental permitting.

The proposed project would resume historic use of a site that presently contains all of the necessary infrastructure to support development. General Plan Policy 5.4.11.a encourages the use of infill development that appears as an integral part of the surrounding community. As an already established restaurant and cocktail lounge/bar, the card room portion of the site would mix well with the existing uses while utilizing currently unused space within the existing building. General Plan Policy 6.4.2.b calls for the development and expansion of local commercial businesses. The proposed use would do just that by adding a new business element within an already established development.

The subject property is located just outside of the Rivertown/Urban Waterfront focus area, which has an associated initial planning study from August 2006. As an outlying site, the policies and directives established in the Rivertown/Urban Waterfront planning study do not directly affect the site and proposed card room. However, issuance of the proposed Use Permit would support the business development, unique commercial opportunity, and high-revenue goals established in the plan.

Issue #3: Parking and Traffic

The site has a single existing point of ingress and egress on O Street. The on-site parking lot can currently accommodate approximately 27 parking spaces, with the possibility to add an additional 3 spaces through restriping of the existing lot. The proposed use requires 70 parking spaces per the Antioch Municipal Code. The applicant proposes to provide 27 spaces on-site and to utilize 43 spaces within the road right-of-way. The application is seeking approval for shared parking pursuant to Section 9-5.1705 to satisfy the remaining parking requirements. While the City is amenable to providing parking flexibility given conditions in the project vicinity and the following discussion, it is inappropriate to rely on parking within the public right-of-way as the sole means of satisfying overflow parking demand.

Additive Parking

The project site contains three separate uses within the same establishment: (1) restaurant, (2) cocktail lounge/bar, and (3) the proposed card room. If taken as separate uses, Municipal Code Section 9-5.1703.1 requires restaurants to provide 1 off-street parking space per 3 seats and cocktail lounge/bars to provide 1 off-street parking space per 2.5 seats. Also, as an eating and drinking establishment, the site must provide 1 off-site parking space per employee on the largest shift. The site has 49 seats in the restaurant and 35 seats in the cocktail lounge/bar area; on the largest shift, there are 16 employees working. Therefore, the total number of off-site parking spaces required for employees and patrons of the restaurant and cocktail lounge/bar is 46.

There are no specific parking requirements in Section 9-5.1703.1 for card rooms. Therefore, utilizing the guidance in Section 9-5.1704, it is assumed that the "probable equivalent use" of the card room is an "electronic game center." The off-street parking requirement for an electronic gaming center is 1 space per 2 machines. It is assumed that with each machine there is an associated seat. Therefore, the probable equivalent parking requirement for the card room is 1 space per 2 seats. The proposed card room will have 6 tables, each capable of seating 8 patrons. Therefore, the required number of off-street parking spaces for the card room is 24. This brings the total number of required off-street parking spaces to 70, which is approximately 2.5 times the maximum possible capacity of the on-site parking lot.

To establish a basis for comparison, staff investigated card room parking requirements in other jurisdictions. Though few jurisdictions specified parking requirements, those that did required far less parking than the approach adopted for discussion in this

analysis. Table 2 provides a comparison of the various parking standards. To allow for apples-to-apples comparison, we have converted the requirement into equivalent spaces at Kelly's Card Room using the estimate that there are 2,500 square feet of gross area and 2,000 square feet of gaming area in the card room.

Table 2: Parking Requirement Comparison

Jurisdiction	Standard	Equivalent Parking at Kelly's
American Canyon	1 space/100 gross s.f.	25 spaces
City of Antioch	1 space/2 seats	24 spaces
City of Sacramento	1 space/500 gross s.f.	5 spaces
City of San Jose	1 space/40 s.f. gaming area	50 spaces
<i>Average</i>		<i>26 spaces</i>

Because few communities have card room parking standards and because there is such variance between the standards we found, it appears that card rooms occur infrequently enough that no reliable standardized approach has emerged and communities are left with trying to establish reasonable requirements based on site and project specifics. The City has the advantage of being able to observe the historic use at this site to understand how effectively parking functioned to serve the use. Anecdotal evidence suggests that parking functioned adequately most of the time, with periods of peak demand that exceeded on-site parking capacity. The applicant proposes to utilize on-street parking to address peak period demand, similar to what has occurred historically.

Shared Parking

When the card room operation at the project site is viewed as a part of the whole land use, it is appropriate to recognize that visitors to the property will likely take advantage of more than one component of the land use (e.g., some bar patrons are also likely to be restaurant patrons). Unless the components are treated as parts of a land use that shares parking, the City runs the risk of double counting patrons and inflating parking demand estimates. In fact, Antioch Municipal Code Section 5-4.02 requires that card rooms be ancillary to another use. Arguably, the parking requirements should also be ancillary to those provided for another use.

As a small facility with about 7,100 square feet of space, it is reasonable to assume that patrons of one activity in the building (restaurant, cocktail lounge/bar, and card room) will also patronize one or more of the others. These overlapping uses warrant consideration of shared parking as provided for in Section 9-5.1705 to reduce the parking required on-site. This reduction is particularly appropriate in this neighborhood where a city operated parking lot is available to accommodate demand for up to 36 parking spaces should peak period parking need exceed on-site capacity.

Staff is recommending conditions of approval that require the applicant to comply with the requirements listed below in order to ensure adequate parking is available to patrons.

1. Restripe the on-site off-street parking lot to add 3 new parking spots to bring the total number of off-street spots to 30 (see Attachment E).
2. Enter into an agreement with the City, pending approval by the City Council, to secure use of the City owned lot for overflow and employee parking and to offset any public costs associated with use of this facility or a similar arrangement acceptable to the Community Development Director.

Issue #4: Security and Surveillance

As part of the license application process with the Bureau and Commission, the Applicant has prepared a Security and Surveillance Plan, which has been redacted, (see Attachment E) to ensure operations are safe and controlled at all times. The Security and Surveillance Plan (Plan) outlines the steps and procedures in place to closely monitor and control all gambling activity and has been reviewed and approved by the Antioch Police Department. Elements in the Plan include but are not limited to:

1. Monitoring and control of access to restricted areas such as cages and vaults
2. On-site closed circuit video recording
3. Adequate indoor and outdoor security lighting throughout the site
4. Procedures for securing and protecting persons, assets, and records associated with gambling activities
5. Proper age verification procedures
6. Establishment of professional relationships with local law enforcement agencies

Staff training will be provided for employees that have been assigned duties outlined in the Plan. This training program will ensure that employees have a grasp of their specific duties and a general understanding of the security and surveillance procedures in place. The same training will be conducted with each new employee to guarantee every employee has an understanding of the Plan.

In addition to the staff training procedures in place, the management will annually review the Plan and provide updates if required by changes to State guidance. Similarly, management may revise the Plan anytime to ensure accuracy and compliance with any state or local mandates. At the completion of the management's annual review, management will provide the City a written report of any changes to the operation or procedures.

Issue #5: General Site Development Issues

The following issues were considered and found to be inconsequential or to be issues that would be addressed through the standard ministerial permit review process as described below:

- Air Quality/GHG Emissions – The proposed project is restoring the previous use of the site and will not generate greater trip traffic or generate more emissions than historic uses.
- C-3 Development Standards – Other than resurfacing and restriping the parking lot, there is no new site development or building expansion proposed by the project and C-3 standards will not be triggered.
- Signs – Any new sign program will be consistent with the sign standards in the Zoning Code.
- Access – Any upgrades to the building to meet Title 24 accessibility requirements will be implemented through the tenant improvement plan check for building permits.

ATTACHMENTS

- A. Aerial Photo
- B. Draft Notice of Exemption
- C. Applicant's Summary
- D. Redacted Security and Surveillance Plan
- E. Parking Lot Restriping Plan

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

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
ADOPTING A CATEGORICAL EXEMPTION AND USE PERMIT FOR KELLY'S CARD
ROOM LOCATED AT 408 O STREET**

WHEREAS, the City of Antioch received an application from Anthony Keslinke for a Use Permit to operate a 6-table card room pursuant to Section 9-5.3803 of the Municipal Code and a shared parking arrangement under Section 9-5.1705 of the Municipal Code. The Use Permit is required to reopen the historic use, due to a lapse of operation. Both the City of Antioch and the California Gambling Control Commission will regulate the card room. The site location is 408 O Street, south of W 4th Street (APN: 074-130-012).

WHEREAS, the City determined that the project is Categorically Exempt from environmental review pursuant to Section 15332 of the California Environmental Quality Act Guidelines, as follows:

CEQA Section 15332 Findings	Project Applicability
a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.	The proposed use is consistent with the C-2 zoning designation and supports General Plan Policies 4.3.2.b, 5.4.11.a, and 6.4.2.b.
b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.	The project site is located within city limits at 408 O Street, and the parcel, APN 074-130-012, is 0.528 acres in size.
c) The project site has no value as habitat for endangered, rare or threatened species.	The site is located within an already developed mixed-use area with a preponderance of light industrial uses. The project site is almost entirely paved, and no vegetation would be removed as the result of this project.
d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.	The proposed use is resuming historic use of the site and will not result in traffic, noise, or emissions that substantially differ from the historic use.
e) The site can be adequately served by all required utilities and public services.	The site currently serves as a restaurant and bar, and has adequate utilities and public serves to support the card room.

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

WHEREAS, the Planning Commission on August 21, 2013, duly held a hearing, received and considered evidence, both oral and documentary.

NOW THEREFORE BE IT RESOLVED that the Planning Commission does hereby adopt the Categorical Exemption for the Kelly's Card Room project; and

BE IT FURTHER RESOLVED that the Planning Commission does hereby make the following findings for approval of a Use Permit for the card room and shared parking:

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

The card room is an ancillary use to the current establishment, which is a restaurant and bar/lounge, is consistent with historic use of the site, and will not be detrimental to the public health or welfare or injurious to the property or improvements in the project vicinity in a way that differs from prior use of the site. The application also incorporates security and surveillance provisions designed to improve site safety consistent with City standards. The use is compatible with the surrounding neighborhood and will provide additional entertainment services for the community at the subject site.

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

The General Plan designation is Neighborhood Commercial and the zoning is C-2 (Neighborhood/Community Commercial). The use of a card room is allowed under the General Plan and Zoning Code upon approval of a Use Permit.

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

The site is currently used as a restaurant and cocktail lounge/bar and is adequate in size and shape to accommodate the proposed use. Secondly, the site has operated as a card room in the past and is currently applying for a renewal for the state permit granted to operate a card room.

The proposed card room would occupy approximately 2,000 square feet, or 28% of the existing 7,100 square foot facility, and is ancillary to the primary use of the site as a restaurant and bar. There is adequate space on-site and in a City owned parking lot near the project site to accommodate the shared parking demand from existing uses as well as the Card Room if the applicant enters into an agreement with the City for additional parking or a similar arrangement as required by the conditions of approval. All yards, fences, parking, loading, landscaping, and other required features meet the requirements of the Zoning Code and are comparable to the surrounding uses in the neighborhood.

4. The project site, in combination with available on-street parking, contains adequate area to meet the City's parking requirements due to the overlap in parking demand that results from shared use of the site. As conditioned by project approval, there is sufficient on- and off-site parking available to support a shared parking arrangement pursuant to Municipal Code Section 9-5.1705.
5. The site abuts streets and highways adequate in width and pavement type to carry the kind of traffic generated by the proposed use.

The site has a single existing point of ingress and egress on O Street, and the on-site parking lot can currently accommodate approximately 30 parking spaces through restriping of the lot. Currently, there is a lack of sufficient on-site parking according to the Antioch Zoning Code pending compliance with one of the project-specific conditions of approval below.

6. The granting of such Use Permit will not adversely affect the comprehensive General Plan.

The General Plan designation is Neighborhood Commercial, which allows eating and drinking establishments as a primary use and classifies a card room as indoor recreation that is accessory to the primary use consistent with the General Plan.

NOW THEREFORE BE IT RESOLVED that the Planning Commission of the City of Antioch does hereby **APPROVE** UP-13-02 subject to the following conditions:

STANDARD CONDITIONS

1. The City of Antioch Municipal Code shall be complied with.

RESOLUTION NO. 2013-**

Page 4

August 21, 2013

2. Conditions required by the Planning Commission, which call for a modification or any change to the Use Permit application submitted, will be corrected to show those conditions and all standards and requirements of the City of Antioch prior to any issuance of a Business License. No Business License will be issued unless the application meets the requirements stipulated by the Planning Commission and the standards of the City.
3. This approval expires two years from the date of approval (expires August 21, 2015), unless a building permit has been issued and construction has diligently commenced thereon and has not expired, an occupancy permit has been granted for the Card Room, or an extension has been approved by the Zoning Administrator. Requests for extensions must be received in writing with the appropriate fees prior to the expiration of this approval. No more than one (1) one-year extension shall be granted.
4. City staff will inspect the site to confirm compliance with the conditions of approval before the Card Room is allowed to open for business.
5. Any revisions to the building exterior materials, paint colors, and/or overall color scheme shall require a new application and shall be subject to Design Review approval.
6. Any required easements or rights-of-way for off-site improvements shall be obtained by the applicant, at no cost to the City of Antioch.
7. Advance permission shall be obtained from any property or easement holders for any work done within such property or easements.
8. The applicant shall obtain an encroachment permit for all work to be done within the public right-of-way.
9. This approval supersedes previous approvals that have been granted for this site.
10. Any extension in hours of operation, increase in number of employees, or change in other aspects of the proposed that deviate from the proposed project shall be brought back to the Planning Commission for review and approval.
11. Building permits shall be secured for any interior improvements not expressly evident in the materials submitted.

12. The applicant shall defend, indemnify, and hold harmless the City in any action brought by a third party to challenge the land use entitlement and shall enter into an agreement to effectuate this condition of approval as required by the City. Applicant shall also be responsible for any election costs if a referendum petition is presented.
13. All requirements of the Contra Costa Environmental Health Department shall be met.

Site Maintenance

14. No illegal signs, pennants, banners, balloons, flags, or streamers shall be used on this site at any time.
15. No signs shall be installed on this site without prior City approval.
16. The site shall be kept clean of all debris (boxes, junk, garbage, etc.) at all times.
17. Standard dust control methods shall be used to stabilize the dust generated by construction activities.

Fees

18. No permits or approvals, whether discretionary or mandatory, shall be considered if the applicant is not current on fees, reimbursement payments, and any other payments that are due.

Landscaping

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

PROJECT-SPECIFIC CONDITIONS

22. Prior to occupancy of the card room, the project applicant must comply with the following to ensure adequate parking is available on- and off-site to support the use:

August 21, 2013

- a) Restripe the on-site off-street parking lot to add 3 new parking spots to bring the total number of off-street spots to 30 (see Parking Lot Restriping Plan).
 - b) Enter into an agreement with the City to secure use of the City owned lot for overflow and employee parking and to offset any public costs associated with use of this facility or enter into a similar arrangement acceptable to the Community Development Director.
23. The Use Permit approval is contingent upon the applicant receiving a gaming license from the State of California and a Card Room License from the City of Antioch. A copy of the State license or other approval must be submitted to the City within 10 days of receipt by the applicant. The Use Permit shall become null and void if the gaming license is not issued.
24. The site shall be operated in conformance with the following provisions:
- a) The owner shall provide the City with an annual report of the review and changes to any operational or procedural changes made during their annual review.
 - b) The owner shall maintain, update, and implement the Security and Surveillance Plan submitted in conjunction with this application to the satisfaction of the Chief of Police.
 - c) Restaurant shall be fully operational during hours of operation of the card room.
 - d) *The card room may operate 24 hours a day 7 days a week.*

The card room shall operate 7 days a week from 6:00 AM to 2:00 AM.

* * * * *

I HEREBY CERTIFY the foregoing resolution was duly adopted by the Planning Commission of the City of Antioch, County of Contra Costa, State of California, at a regular meeting of said Planning Commission held on the 21st day of August, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

TINA WEHRMEISTER, Secretary to the
Planning Commission

ATTACHMENT "A"



Source: Google Earth

ATTACHMENT "B"

Notice of Exemption

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: Antioch Development Agency
City Hall, Third and H Streets
Antioch, CA 94509

County Clerk-Recorder
County of Contra Costa
555 Escobar Street
Martinez, CA 94553

Project Title: Use permit to continue operation of Kelly's Card Room, a 6-table card room.

Project Location – Specific: 408 O Street, south of W 4th Street in the City of Antioch, County of Contra Costa, APN 074-130-012

Project Location – City: City of Antioch

Project Location – County: Contra Costa

Description of Project: Kelly's Card Room has applied for a Use Permit to continue operation of a 6-table card room within the City of Antioch. The Use Permit is required to reopen the historic use, due to a lapse of operation, and to allow for shared parking to satisfy City parking requirements. The card room will be regulated by both the City of Antioch and the California Gambling Control Commission.

Name of Public Agency Approving Project: City Council of the City of Antioch.

Name of Person or Agency Carrying Out Project: Anthony Keslinke, Owner of Kelly's Card Room

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption.
- Statutory Exemptions. State code number: Affordable Housing and Infill (Sec. 15194 and Sec. 15195);
- Not a "Project" as defined in Section 15378.

Reasons why project is exempt:

The project constitutes an infill project pursuant to Section 15332, Infill Development, of the California Environmental Quality Act.

Lead Agency

Contact Person Tina Wehrmeister

Area Code/Telephone/Extension 925-779-7013

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: _____

Tina Wehrmeister
Director of Community Development

Date: _____ Title: _____

Signed by Lead Agency

Signed by Applicant

Date received for filing at OPR: _____

B1

ATTACHMENT "C"

Project Description

2/20/2013

The current application for a use permit proposes to reopen the Kelly's Cardroom in a manner consistent with its historic operation. The business has been run as a cardroom since 1978 and has been regulated by the City of Antioch during that time. It also has been regulated by the State of California Gambling Control Commission since the passage of the California Gambling Control Act in 1997. The applicant anticipates that the cardroom will employ 34 full and part-time employees once it is fully operational to its historic level of 6 operational gaming tables. Further, the associated Kelly's Restaurant and Bar are anticipated to employ an additional 15 employees. The hours of operation will be consistent with its previous operational status and will operate 24 hours a day 7 days a week. The existing building covers 31.4% of the existing lot and has 26 parking spaces behind the building which includes 2 handicapped spaces. The number of parking spaces could be increased by increasing the efficiency of the striping pattern of the parking lot.

Sincerely,


Anthony Keslinke

C1

ATTACHMENT "D"

KELLY'S CARDROOM

SECURITY & SURVEILLANCE PLAN

Purpose: The purpose of this plan is to provide for the close monitoring and control of all gambling activity; close monitoring and control of access to restricted areas of the gambling establishment that include, but are not limited to, cages, count rooms, vaults, security offices and surveillance rooms; surveillance procedures, including video recording requirements, as applicable; lighting in and around the gambling establishment; specific conditions, procedures and instructions for reporting suspected criminal incidents or activity to state and/or local law enforcement agencies; and procedures for securing or protecting persons, property, assets and records.

General Security and Surveillance Policy Statement

It is the policy of Kelly's Cardroom to provide surveillance coverage of its entire facility and operations to maintain safety for patrons and employees; ensure regulatory compliance and gaming integrity and to prevent potential criminal activity; ensure access to restricted areas of the gambling establishment are closely controlled and limited to authorized personnel in the performance of their duties; and for the purpose of video surveillance recordings, provide adequate lighting of all public areas, entrances and exits. Kelly's shall be responsible and liable for its patrons' safety and security in and around the card room and will adopt this plan to provide for the safety and security of patrons, after the plan has been approved by the Chief of Police and the State of California.

Security and Surveillance Plan Submission:

1. Kelly's Cardroom will submit as an attachment to this Security and Surveillance Plan, copies of identified, applicable local ordinances and any locally-issued certificate of compliance with those ordinances.
2. Kelly's Cardroom will submit to the Commission one copy of the current Security and Surveillance Plan as required.
3. If this plan is revised as a result of the addition of permanent tables, or as a result of any change to the physical premises which alters the locations or configurations of any restricted areas, or which alters or affects any security or surveillance capabilities or procedures, Kelly's Cardroom will submit one copy of the revised Security and Surveillance Plan with the first biennial license renewal application submitted immediately following any revision the plan.
4. Since Antioch Police Department must approve this Security and Surveillance Plan, Kelly's Cardroom shall send documentation of the areas reviewed and whether or not they approved those areas of the security and surveillance plan under their authority's jurisdiction. If the Bureau of Gambling Control determines that it does not address the proper elements, then the Bureau

may issue a determination identifying the deficiencies and specifying a time certain within which those deficiencies shall be cured.

Security

One of the primary responsibilities of the employees at Kelly's Cardroom is to maintain order and security inside and outside the casino, provide a safe and secure environment for the customers and fellow employees of Kelly's Cardroom entering and leaving the casino, greet customers in a professional manner when arriving and leaving, detect, report and deter suspected illegal activity, and escort customers to their vehicles when leaving and arriving if able, which will be done by keeping them in view. During any period of time, between one-half hour before or after sunset and one-half hour before or after sunrise, in which Kelly's Cardroom is open for business or patrons are present on the premises, Kelly's shall have at least one uniformed security officer on duty, who shall periodically patrol the exterior of the gambling establishment, including all adjoining and adjacent parking areas owned, operated or otherwise controlled by Kelly's for use by its patrons. Any security officer, whether an employee, agent or contractor of the licensee, who is a gambling enterprise employee, agent or contractor of the licensee, who is a gambling enterprise employee, shall be required to hold a work permit. Any contract security officer whose scope of employment is limited to performance of his or her duties exclusively outside Kelly's Cardroom shall not be required to hold a work permit.

Restricted Areas

Access to restricted areas of the gambling establishment, including but not limited to the cages/count room and surveillance room, shall be limited to authorized personnel in the performance of their duties and shall be closely controlled.

Lighting Plan

1. For the purpose of video surveillance recordings, Kelly's Cardroom provides adequate lighting of all public areas, entrances and exits, and for all adjoining parking areas owned, operated or otherwise controlled by Kelly's Cardroom for use by its patrons.
2. The interior of Kelly's Cardroom is illuminated by a number of direct fluorescent lights. The lighting is sufficient to provide visual inspection, surveillance recording and routine operations. In addition to general lighting, Kelly's Cardroom has installed a generator which will restore electricity and illuminate the premises in the event of a power failure.
3. The exterior of Kelly's Cardroom is illuminated with several lights including lights on the building and lights on the Grange building for the leased parking lot and street lights near all parking lots.

General Safety Awareness

The primary security duty for employees is to observe and report. For their safety and the safety of all others, it is imperative that they advise the casino manager or key employee on duty of all activity they feel may be suspicious or detrimental to casino operations and always be aware of their surroundings.

Age Verification

1. All patrons ordering drinks must be 21 years of age or older and patron identification in must be checked in a courteous and respectful manner.
2. If an employee suspects any person in the gaming area is underage, they will notify the casino manager or key employee on duty and their ID will be checked. Anyone who looks under 30 years of age should be asked for ID.
3. Any person attempting to enter Kelly's Cardroom premises that is under 21 years of age or appears to be under 21 without valid photo identification will be denied entry and asked to leave the premises immediately.

Inspection of the Parking Lot

At regular intervals security, the casino manager or key employee on duty should make visual inspections of Kelly's Cardroom parking lot. Any suspicious activity observed should be monitored or reported the Antioch Police Department.

Monitoring of Equipment and Safety Hazards

1. The casino manager or key employee should check fire extinguishers on a regular basis for proper operation. Any problem with any equipment must be reported for corrective action.
2. If a safety hazard is identified outside, isolate the problem area so that patrons and employees are aware that a hazard exists. If necessary, stand by at the site of the hazard until it is repaired or the situation is resolved.

Assistance to Others

1. Employees and/or security guards should respond and assist Kelly's Cardroom patrons and other staff during emergency situations, which may include accidents on the premise requiring medical attention, physical altercations, detentions and removal of patrons who may be intoxicated or otherwise disruptive, if requested by the Kelly's Cardroom casino manager or key employee on duty.
2. Any situation requiring assistance of law enforcement, medical response or assistance of other security personnel should be documented.

Alcohol Consumption

1. Kelly's Cardroom allows the service of alcohol to its patrons pursuant to a California ABC license. **It is Kelly's Cardroom policy to comply fully at all times with any and all regulations associated with that license.** Employees should familiarize themselves with restrictions on the serving of alcohol to the general public and notify management of any possible acts of non-compliance.
2. The casino manager or key employee on duty should be notified by staff whenever a card room patron has been cut off from alcohol consumption and becomes a problem. The notification should include the table number of the seated player or the location of the patron in the bar. If an employee observes the customer attempting to consume more alcohol, he should notify management so that they can contact the person and resolve the situation.
3. Staff should monitor alcohol consumption during "last call" and should notify management or other staff about any attempted acts of non-compliance with Alcohol Beverage Control (ABC) rules. Drinking of alcoholic beverages in the parking lot is prohibited. Consumption of alcoholic beverages is only permitted inside the club.
4. Person(s) found drinking alcoholic beverages in the parking will be told by management not to do so. Management has the following options: Ask the person(s) to stop drinking or escort them off the property.

Control of Disputes

1. It is Kelly's Cardroom's intent to provide a fun, safe environment for all patrons of its facility. From time to time disputes can and may occur and management should take immediate but restrained attempts to resolve the situation peacefully.
2. If a dispute occurs, management should intervene to prevent escalation. If a dispute between patrons or staff escalates to a physical altercation, management, with the assistance of security if needed, will make a safe attempt to stop it, separate the involved parties and have the nearest staff member call the Antioch Police Department to report the altercation.
3. The casino manager or key employee on duty is responsible for completing an Incident Report and should attempt to obtain the parties involved identification for an Incident Report if it is not on file.
4. If the Antioch Police Department is called, management should obtain the responding officer(s) names and badge numbers along with a case number or event number to be included as necessary information for an Incident Report.
5. Any employee who intervenes in physical disputes should make a note and document specifically any and all injuries a detained person may have and who caused the injuries. Kelly's Cardroom maintains constant video surveillance of its facility. Any incident should be supported with recorded video or photographs from the surveillance system.

Removal of Persons

1. The California Gambling Control Act (Business and Profession Code, Section 19845) gives Kelly's Cardroom, the authority to remove a person from the premise who has engaged in various acts of disorderly or disruptive conduct and other acts deemed to be of a threatening or dangerous nature.
2. Persons removed under the authorities listed above should be identified by name, date of birth, address and surveillance photo. If possible, management should get a copy of photo identification. An Incident Report of the removal along with a copy of the surveillance photo should be kept on file.
3. Persons removed will be informed by management of a specific time period that they may re-enter the premises.

Former Employees

Any employee of Kelly's Cardroom who is terminated for cause shall not be allowed to return to the premises without approval of management.

Incident Reports

1. Kelly's Cardroom will complete an internal Incident Report that accurately documents events of any security-related situation at Kelly's Cardroom. These reports are an official record of events and may be used by management to review and resolve security-related issues. They may also be used to review the execution of organizational policy and procedures.
2. In the event that any key employee or casino manager suspects any of the activities listed below, he/she must complete and file an Incident Report with the Criminal Intelligence Unit of the Bureau of Gambling Control within five (5) days of the incident.

:

Activities

1. Violations of the Penal Code that pertain to gambling.
2. Violations of the Gambling Control Act.
3. Violations of BGC or CGCC regulations.
4. Loan-sharking.
5. Illegal possession or distribution of controlled substances or dangerous drugs.
6. Money laundering.
7. Robbery
8. Assault with a deadly weapon
9. Pimping
10. Pandering

11. Prostitution
12. Burglary
13. Forgery
14. Fraud
15. Grand theft
16. Petty theft
17. Embezzlement
18. Extortion
19. Commercial bribery
20. Counterfeit currency
21. Loiter for prostitution
22. Prostitution

3. The incident report for BGC shall include, when available and applicable, the following information:

- a. The date and time of the incident or event;
- b. The identity of each perpetrator or suspect, including full name, address, date of birth and driver license or identification card number
- c. Law enforcement report number of any responding law enforcement personnel;
- d. Detailed description of the event or suspected incident, including an identification of any witnesses and a description of any evidence.

4. Incident reports may be subject to subpoena for both civil and criminal action. It is imperative, therefore, that incidents reports be as truthful, accurate and impartial as possible with detailed names, dates, times and contact info for all involved parties. Incident reports must be sent to the Casino manager for review before being sent to BGC.

5. Incident Reports will remain on file and maintained for a period of 3 years.

Fire and Other Emergencies

1. All employees should know the locations of Kelly's Cardroom's exits, the location of the fire extinguishers, and the location of the fire alarms.
2. All employees shall be familiar with Kelly's Cardroom's Emergency Preparedness and Evacuation Plan.
3. In the event of an emergency that requires evacuation, employees will follow the instructions of the casino manager or key employee on duty who may ask for assistance in helping all customers and employees exit the building through the nearest door marked exit.
4. Once safely outside the facility, all staff and customers should wait for instructions from emergency personnel. They have sole responsibility to allow people to return to Kelly's Cardroom.

Armed Robbery

1. In the event of an armed robbery, all employees should comply with any demands by the intruders to minimize the risk of harm to patrons or employees. An employee should not attempt an apprehension of a robbery suspect at any time. The safety of employees and patrons is the most important aspect of this type event.
2. When it is safe to do so call 911 to report the incident. Employees are encouraged to call 911 only when it is safe for them to do so, which may be at the conclusion of the robbery.
3. The casino manager or key employee on duty should make contact with employees to obtain a description of the suspect, his/her weapon (if any) and last known direction of travel. This info should be given to the City of Antioch Police Department Dispatch Center so that responding officers can approach the facility with due caution.

Power Outages/Gas Leaks

1. In the event of a **power outage**, the emergency lights will illuminate the restaurant and card room.
2. In the event of an outage, management should be notified as soon as possible. The casino manager or key employee on duty should also ensure someone contacts PG&E to confirm that they are aware of the problem and to determine if they have an estimate time for resolving the outage.
3. In the event of a **gas leak**, evacuate the premises and call PG&E.
4. In the event of a gas leak, **DO NOT** smoke or otherwise use matches, lighters, etc.

Drop Box Collection

1. Kelly's Cardroom surveillance system will record all drop box collections and counting procedures.
2. Kelly's Cardroom drop boxes are numbered for video and table tracking.

Surveillance Equipment

1. Kelly's Cardroom has a surveillance system, with video recording and closed circuit television (CCTV) monitoring capabilities, to record critical activities related to gambling operations. The surveillance system records with reasonable coverage and clarity the gambling operation, the payment of player drop fees, the collection of drop boxes, the drop count processes, cage and cashier activities, gambling equipment storage areas (except for furniture storage areas), and the interior of entrances and exits.

2. The video recording equipment includes date and time generators which display the current date and time of recorded events on videotape or digital recordings. The displayed date and time do not significantly obstruct the view of recorded images.
3. All surveillance recordings are made in real time mode, or at a speed sufficient to capture and record with reasonable completeness the actions of all individuals being observed, except that any recordings of the gambling establishment parking areas, and the gambling establishment entrances and exits may be recorded in time-lapse mode, at a minimum speed of 15 frames per second.
4. All video surveillance cameras shall be installed in a manner that prevents them from being intentionally obstructed, tampered with or disabled by patrons or employees, to the extent reasonably possible. All recording and monitoring equipment shall be located in secure rooms or areas of the gambling establishment so that access is controlled.
5. Kelly's Cardroom has installed approximately 15 surveillance cameras in a variety of locations on the premises including the cardroom, and cage/count room.
6. Kelly's Cardroom has also installed 2 digital video recorders (DVR) to record and maintain video surveillance from the above-referenced cameras. It is Kelly's Cardroom policy to keep recorded video for a minimum of fourteen (14) days unless otherwise requested.
7. The DVR's and video monitors of the surveillance cameras are located in the cage. Access to the system's control capabilities is restricted to authorized personnel.
8. A sign is prominently displayed at both entrances, in a manner conspicuous to all patrons entering and exiting the gambling establishment and is of sufficient size to be visible and readable stating: **"All Public Areas, Entrances and Exits of This Establishment are Subject to Surveillance and Video Recording."** The lettering and background shall be of contrasting colors, and the sign shall comply in all respects with applicable signage requirements, if any, of the local jurisdiction.

Camera Coverage

1. The Kelly's Cardroom Surveillance System has been designed to provide for coverage of all areas located within property boundaries. All cameras required under the regulations and the Internal Control Standards are installed and are operational.
2. Cameras are placed at all entrances to the Card club in order to insure there is a recording of all guests, staff and vendors entering and exiting the property. All count room activities are viewed & recorded as required.
3. All cameras have the ability to provide still images that can be printed for law enforcement or management use during investigations.
4. The Kelly's Cardroom provides one (1) overhead fixed camera for each card table.

5. The Kelly's Cardroom's surveillance system has the capability to monitor and record.

Camera Coverage – Cage

The Kelly's Cardroom surveillance system has cameras that monitor and record all general cage activities. The cameras monitor and record all activities, with sufficient clarity to identify all employees within the cage, employees at the counter area, and patrons at the cage window. The cashier cage window has a dedicated camera that will monitor & record every transaction that takes place at each cage.

Camera Coverage – Count Room

Kelly's Cardroom's count room is monitored and recorded at all times during each daily chip count. The count room counting station is monitored and recorded by a fixed color overhead camera during the entire daily chip count.

Surveillance Equipment and Maintenance

The surveillance system operation shall be checked daily by the casino manager or key employee on duty to ensure that all surveillance equipment is functioning properly and reasonable efforts shall be made to repair malfunctioning surveillance equipment within 72 hours of the discovery of the malfunctions.

Key Employee On Duty

During all hours of operation, a Kelly's Cardroom casino manager or key employee will be on duty who has the ability to access live video from surveillance cameras and previous surveillance video recordings.

Digital Video Recording (DVR) System

1. If a digital video recording (DVR) system is utilized, the system shall meet the following standards:

a. The DVR system shall have a failure notification system that, at a minimum, provides a visual notification of any failure in the surveillance system or the DVR media storage system.

b. The DVR system shall have a media storage system that is configured so that a failure of any single component will not result in the loss of any data from the media storage system.

c. The DVR system shall have the capability to reproduce or copy all or any portion of the stored data from the media storage system to a digital video disk (DVD).

d. A single DVR system shall not have more than 8 cameras required by the standards of this section, unless the DVR system has an appropriate backup system to ensure that there is no loss

of data in the event of a failure of the primary DVR system or any single component of that system.

e. Videotapes or other recording media shall be marked or coded to denote the activity recorded.

Access Control

Routine access and entry into the office with surveillance equipment shall be limited to casino managers, shift supervisors and other employees of the gambling establishment who hold a valid gambling license or work permit for the purpose of performing their duties. Other persons may be granted limited access to the surveillance room for educational, investigative or maintenance purposes, if accompanied at all times by a Kelly's Cardroom employee. The equipment is secured in a locking cabinet.

Dedicated Camera Malfunction Procedure

In the event of a dedicated camera malfunction:

1. Provide alternative camera coverage if possible to protect the subject activity.
2. Contact the casino manager or key employee on duty and advise him/her of the malfunction.
3. Enter all malfunction information into a report.

Surveillance System Malfunction Procedure

In the event of a malfunction of any surveillance system equipment required by the Minimum Internal Control Standards, follow the steps below:

1. Correct or repair the malfunction.
2. Contact the casino manager or key employee on duty, to advise him/her of the malfunction and any corrective action taken.
3. Contact the equipment maintenance vendor to advise them of the malfunction.
4. Enter all malfunction information into a report.

NOTE: Reasonable effort is made to correct or repair each malfunction of the surveillance system equipment within seventy two (72) hours after the malfunction is discovered.

Cooperation With Regulatory Agencies

1. It is required by regulation that the Kelly's Cardroom cooperate with the Bureau of Gambling Control and local law enforcement. It is also in the best interests of the Kelly's Cardroom to cooperate with other law enforcement agencies and to provide aid whenever possible.

2. For the purpose of enforcing the provisions of the Gambling Control Act, and all state gambling regulations, Bureau staff, with the approval of their chief, may, at any time during Kelly's Cardroom's actual hours of operation, demand immediate access to the surveillance room and any area of the casino where surveillance equipment is installed or maintained or where surveillance video recordings are stored, and such access shall be provided.

3. The Bureau may take custody of and remove the original of any video recording, or a copy of any digital recording, required to be made and maintained pursuant to the Act or state gambling regulations. Upon reasonable request, a copy of the recordings shall be made and left on the premises if copying equipment is available to enable Bureau staff to make copies. If copying equipment is not available to Bureau staff, upon reasonable request, a copy of the recordings will be provided at our expense, unless the Bureau expressly waives its costs of providing the copies.

4. When enforcement agents request surveillance recordings, or a required report is to be submitted, the casino manager or key employee on duty is contacted before notification is processed. **No information** is to be passed to law enforcement agencies without notifying the casino manager or key employee on duty beforehand.

Law Enforcement DVD Request

1. When such a request is made, locate the digital image file in question and ask the requestor if they need the entire file or if a lift of a specific time frame will suffice. Inform the requestor of the time needed to make the copy and notify the casino manager or key employee on duty of the request.

2. If a situation occurs in which it is imperative for law enforcement to see a DVD in order to properly evaluate a situation or incident, they are allowed to review the file in question prior to a copy being made. The casino manager or key employee must be notified.

3. After the file is reviewed, and the decision has been made, copies are produced. Kelly's Cardroom has the right to retain any image file and no exceptions to this rule are made without the approval of the casino manager. Any file provided to law enforcement or any outside agency is copied on to DVDs. No DVDs are to be released without completed notification and/or review of the casino manager or key employee on duty.

4. These same rules apply to written or typed information. All requests for information in any form, including verbal is referred to the casino manager or key employee on duty.

Training

1. Kelly's Cardroom shall, at least annually, provide for a review of the requirements of the Security and Surveillance Plan with those employees that have been assigned duties under the plan, ensuring that each employee has a general understanding of the provisions of the plan applicable to his or her position and understands his or her specific duties under the plan. This annual review shall be scheduled in advance and documented, including a signature from each

employee indicating that they have participated in the review and a signature from the person who provided the review.

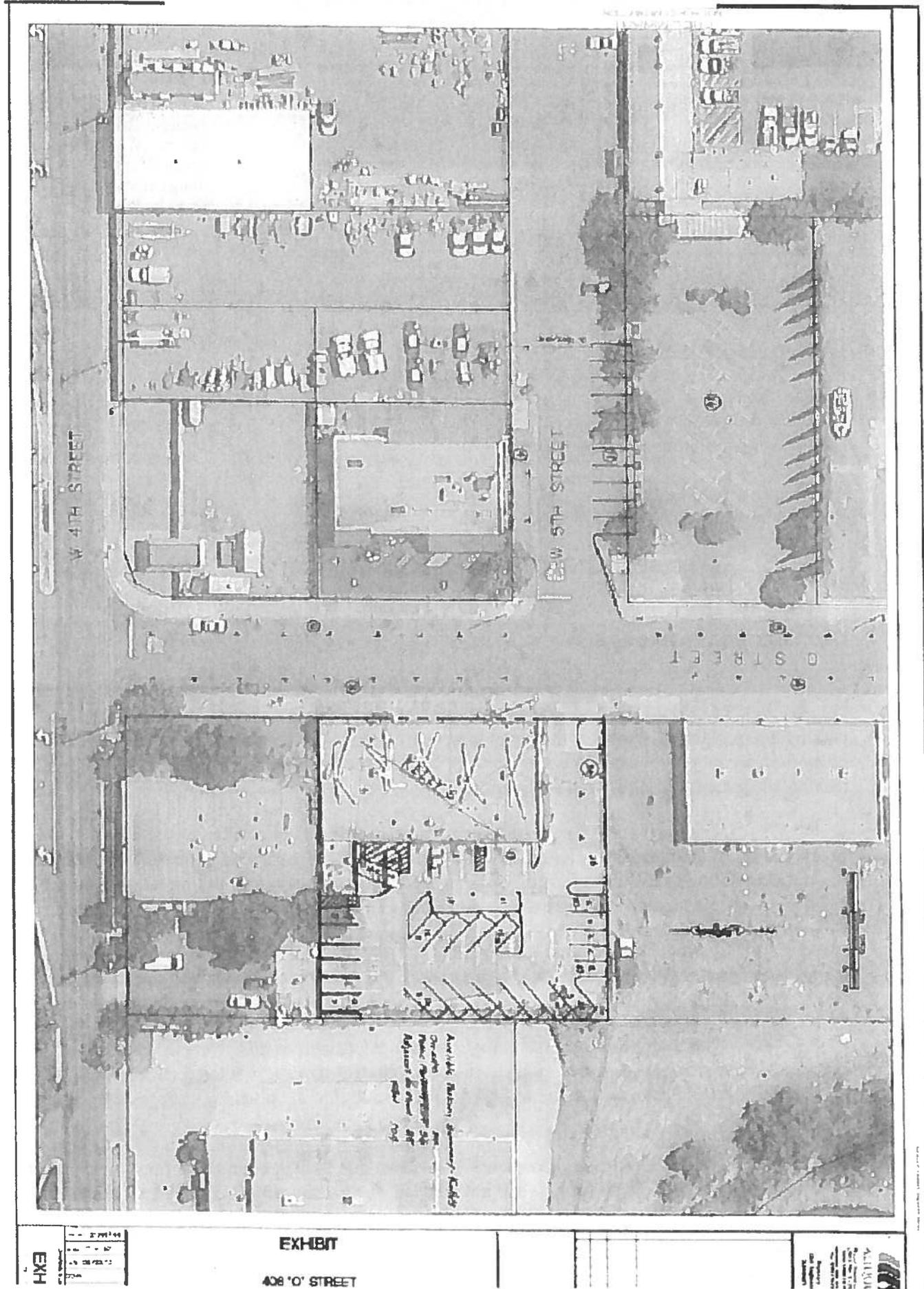
2. When a new employee begins work, Kelly's Cardroom shall provide for a review of the requirements of the Security and Surveillance Plan with the new employee, ensuring that each new employee has a general understanding of the provisions of the plan applicable to his or her position and understands his or her specific duties under the plan. This initial review shall be documented as provided above.

Review of Security Policies and Procedures

1. Kelly's Cardroom Management will review this plan and provide updates if warranted by procedural changes. In addition, management will complete an annual review of this Security and Surveillance Plan for updates and revisions where appropriate.

2. Kelly's Cardroom Management may make revisions to this manual any time during the year to ensure accuracy and compliance with any state or local mandate or Kelly's Cardroom procedural change.

ATTACHMENT "E"



REMCHO, JOHANSEN & PURCELL, LLP
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August 20, 2013

VIA EMAIL AND MAIL

Virginia Sanderson, Chair
and Commissioners
City of Antioch Planning Commission
P.O. Box 5007
Antioch, CA 94531-5007
Email: ginnysanderson@gmail.com

Re: *Use Permit, Kelly's Cardroom, Antioch
Planning Commission Hearing, August 21, 2013*

Dear Chair and Commissioners:

I write to oppose the use permit for Kelly's Cardroom. The use permit plainly violates the City of Antioch Municipal Code, goes against what the community wants, and the parking and parking analysis for the development are both woefully inadequate. The letter is being delivered today because the Agenda and Staff Report were posted over the weekend, not leaving adequate time to respond before now.

The Staff Report is wrong in a number of respects, including its incorrect interpretation of the Ordinance, its failure to gather relevant revenues and patronage information, its complete failure to estimate parking demand, and its comparison for parking requirements of a casino to a game arcade where teenagers and children play.

Moreover, the safety and security plan is a form document. It does not bear on the merits of this use in Antioch. The proposed owner has no experience safely operating a card room. The Staff Report does not contain any actual data or analysis of safety or security.

The Staff Report fails to provide a fair discussion of this proposed use. If the Planning Commission were to act on the basis of the Staff Report, it would create both a precedent for results-oriented decisions and the perception that the planning process is a pretense.

Kelly's Cardroom has been closed down due to allegations of serious misconduct and illegal activity, which the owners did not contest. A new use permit should not be issued to

re-open this kind of business. This is not smart development, and this will not contribute to other local businesses.

The use permit should be denied for the following reasons.

I. The Use Permit would violate City Code.

- A. City Code requires that the gambling operation be ancillary to an existing business. The volume of the existing business has to be larger than the volume of the gambling business.**

The City of Antioch Municipal Code provides:

§ 5-4.05 LICENSE; ISSUANCE TO ESTABLISHED
BUSINESSES ONLY.

In addition to the other requirements contained in this chapter, no license shall be issued for a card room other than in an established place of business of sufficient size and volume that the already established business is the major business of the place rather than the business of operating such card room.

(Ord. 2051-C-S, passed 10-25-11, emphasis added.)

This Ordinance expresses the community's view that Antioch is not a "gambling" City. The card room cannot be the major business at the location, nor exceed the size and volume of the already established dominant business.

The Planning Commission should reject this use permit because it violates the plain provisions of the Ordinance.

- B. The Staff Report is flawed because it looks at square footage alone to determine "size and volume."**

The Staff Report concludes that the Ordinance is not violated because the card room will occupy less square feet than the restaurant and bar. The Staff Report has erred by looking at square footage.

The Ordinance requires that the card room be the secondary business by two separate measures: "size and volume." The Staff Report looks only at size, only one measure of size, and at a particularly easy to manipulate measure of size.

The Staff Report ignores "volume." In business, volume refers to sales or the amount of products sold. As shown below, the record is missing any information to show that the restaurant and bar does or will generate more sales than the card room.

Even the term “size” in the Ordinance refers to the scale of the business – its employees and patrons, etc. Here, by every relevant measure, including patron spaces, parking use, and employees, the card room business is the larger business by size. The applicant admits that the card room will have more than twice as many card room employees (34) as restaurant and bar employees (15). And as shown below, the applicant undercounts the card room workers. Plainly the scale and size of the card room business, even without looking at revenues, is far more than the restaurant and bar.

The use of square footage alone or even as one factor is plainly erroneous. The square footage easily can be manipulated by assigning more square footage to another part of the building or leasing more space than needed and making it a warehouse or storeroom for the bar. It is more difficult to manipulate revenues. It is far more difficult to manipulate actual revenues rather than projections. That is why the comparison must be with an existing business.

Because the intent of the Ordinance is to control the expansion of gambling, using square footage alone or even as an important factor to compare businesses easily defeats the Ordinance.

In addition, the comparison must be between the card room and an existing business. The Staff Report compares the card room to the new restaurant planned by the applicant, which is not yet open, may never open, and even if it opens, may not stay open.

C. Gambling will be the dominant business.

The existing business at Kelly’s is a food service and bar operation. The applicant, Mr. Keslinke, has not submitted any revenue figures to show what the gross revenues are currently. Therefore, the record does not permit the Planning Commission to find that this location complies with section 5-4.05 of the City of Antioch Municipal Code which requires that the “already established business” be larger in size and volume.

Even if the restaurant and bar numbers were included with the application, the restaurant and bar sales cannot generate sufficient volume to satisfy the Ordinance. For example, if the existing restaurant sells 120 meals a day with average checks of \$10 that would be gross sales of \$1,200 per day. That means \$438,000 in gross annual revenue for the existing restaurant. Similarly, if the bar serves 75 bar and restaurant customers per day at an average sale of 2 drinks totaling \$10, daily sales are \$750 and annual gross bar sales are just over \$270,000.

Card rooms generate gross profits per table by charging the players a flat fee per hand. The City of Emeryville publicly reports its card room revenue, with annual gaming revenues of \$657,143 per table.¹ At six tables, Kelly’s would have expected gross gaming

¹ Operating Budget, Fiscal Years 2012-13 & 2013-14 at 30, Line Item 101-43100 <<http://www.ci.emeryville.ca.us/Archive.aspx?AMID=65>> (35 tables in use even though 40 tables are licensed).

revenue of nearly \$4 million annually, as much as five to six times the volume of the existing restaurant and bar business.

Allowing a gambling establishment at Kelly's based on the existing restaurant and bar would be a plain violation of section 5-4.05 of the City of Antioch Municipal Code.

D. Gambling will be the dominant business even if a new restaurant is opened at Kelly's.

The Ordinance plainly requires that the Planning Commission compare the "already established" business to the card room. So even if Mr. Keslinke had provided projections about a new and improved restaurant and bar, mere projections are irrelevant.

Even if Kelly's was a successful restaurant decades ago, that does not satisfy the requirement that there be an already established business at this location that is the major business at the location by size and volume.

Even if that were not the case, Kelly's pitch is that despite its poorly suited location, the buyer will open a high-end fashionable restaurant, bar, and gambling establishment that will be materially different from the food service now operating at the site and will revitalize all of downtown. That may be a story people want to hear, but it is not realistic.

Even if the Commission was allowed to speculate about the future, numerous studies show that 60% of new restaurants fail. (<http://www.hvs.com/article/3153/why-new-restaurants-fail/>.) Here the odds may be worse. The location is poor, and economic conditions and income levels in the immediate vicinity may not support a high-end restaurant in that location. Regardless, because the new restaurant is not yet established, the Ordinance would be violated by granting a use permit for gambling.

Until the newly promised restaurant is open and is more successful than any potential gambling operation, a use permit for gambling cannot be issued based on projections for a new restaurant, even if those projections had been included with the application, which they were not.

Moreover, if Kelly's wants to forecast a much larger volume for a new bar and restaurant than the existing bar and restaurant, the Planning Commission should have studied the effects such an operation would have on the City, including adverse impacts such as public intoxication and incidents related to larger bars and gambling establishments. That, however, was not done.

Kelly's also cannot claim that gambling will be a big contributor to re-development and then minimize the parking requirements or gambling volume. The applicant cannot say this will only be a small gambling operation, and then claim an outsized effect on revitalizing downtown.

II. Gambling is not what the Community wants.

Every time voters in the Bay Area voters have been asked what they want, they have resoundingly said they do not want more gambling, even when the voters were promised that gambling would bring more taxes, more jobs, and more development.

A. City of San Jose Measure E (November 6, 2012).

Would have increased taxes on two existing card rooms and expanded their number of tables.

No: 58%, Yes: 42%

B. City of Richmond Measure U (November 2, 2010).

Casino proposed with thousands of new jobs and millions in new taxes. The casino developer promised the casino would help revitalize Richmond.

No: 58%, Yes: 42%

Two new anti-casino Councilpersons also were elected, one of whom had lost 9 Council races previously. The anti-casino Mayor was re-elected. All three won despite Chevron, casino proponents, and police unions strongly supporting and contributing to candidates who happened to be pro-casino. The voters voted against pro-casino Council candidates.

C. Amador County Advisory Vote (November 8, 2005).

Proposed Tribal casino with \$26 million in annual payments to the County.

No: 85%, Yes 15%

D. Tribal Casino proposed for Antioch (2003).

There was widespread and strong opposition from all elements of the Antioch community. More than 100 people spoke at the City Council meeting against a casino in Antioch.

III. There is no benefit to Antioch from re-opening Kelly's.

There is no benefit to the community from expanding gambling or restoring gambling, whichever way you put it. There will not be a large increase in jobs and no promise that the jobs will be local. The dealer jobs are minimum wage.

Moreover, the license fees paid by card rooms to the City are \$260 a table. For 6 tables, that is \$1,560 a year, far less than the associated public safety costs for such an establishment.

Even if the table fee was increased by 50 times or 100 times – and approved by the Council and again at a local election – the fees would still not pay for one added police officer on every shift.

IV. Kelly's Parking "Study" is flawed and the available parking is woefully inadequate.

The Parking Study submitted with the application is just a short email with an optimistic count of available parking. Even then, the email lacks any estimate for parking demand.

The Staff Report makes no effort to estimate parking demand and glosses over obvious mistakes. The Report makes no effort to look at published parking studies about gambling operations, and does not even correctly state how many wagering positions are at each gambling table. There is no accepted methodology or research in the Staff Report.

The Staff Report's assumption without explanation that casino parking requirements can be compared to an electronic game arcade is misplaced since there are available parking and traffic studies of casinos, and the clientele (teenagers and children) is completely different for video arcades. The Report also fails to count parking demand for contracted third parties, such as janitorial, security, and proposition players, and instead only looks at employee counts. Even those are based on low estimates.

As shown below, there is not enough off-street parking or public parking to meet code requirements. The email and hand-drawn parking map submitted by Mr. Keslinke are entirely inadequate to support the issuance of the use permit.

A. Available Spaces.

Kelly's states the subject property only has 26 off-street parking spaces, which might be expanded to 30 with re-striping. Kelly's estimates there are another 74 public spaces, only a portion of which count toward the use permit. The email states "Although this is a draft, the final count of available vicinity parking should only vary by a minor amount."

However, Kelly's will need at least 127 off-street parking spaces, and even more public spaces, versus the 30 off-street spaces available.

B. Demand.

The total demand for off-street parking spaces is calculated to be at least:

	<u>Patron Spaces</u>	<u>Staff</u>	<u>Total By Activity</u>
Gambling:	63	20	83
Dining/Bar:			46
Total:			129

This assumes that 4 of the 6 gambling tables are used for poker. If the applicant intends to operate more non-poker games, then the need for off-street parking will only increase.

C. Parking Demand.

1. Gambling Operations (83 off-street spaces)

Kelly's proposes to operate a 6-table card room. Gambling operations create substantially higher parking demand than other commercial operations because of: (1) the level of staffing required; (2) the number of patrons that occupy a relatively small area of square footage at a single gaming table; and (3) the fact that most gambling customers make single rider car trips so they can come and go as they please or as their money lasts.

With a destination gambling resort, gamblers may travel in small groups or as couples and by air or bus, staying overnight. But with a local gambling establishment, the gamblers are most often individual players who live within 20 miles and make single rider car trips that require parking. Dealers also make single rider trips, working staggered shifts so as not to disrupt the games.

For patrons, the ratio is 1.18 car occupants per player position based on estimates from the Institute of Transportation Engineers Journal.² For staff, we must presume 1 parking

² A ratio of 85% car trips to gaming positions (1.18 occupants per car) was used for the proposed casino at San Pablo. That casino did not have a hotel, but included electronic gaming devices like slot machines. (*San Pablo Casino Traffic Analysis*, Katz, Okitsu & Associates, January 28, 2005, citing ITE Journal.) Because Kelly's will not have slot machines, it will attract fewer couples. So Kelly's car occupancy ratio is likely far worse than the ratio for San Pablo. ("Research by Harrah's Entertainment Inc. suggests that 80% of female gamblers in casinos prefer slot or video poker machines to table games such as blackjack, roulette and craps." Pittsburgh Post Gazette, August 10, 2003.) Other published studies for casino trip generation are for destination resorts, where persons are more likely to travel in groups and use varied modes of

(continued . . .)

space per 1 employee. The use by the Staff Report of 2 patrons per parking space based on game arcades is entirely misplaced.

a. **Patrons (63 spaces)**

Poker tables seat up to 10 patrons, not 8 as the Staff Report uses. In addition, there will be players signed up to play poker who wait on-site until a seat is available.

In California card rooms, other games like Baccarat, Blackjack, or Pai Gow will have 8 *seated* positions, but allow standing patrons to stand and bet behind the seated players. Therefore, these other games may have as many as 24 patrons, 8 of whom are seated and 16 +/- of whom stand and bet behind. The estimated peak parking demand is:

48 Poker Tables: 4 tables x 10 patrons, plus 8 persons (2 per table) waiting on busy shifts.

28 Other Card Games: 2 tables x 14 patrons each.

76 x 1.18 = 63 spaces.

If the Staff Report is correct is stating there are 8 seated positions, then Kelly's is likely intending to offer games other than poker. If Kelly's proposes to operate exclusively other card games, the parking demand will increase substantially. Six tables of casino card games like blackjack could have peak demand of 84 – 110 patrons.

Indeed, yet another flaw of the Staff Report is that it does not identify what type of card games Kelly's will now offer.

b. **Staffing (20 parking spaces)**

The following staffing is required per shift.

7 Dealers: 6 for 6 tables, plus 1 for dealer breaks who also breaks the cashier and floor/board person.

1 Key employee supervising gambling operations

1 Cage cashier

1 Floor/Board person to run chips, seat and move poker players, check IDs

transportation, including air travel and buses. Once in destinations like Las Vegas, people then tend to travel by foot or monorail from one property to another.

- 1 Security
- 3 Third party contracted proposition players and hosts who start and play in non-poker games.
- 2 House employees who act as proposition players in poker games.
- 1 Food and cocktail server for players at gambling tables.
- 1 General Manager. (May be present less than every shift.)
- 1 Office staff. (May be present less than every shift.)
- 1 Janitor/maintenance employee. Maintain the premises, gambling area, and gambling equipment.

Kelly's estimates 34 gambling employees, but that is low. Moreover, Kelly's estimates may not include contracted third parties for janitorial and security. Kelly's also will contract with third parties that bank the non-poker games. The bankers who play against all the other players and bank games like blackjack would be employed by a separate company and cannot not be direct employees since the house cannot bank its own games. But all these third parties have to be present on every shift and included for parking counts.

The off-street parking requirement for the casino alone is 83 spaces versus 30 available spaces.

2. Dining/Restaurant/Bar

The proposed dining use has 49 seats. The off-street parking requirement is one-third, 17, but the total parking demand will be substantially higher because some persons will not be sharing a car and will meet at the restaurant. If 25% of the patrons use single car trips, and the rest of the diners average 2.5 persons per car, then the total demand is really 28 parking spaces. (There also may be fewer families than the requirements assume because this is a gambling establishment.)

The bar has 35 seats. Assuming 50% of the car trips are single riders and the other 50% include 2 persons, the total demand is 27, with off-street parking required of 14.

There are 16 restaurant and bar staff spaces required.

As these numbers all show, for required off-street parking and for actual peak usage and demand, Kelly's has nowhere near the necessary parking.

Virginia Sanderson, Chair
and Commissioners
City of Antioch Planning Commission
August 20, 2013
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V. **Proposed Resolution is in error.**

The City's proposed Resolution is also faulty.

First, use is ancillary based on square footage. That is the incorrect meaning of "size and volume." Any applicant could avoid that restriction by just adding unused or underutilized square footage. Determining the major business requires looking at revenues, as discussed in more detail above.

Second, for purposes of the parking analysis, a casino cannot be compared to a video game center. Staff assumptions about patrons and staffing are derived from inconclusively looking at local ordinances instead of researching studies of what card rooms actually require for parking.

Third, the safety and security plan is inadequate. The safety and security plan is a stock document. It does not bear on the merits of this use in Antioch. The proposed owner has no experience safely operating a card room. The Staff Report does not contain any actual data or analysis of safety or security.

VI. **Conclusion.**

It would be plain error to approve this use permit application. Gambling at Kelly's would violate the City of Antioch Municipal Code, provide no benefits for Antioch, and goes against what the community wants. Moreover, the parking and parking analysis for the development are both woefully inadequate.

This is not smart development, and this will not contribute to other local businesses.

Sincerely,

Thomas A. Willis / TJ

Thomas A. Willis

TAW:NL
Attachment

cc: Lynn Tracy Nerland (via email, w/attachment)
City Attorney
Email: lnerland@ci.antioch.ca.us
(00204059)

San Pablo Casino Traffic Analysis Preliminary Findings

Prepared by: Katz, Okitsu & Associates

January 28, 2005

Assumptions and Findings

With the potential introduction of a large number of slot machines at the San Pablo Casino, substantial effects could occur to circulation. Information that has been helpful in estimating the future number of trips is the "Proposition 68 Traffic Analysis" by Parsons Brinkerhoff, dated September 2, 2004. Below are a series of discussion points that can help focus one on the important issues. Following that, the technical study is presented.

The proposed introduction of between 2,500 and 5,000 slot machines at this location represents a very dramatic increase in the potential trip making concentrated in this already problematic area. For a sense of scale, the trip making associated with this project is equivalent of up to nearly 7,000 single-family homes or regional shopping center of 1.3 million square feet. It is also the amount of trip making that would normally be equivalent to the heavier volume carried by a 4-lane freeway (2 lanes each way) operating at an acceptable level of service.

Some of these points are as follows, and we shall begin by reviewing certain assumptions.

Assuming:

- Daily trip generation rate of 13.6 trips per gaming position/slot machine.
- Peak hour trip generation rates of 0.47 and 0.788 for AM and PM respectively for each gaming position/slot machine.
- Estimated average duration of visit of two hours per patron and an occupancy factor of approximately 1.18 persons per car.
- Each parked car required 350 square feet of space.

Points regarding the proposed slot machine expansion:

- Up to 2,500 slot machines are proposed, with the possibility of expansion in 2008 for the San Pablo Casino. The original plan called for 5,000 slot machines, so those numbers are analyzed as well.
- At 13.6 trips per weekday per machine, up to about 34,000 daily trips could result with 2,500 machines, and double that from 5,000 machines.
- A typical 4-lane roadway becomes congested above 30,000 vehicles per day.
- In the peak hour of the AM that could mean 1,175 trips and for the PM peak it could result in 1,970 trips with 2,500 machines. For 5,000 machines, those numbers would be doubled.
- Each lane of a roadway can typically handle up to 1,900 vehicles per hour if the signals were continuously indicating green and no red time.
- Parking for an estimated 1,687 extra vehicles would be needed for 2,500 machines, and double that number for 5,000 machines.
- The parked vehicles would consume 13.6 acres of space on one level or 3.4 acres of space on four levels at the 2,500-machine level.

Points regarding the circulation system accessing and the development patterns serving the existing San Pablo Casino:

- The nearest access point for regional traffic on the I-80 is at the San Pablo Dam Road interchange, which is an older, lower capacity diamond configuration.
- Peak hour traffic congestion measures at some of the intersections between the ramps and San Pablo Dam Road show it is presently failing.
- Even more intersections in the area are projected to be failing in the future without introducing any more traffic associated with the proposed new traffic to the Casino.

- The next interchange to the north on I-80 is out-of-direction and the next one to the south is approximately a mile away.
- I-80 is carrying approximately 187,000 daily vehicles currently at San Pablo Dam Road, and the volume can be expected to grow in the future.
- Traffic congestion on the I-80 is substantial.
- The portion of San Pablo Dam Road leading from the Casino to I-80 is a four lane, urban roadway with intervening traffic signals serving local commercial development that constrains the ability to widen it.
- The City and Caltrans have been working on preparing a Project Study Report to make improvements to the San Pablo Dam interchange with I-80, but the funding and timing are not completely known nor committed yet.
- The Brookside Hospital/Doctors Medical Center is adjacent to the Casino and depends on the same roadway system for access for emergency vehicles and patients.

Therefore, the implication of these points is:

- The slot machines alone create enough new daily traffic to demand the capacity of up to two completely brand new 4-lane major roads.
- Even using all available roadways in the area, the congestion that will be introduced by the additional slot machines will overwhelm the capacity of the existing roadway system, and there is very limited opportunity to do anything to increase the capacity without tearing out existing development.
- Congestion will be extreme on the portion of San Pablo Dam Road leading to I-80 and will potentially cause this area to completely fail operationally.
- The impacts will not only occur in the worst commuting peak hours, but the impact will also be spread over the whole day and night as typically occurs with casino operations.
- Operations on I-80 itself will be dramatically affected by this substantial increase in traffic since it represents a potential increase to freeway traffic of over 25% above existing I-80 traffic. There is little, if anything, that can alleviate it short of building an additional lane along I-80 and creating a new interchange just for the extra casino traffic.
- Air quality and fuel consumption will degrade and increase respectively at the nearby surface intersections. There will be an estimated annual additional 53 thousand gallons of fuel consumed and 1.8 tons of CO released into the air just due to congestion at the nearby intersections.

The costs associated with mitigation of the Casino impacts include the following:

- Arterial Widening: \$3 million per lane per mile, including land acquisition costs. Assume one lane mile of widening would be required for a total cost of \$3 million.
- Freeway Widening: \$6 million per lane per mile, not including land acquisition costs. Assume ten lane miles of widening would be required for a total cost of \$60 million, plus additional land acquisition costs.
- Bridge Overcrossing Widening: \$500,000 per overcrossing. Assume five bridge overcrossings for a total cost of \$2.5 million.
- Interchange Reconstruction: \$25 million per interchange. Assume one interchange reconstruction for a total cost of \$25 million.

The total costs for roadway improvements associated with the Casino would be \$90 million, plus additional land acquisition costs for freeway improvements.

Technical Information

This section contains the results of the limited technical study we prepared to arrive at these conclusions.

Introduction

Casino San Pablo is currently operating at 13255 San Pablo Avenue in the City of San Pablo. The main entrance of the casino is the west leg of the intersection of San Pablo Avenue and San Pablo Dam Road. Casino San Pablo was established in 1995, and in 1999 the Lytton Band of Pomo Indians and the City negotiated the Municipal Services Agreement outlining details of taxation, facility expansion, security levels, and other operating and development procedures. The Casino is currently licensed to operate 100 gaming tables; it also has a live entertainment showroom, a full-service restaurant, a cocktail lounge, and entertainment facilities.

Casino San Pablo is considering expanding its operations. Because the magnitude of the expansion is unknown at this time, this study analyzes two scenarios: a) 2,500 additional gaming machines, and b) 5,000 additional gaming machines. This study examines the potential traffic impacts of the anticipated expansion. Existing and future analyses are performed to compare traffic conditions with and without the gaming expansion for both scenarios. The exact date of project completion is unknown at this time; however, Contra Costa County's long range traffic forecast model uses Year 2025 as its horizon year; therefore this study uses Year 2025 as the future year of analysis.

Trip Generation

Trip generation for the expansion of Casino San Pablo is based upon rates published in an article of the May 2002 issue of the ITE Journal. The article provides a trip generation rate for casinos based upon its number of gaming positions. A study prepared by Parsons Brinckerhoff titled, *Proposition 68 Traffic Impact Analysis*, also uses these published rates. Table 1 below outlines the trip generation rate as specified by ITE, and the trips for the expansion of Casino San Pablo for both scenarios.

Table 1 – Trip Generation

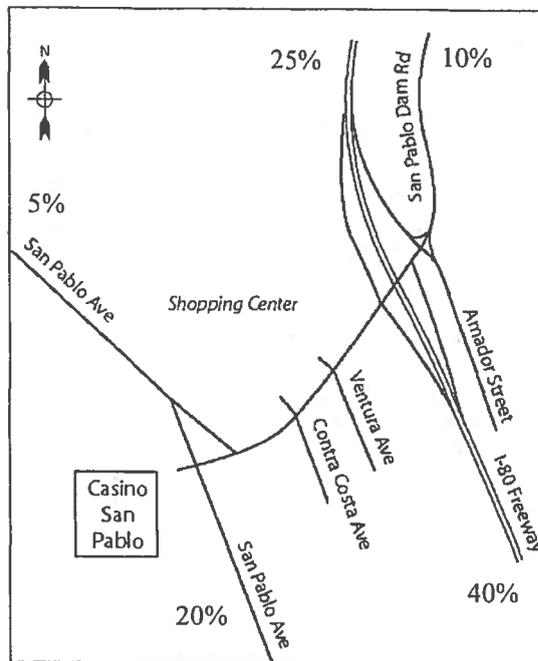
Land Use	AM Peak Hour			PM Peak Hour		
	Total	In (57%)	Out (43%)	Total	In (52%)	Out (48%)
Casino						
Trips/Gaming Position	0.470	0.2679	0.2021	0.788	0.40976	0.37824
2,500 Gaming Positions	1175	670	505	1970	1024	946
5,000 Gaming Positions	2350	1340	1011	3940	2049	1891

An expansion of 2,500 new gaming machines at Casino San Pablo is forecast to generate 1,175 trips in the AM peak hour, and 1,970 trips in the PM peak hour. The expansion of 5,000 additional gaming machines is forecast to generate 2,350 trips in the AM peak hour and 3,940 trips in the PM peak hour.

Trip Distribution

Casino San Pablo is anticipated to attract customers from the entire East Bay region and beyond. Therefore, a significant percentage of patrons are forecast to arrive on-site via the I-80 Freeway. Most are anticipated to use the San Pablo Dam Road ramps, while a portion might use San Pablo Avenue ramps, approximately one mile south of the project site. The Casino expansion will result in a considerable amount of traffic on I-80. However, the focus of this study is not traffic impacts on freeway segments. A small number of local customers currently access the Casino from San Pablo Avenue. It is assumed that this number will not increase significantly. An estimated 10% of project traffic will come from the Orinda/ Walnut Creek area via San Pablo Dam Road. Trip distribution forecasted for this study is shown in Figure 1.

Figure 1 – Trip Distribution



Existing Conditions

Existing turning movement volumes were collected in the AM and PM peak periods at all signalized intersections along San Pablo Dam Road between the main entrance of the Casino and I-80 Freeway ramps. Existing volumes were collected on Wednesday, October 27, 2004, by Baymetrics Traffic Resources, of El Cerrito, CA. These volumes were used for the existing conditions analyses.

Future Conditions (Year 2025)

Future traffic turning movement volumes were derived from model forecasts provided by the Contra Costa Transportation Authority. Existing traffic volumes were compared with Year 2000 Validation Model Runs to derive Model Calibration Correction (MCC) Volumes. Year 2000 volumes were used without adjustment to 2004 because regional land use and economic character have remained relatively unchanged since 2000. The MCC Volumes were added to

2025 Model Output Volumes to generate Adjusted Model Output volumes. Adjusted output link volumes and existing turning movement volumes were used to calculate 2025 turning movement volumes by the Furness Method, as described in Contra Costa Transportation Authority's Technical Procedures manual. Where necessary, further manual adjustment and volume balancing were applied to ensure a reasonable forecast.

Three scenarios were analyzed in the Future Year (2025) condition: Without Project, and With 5,000 additional machines, and With 2,500 additional machines. A comparison between the analyses results of these scenarios would forecast the potential impact of the proposed casino expansion.

Analyses Results

Traffic performance was analyzed at six signalized locations. The analyzed locations represent the most probable ingress and egress route future and current casino patron use to the casino. The intersection of I-80 Eastbound off-ramp, San Pablo Dam Road, and Amador Street functions as one elongated intersection controlled by a single traffic signal controller in real life; the complex operation was simulated using Synchro signal timing analysis software to reflect the special signal phasing required to serve traffic movements. This intersection complex has been reported as separate intersections.

Tables 2 and 3 present the results of the 2,500 additional machine scenario analyzed. Tables 4 and 5 present forecast intersection performance for the 5,000 additional machine scenario.

**Table 2 – Intersection Performance (2,500 Machines)
(AM Peak Period)**

Intersection	Existing (2004)		2025 Without Project		2025 WITH Project		Increase	
	Delay/LOS	ICU/LOS	Delay/LOS	ICU/LOS	Delay/LOS	ICU/LOS	Delay	ICU
San Pablo Dam Road & San Pablo Ave	15.6/B	0.577/A	129.0/F	1.171/G	172.4/F	1.412/H	43.4	0.214
Contra Costa Ave & San Pablo Dam Road	8.9/A	0.472/A	110.5/F	1.106/G	143.3/F	1.257/H	32.8	0.151
Town Center/Ventura & San Pablo Dam Road	10.1/B	0.524/A	113.6/F	1.178/G	133.1/F	1.296/H	19.5	0.118
I-80 WB Ramps & San Pablo Dam Road	17.6/B	1.104/F	207.4/F	2.906/H	213.1/F	2.984/H	5.7	0.078
I-80 EB Off Ramp & San Pablo Dam Road	27.0/C	0.544/A	221.6/F	1.063/F	229.0/F	1.166/G	7.4	0.103
Amador Street & I-80 EB On Ramp	37.1/D	0.937/E	249.3/F	1.824/H	251.2/F	1.899/H	1.9	0.075

Note: ICU= Intersection Capacity Utilization (a method of determining congestion at intersections.) LOS= Level of Service. Delay is seconds per vehicle.

In the existing AM peak hour, both ramps at San Pablo Dam Road currently operate at physical capacity limits of Level of Service E or F. Delays are within barely tolerable limits, and the ICU is approximately equal to 1.0, the physical limit to capacity. By 2025, all intersections are forecast to operate at Level of Service F. With the additional traffic anticipated from the expansion of the casino, all study intersections are forecast to experience severe congestion.

**Table 3 – Intersection Performance (2,500 Machines)
(PM Peak Period)**

Intersection	Existing (2004)		2025 Without Project		2025 WITH Project		Increase	
	Delay/LOS	ICU/LOS	Delay/LOS	ICU/LOS	Delay/LOS	ICU/LOS	Delay	ICU
San Pablo Dam Road & San Pablo Ave	37.1/D	0.827/D	136.4/F	1.191/G	198.6/F	1.595/H	62.2	0.404
Contra Costa Ave & San Pablo Dam Road	13.3/B	0.602/B	26.9/C	0.890/D	103.4/F	1.121/G	76.5	0.231
Town Center/Ventura & San Pablo Dam Road	14.4/B	0.726/C	36.5/D	0.965/E	131.2/F	1.195/G	94.7	0.23
I-80 WB Ramps & San Pablo Dam Road	19.7/B	0.988/E	119.4/F	1.942/H	156.9/F	2.116/H	37.5	0.174
I-80 EB Off Ramp & San Pablo Dam Road	22.0/C	0.688/B	116.9/F	0.735/C	175.1/F	0.834/D	58.2	0.099
Amador Street & I-80 EB On Ramp	21.6/C	0.955/E	166.4/F	1.526/H	198.4/F	1.659/H	32.0	0.133

Note: ICU= Intersection Capacity Utilization (a method of determining congestion at intersections.) LOS= Level of Service. Delay is seconds per vehicle.

In the 2,500-machine scenario, both AM and PM peak hours are forecast to experience severe congestion; although delay increases are not forecasted to be as substantial as the 5,000-machine scenario seen below. The intersection of San Pablo Dam Road and Town Center Avenue is forecast to experience to most significant increase in vehicle delay.

The ICU levels forecast are well above 1.0 and are as high as 3.2. A value of 3.2 can be interpreted to suggest that 3.2 intersections will be required where only one intersection is currently present. Delay values of 200 seconds or higher suggest that motorist will queue up excessively and wait for 4-6 green lights before finally getting through the intersection.

**Table 4 – Intersection Performance (5,000 Machines)
(AM Peak Period)**

Intersection	Existing (2004)		2025 Without Project		2025 WITH Project		Increase	
	Delay/LOS	ICU/LOS	Delay/LOS	ICU/LOS	Delay/LOS	ICU/LOS	Delay	ICU
San Pablo Dam Road & San Pablo Ave	15.6/B	0.577/A	129.0/F	1.171/G	225.7/F	1.747/H	96.7	0.576
Contra Costa Ave & San Pablo Dam Road	8.9/A	0.472/A	110.5/F	1.106/G	170.6/F	1.408/H	60.1	0.302
Town Center/Ventura & San Pablo Dam Road	10.1/B	0.524/A	113.6/F	1.178/G	163.5/F	1.447/H	49.9	0.269
I-80 WB Ramps & San Pablo Dam Road	17.6/B	1.104/F	207.4/F	2.906/H	218.8/F	3.248/H	11.4	0.342
I-80 EB Off Ramp & San Pablo Dam Road	27.0/C	0.544/A	221.6/F	1.063/F	240.2/F	1.269/H	18.6	0.206
Amador Street & I-80 EB On Ramp	37.1/D	0.937/E	249.3/F	1.824/H	253.1/F	1.974/H	3.8	0.150

Note: ICU= Intersection Capacity Utilization (a method of determining congestion at intersections.) LOS= Level of Service. Delay is seconds per vehicle.

**Table 5 – Intersection Performance (5,000 Machines)
(PM Peak Period)**

Intersection	Existing (2004)		2025 Without Project		2025 WITH Project		Increase	
	Delay/LOS	ICU/LOS	Delay/LOS	ICU/LOS	Delay/LOS	ICU/LOS	Delay	ICU
San Pablo Dam Road & San Pablo Ave	37.1/D	0.827/D	136.4/F	1.191/G	262.2/F	2.043/H	125.8	0.852
Contra Costa Ave & San Pablo Dam Road	13.3/B	0.602/B	26.9/C	0.890/D	187.5/F	1.352/H	160.6	0.462
Town Center/Ventura & San Pablo Dam Road	14.4/B	0.726/C	36.5/D	0.965/E	214.4/F	1.426/H	177.9	0.461
I-80 WB Ramps & San Pablo Dam Road	19.7/B	0.988/E	119.4/F	1.942/H	189.6/F	2.541/H	70.2	0.599
I-80 EB Off Ramp & San Pablo Dam Road	22.0/C	0.688/B	116.9/F	0.735/C	211.1/F	0.963/E	94.2	0.228
Amador Street & I-80 EB On Ramp	21.6/C	0.955/E	166.4/F	1.526/H	215.4/F	1.793/H	49.0	0.267

Note: ICU= Intersection Capacity Utilization (a method of determining congestion at intersections.) LOS= Level of Service. Delay is seconds per vehicle.

The two freeway ramp intersections are operating at Level of Service E in the existing PM peak hour scenario. By 2025, the intersections of San Pablo Dam Road at San Pablo Avenue, and San Pablo Dam Road at Ventura Avenue are also forecast to operate at deficient levels. In the 2025 5000-machine scenario, all study intersections are forecast to experience extreme congestion.

J. Arnold Torma, PE
Principal Engineer

**CITY OF ANTIOCH PLANNING COMMISSION
RESOLUTION NO. 2013-12**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
ADOPTING A CATEGORICAL EXEMPTION AND USE PERMIT FOR KELLY'S CARD
ROOM LOCATED AT 408 O STREET**

WHEREAS, the City of Antioch received an application from Anthony Keslinke for a Use Permit to operate a 6-table card room pursuant to Section 9-5.3803 of the Municipal Code and a shared parking arrangement under Section 9-5.1705 of the Municipal Code. The Use Permit is required to reopen the historic use, due to a lapse of operation. Both the City of Antioch and the California Gambling Control Commission will regulate the card room. The site location is 408 O Street, south of W 4th Street (APN: 074-130-012).

WHEREAS, the City determined that the project is Categorically Exempt from environmental review pursuant to Section 15332 of the California Environmental Quality Act Guidelines, as follows:

CEQA Section 15332 Findings	Project Applicability
a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.	The proposed use is consistent with the C-2 zoning designation and supports General Plan Policies 4.3.2.b, 5.4.11.a, and 6.4.2.b.
b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.	The project site is located within city limits at 408 O Street, and the parcel, APN 074-130-012, is 0.528 acres in size.
c) The project site has no value as habitat for endangered, rare or threatened species.	The site is located within an already developed mixed-use area with a preponderance of light industrial uses. The project site is almost entirely paved, and no vegetation would be removed as the result of this project.
d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.	The proposed use is resuming historic use of the site and will not result in traffic, noise, or emissions that substantially differ from the historic use.
e) The site can be adequately served by all required utilities and public services.	The site currently serves as a restaurant and bar, and has adequate utilities and public serves to support the card room.

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

WHEREAS, the Planning Commission on August 21, 2013, duly held a hearing, received and considered evidence, both oral and documentary.

NOW THEREFORE BE IT RESOLVED that the Planning Commission does hereby adopt the Categorical Exemption for the Kelly's Card Room project; and

BE IT FURTHER RESOLVED that the Planning Commission does hereby make the following findings for approval of a Use Permit for the card room and shared parking:

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

The card room is an ancillary use to the current establishment, which is a restaurant and bar/lounge, is consistent with historic use of the site, and will not be detrimental to the public health or welfare or injurious to the property or improvements in the project vicinity in a way that differs from prior use of the site. The application also incorporates security and surveillance provisions designed to improve site safety consistent with City standards. The use is compatible with the surrounding neighborhood and will provide additional entertainment services for the community at the subject site.

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

The General Plan designation is Neighborhood Commercial and the zoning is C-2 (Neighborhood/Community Commercial). The use of a card room is allowed under the General Plan and Zoning Code upon approval of a Use Permit.

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

The site is currently used as a restaurant and cocktail lounge/bar and is adequate in size and shape to accommodate the proposed use. Secondly, the site has operated as a card room in the past and is currently applying for a renewal for the state permit granted to operate a card room.

The proposed card room would occupy approximately 2,000 square feet, or 28% of the existing 7,100 square foot facility, and is ancillary to the primary use of the site as a restaurant and bar. There is adequate space on-site and in a City owned parking lot near the project site to accommodate the shared parking demand from existing uses as well as the Card Room if the applicant enters into an agreement with the City for additional parking or a similar arrangement as required by the conditions of approval. All yards, fences, parking, loading, landscaping, and other required features meet the requirements of the Zoning Code and are comparable to the surrounding uses in the neighborhood.

4. The project site, in combination with available on-street parking, contains adequate area to meet the City's parking requirements due to the overlap in parking demand that results from shared use of the site. As conditioned by project approval, there is sufficient on- and off-site parking available to support a shared parking arrangement pursuant to Municipal Code Section 9-5.1705.
5. The site abuts streets and highways adequate in width and pavement type to carry the kind of traffic generated by the proposed use.

The site has a single existing point of ingress and egress on O Street, and the on-site parking lot can currently accommodate approximately 30 parking spaces through restriping of the lot. Currently, there is a lack of sufficient on-site parking according to the Antioch Zoning Code pending compliance with one of the project-specific conditions of approval below.

6. The granting of such Use Permit will not adversely affect the comprehensive General Plan.

The General Plan designation is Neighborhood Commercial, which allows eating and drinking establishments as a primary use and classifies a card room as indoor recreation that is accessory to the primary use consistent with the General Plan.

NOW THEREFORE BE IT RESOLVED that the Planning Commission of the City of Antioch does hereby **APPROVE** UP-13-02 subject to the following conditions:

STANDARD CONDITIONS

1. The City of Antioch Municipal Code shall be complied with.

2. Conditions required by the Planning Commission, which call for a modification or any change to the Use Permit application submitted, will be corrected to show those conditions and all standards and requirements of the City of Antioch prior to any issuance of a Business License. No Business License will be issued unless the application meets the requirements stipulated by the Planning Commission and the standards of the City.
3. This approval expires two years from the date of approval (expires August 21, 2015), unless a building permit has been issued and construction has diligently commenced thereon and has not expired, an occupancy permit has been granted for the Card Room, or an extension has been approved by the Zoning Administrator. Requests for extensions must be received in writing with the appropriate fees prior to the expiration of this approval. No more than one (1) one-year extension shall be granted.
4. City staff will inspect the site to confirm compliance with the conditions of approval before the Card Room is allowed to open for business.
5. Any revisions to the building exterior materials, paint colors, and/or overall color scheme shall require a new application and shall be subject to Design Review approval.
6. Any required easements or rights-of-way for off-site improvements shall be obtained by the applicant, at no cost to the City of Antioch.
7. Advance permission shall be obtained from any property or easement holders for any work done within such property or easements.
8. The applicant shall obtain an encroachment permit for all work to be done within the public right-of-way.
9. This approval supersedes previous approvals that have been granted for this site.
10. Any extension in hours of operation, increase in number of employees, or change in other aspects of the proposed that deviate from the proposed project shall be brought back to the Planning Commission for review and approval.
11. Building permits shall be secured for any interior improvements not expressly evident in the materials submitted.

12. The applicant shall defend, indemnify, and hold harmless the City in any action brought by a third party to challenge the land use entitlement and shall enter into an agreement to effectuate this condition of approval as required by the City. Applicant shall also be responsible for any election costs if a referendum petition is presented.
13. All requirements of the Contra Costa Environmental Health Department shall be met.

Site Maintenance

14. No illegal signs, pennants, banners, balloons, flags, or streamers shall be used on this site at any time.
15. No signs shall be installed on this site without prior City approval.
16. The site shall be kept clean of all debris (boxes, junk, garbage, etc.) at all times.
17. Standard dust control methods shall be used to stabilize the dust generated by construction activities.

Fees

18. No permits or approvals, whether discretionary or mandatory, shall be considered if the applicant is not current on fees, reimbursement payments, and any other payments that are due.

Landscaping

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

PROJECT-SPECIFIC CONDITIONS

22. Prior to occupancy of the card room, the project applicant must comply with the following to ensure adequate parking is available on- and off-site to support the use:

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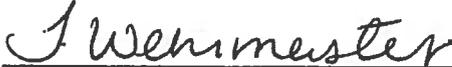
August 21, 2013

- a) Restripe the on-site off-street parking lot to add 3 new parking spots to bring the total number of off-street spots to 30 (see Parking Lot Restriping Plan).
 - b) Enter into an agreement consistent with the Municipal Code and City Policy to secure use of the City owned lot for overflow and employee parking and to offset any public costs associated with use of this facility or enter into a similar arrangement acceptable to the Community Development Director.
23. The Use Permit approval is contingent upon the applicant receiving a gaming license from the State of California and a Card Room License from the City of Antioch. A copy of the State license or other approval must be submitted to the City within 10 days of receipt by the applicant. The Use Permit shall become null and void if the gaming license is not issued.
24. The site shall be operated in conformance with the following provisions:
- a) The owner shall provide the City with an annual report of the review and changes to any operational or procedural changes made during their annual review.
 - b) The owner shall maintain, update, and implement the Security and Surveillance Plan submitted in conjunction with this application to the satisfaction of the Chief of Police.
 - c) The card room shall be an ancillary use to the restaurant establishment and the restaurant shall be fully operational during hours of operation of the card room.
 - d) The card room may operate 24 hours a day 7 days a week, or whatever hours are approved by the City Council and the Chief of Police, with the card room license whichever is more restrictive.

* * * * *

I HEREBY CERTIFY the foregoing resolution was duly adopted by the Planning Commission of the City of Antioch, County of Contra Costa, State of California, at a regular meeting of said Planning Commission held on the 21st day of August, 2013, by the following vote:

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


TINA WEHRMEISTER, Secretary to the
Planning Commission

**CITY OF ANTIOCH
PLANNING COMMISSION MINUTES**

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

**August 21, 2013
City Council Chambers**

CALL TO ORDER

Chair Sanderson called the meeting to order at 6:30 p.m. on Wednesday, August 21, 2013, in the City Council Chambers. She stated that all items that can be appealed under 9-5.2509 of the Antioch Municipal Code must be appealed within five (5) working days of the decision. The final appeal date of decisions made at this meeting is 5:00 p.m. on Thursday, August 29, 2013.

ROLL CALL

Present: Commissioners Azevedo, Motts, Miller, Westerman
Vice Chair Hinojosa and Chair Sanderson
Absent: Commissioner Baatrup
Staff: Community Development Director, Tina Wehrmeister
Assistant Engineer, Ken Warren
City Attorney, Lynn Tracy Nerland
Minutes Clerk, Cheryl Hammers
Staff Consultant, Scott Davidson

PLEDGE OF ALLEGIANCE

CDD Wehrmeister explained the new technology upgrade with new microphones and new voting platforms.

PUBLIC COMMENTS

None.

CONSENT CALENDAR

1. **Approval of Minutes:** June 5, 2013

On motion by Commissioner Azevedo, and seconded by Commissioner Motts, the Planning Commission approved the Minutes of June 5, 2013.

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

END OF CONSENT CALENDAR

NEW PUBLIC HEARINGS

2. **SLATTEN RANCH ROAD NAME CHANGE – Sunset Drive (east of Hillcrest Avenue) to Slatten Ranch Road** – The City Engineer requests a street name change for Sunset Drive (east of Hillcrest Avenue) to "Slatten Ranch Road".

AE Warren provided a summary of the staff report dated June 15, 2013.

OPENED PUBLIC HEARING

With no one wishing to speak, the hearing was closed.

CLOSED PUBLIC HEARING

RESOLUTION NO. 2013-**

On motion by Commissioner Westerman and seconded by Commissioner Azevedo, the Planning Commission approved the change of the street name of Sunset Drive, east of Hillcrest Avenue, to Slatten Ranch Road.

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

3. **UP-13-02 – ANTHONY KESLINKE** has applied for a Use Permit to allow operation of a 6 table card room and a shared parking arrangement pursuant to Section 9-5.1705 of the Municipal Code. The use permit is required to reopen the historic use, due to the lapse of operation. The card room will be regulated by both the City of Antioch and the California Gambling Control Commission. The site location is 408 O Street, south of W. 4th Street (**APN 074-130-012**).

City Attorney Nerland went over the speaker protocol with applicant having ten minutes to speak, any identified opponent have ten minutes to speak and all other speakers having three minutes to speak. She said that these times can be limited by the Commission if desired given time restraints.

CDD Wehrmeister introduced Scott Davidson of the consulting firm, Pacific Municipal Consulting. She clarified that this approval process is a two step process involving land use and then a separate City licensing requirement through the Police Department and City Council, and said that the State also has its own licensing procedures.

Scott Davidson provided a summary of the staff report dated August 15, 2013.

CDD Wehrmeister acknowledged the letter received on August 20, 2013 from Remcho, Johansen & Purcell which was distributed to the Commission and applicant prior to

meeting and said that the letter does not state who they represent. Copies of the letter were available in the Chambers for the public.

OPENED PUBLIC HEARING

Applicant, Anthony Keslinke, asked the Commission for approval to reopen Kellys Restaurant and Card Room. He said that due to the owner's declining health, the card room closed in July 2012 and that in October 2012, he went before the Gambling Commission and received unanimous support to allow Kellys to remain active pending City of Antioch approval. He said that this is not a request for a new business but is simply restoring the historic Kelly's to its original use: the facility is 7100 square feet, that 28% of the square footage houses six card tables and that 72% will be dedicated to fine dining and the cocktail lounge which is the same as it has been for 35 years. Mr. Keslinke said that reopening Kelly's will create new jobs and that they have a security and surveillance plan with indoor and outdoor security. He said that Kelly's has ample parking, that they have parking in their lot and an abundance of on street parking. He indicated that there are benefits of restoring Kelly's such as taking a partially vacant building and returning it to a productive use, a place for residents to frequent as they have for the last 35 years, to drive crime out of the area and to fill the need for thriving businesses. He said that he enjoyed taking dilapidated buildings and bringing them back to life. He left letters for the Commission from citizens who could not be here tonight.

As no one identified as a spokesperson for the opposition, Chair Sanderson began to call individual speakers.

Ken Gray said that he is a downtown resident living in town since 1984, that he supports the project which will bring jobs and people to downtown, that he knows Tony, and that he is asking for the Commission's support to give downtown a chance to come back to life.

Edna Esposito said that she lives downtown as a resident for over 35 years, that she has always enjoyed Kelly's which is within walking distance to her home, that she asks the Commission to support this project as the downtown has become a lot of vacant buildings, and that this will bring businesses back and will bring back revenue for the Police Department.

Martha Parsons said that she is supportive of Kelly's reopening and that she used to dine there for 35 years. She read letters from people who couldn't be here tonight from Chiropractor Dr. Sean Wright, Nancy Kelly and Brian Bellante. She left letters she did not have time to read from Kermit Schayltz, Hans Ho and Joy Motts.

Martha Rosales working with the First 5 Center said that their business represents many families of over 150 in the community, that opening the restaurant will bring opportunity for fine dining, that Tony has provided help to the center, and that opening the restaurant is going to help local people have somewhere to go for fine dining.

Joseph Adebayo said that he is on the side of the people and that he supports the project which will bring more jobs.

Ade Adeyemi said that he has a business on A Street, that Tony has done a good job on the ABC building having known him for the past 7 years, that he has lived in Antioch since 1991, and that he is in support of reopening Kelly's.

Rev. Joseph Langston said that this land use is already zoned for the area, that he values relationships, that he has been a pastor for 13 years and has known Tony for 13 years and values his relationship. He said that he is here to offer his 100% support for reopening Kelly's as it employs people and people in his Church need jobs. Rev. Langston said that Tony has brought back the ABC building, that he has been involved in building a home for the sick, and that the City needs people who are involved in the Antioch area who are concerned about the City like Tony, who is an honest man.

Jason Gonzalez said that he knows Tony who has been a blessing to him and his family, that his son has not been able to get a job and that Tony has offered him a job as soon as it opens up. He said he owns a business for security, that they have seen businesses like La Plaza and Humphreys who have closed their doors, and that he is very supportive of this project.

Keith Pace, owner of a business in the ABC building, said that he has admired Tony for over 10 years, that they became friends and when his business failed, Tony helped him out. He said he used to play at Kelly's, that parking was not an issue when Kelly's was open, that the business will be bringing jobs to the community, and that he supports Tony 150%.

Myron Bell, owner of a business, said that he gives support to Tony to reopen Kelly's who is genuine and caring. He said that Tony has helped to grow his business and that Tony is an outstanding businessman who will make all of us proud.

Ramesh Suman, real estate broker, said that he moved to Antioch about 20 years ago, that in looking for a building to rent went to the ABC building and left and that last year when he looked at the building again he was blown away with the brand new appearance of the building. He said that Tony will do an equally good job on the Kelly's Restaurant and Cardroom which will create more jobs but needs the support of the Commission. He said that he is staying in Antioch and would like to see it flourish.

Kimberly Kittell, salon owner, said that Tony gave her a chance to start her business in the ABC building and with the fire had to relocate for a little while. She said the business is very successful and that she supports Tony who has helped her and has always been 100% to help businesses in the community.

Joy Motts, lifelong resident of Antioch and representing the Rivertown Preservation Society, said that she was here tonight to give support for the reopening of Kelly's, that they have frequented Kelly's for years, that Tony is a successful businessman who has a passion for Antioch and will encourage other businesses to follow in his footsteps. She said she has never found Kelly's to be a cause for heightened crime in

neighborhoods and that reopening would take away a vacant and unkept building. Mr. Motts said that she has never heard about the Protect Antioch organization which opposes the use project and when visiting the website, the only issue that they find concerning is the reopening of Kelly's. She said she is in support of reopening Kelly's.

Bill Cook, 30 years resident of Antioch, said that he attends four to six neighborhood watch meetings a week, that he hears nothing negative at meetings about Kelly's, that he has met Tony who does quality work and talks to people and that he would bet that Tony has talked to residents around Kelly's. He said that Tony comes to Antioch willing to invest here although he doesn't live here.

James Phillips spoke to say that Tony is superman. He said that he has lived in Antioch for 23 years, that he owns a business on O Street and that when they come to work they have to run people off their doorstep and clean up. He said that they have met with Tony, that they have read through the use permit, and ask that the Planning Commission to approve Tony's request to remain open 24 hours a day given that criminals don't like light or security.

Tom Grossi, owner of a pharmacy on A Street, said that when he purchased his building, there were a lot of buildings in disrepair and the parking lot was used as a homeless encampment for a time. Tony offered him valuable advice about how to remodel his building, that Tony vastly improved his business and that Tony drove him around Kelly's and expressed his passion for redeveloping this part of Antioch one building at a time. He said the Planning Commission should approve this project.

Ruthie Evans of Scotto's Auto Body across the street from Kelly's, said that their concern is with the homeless and the problems that come with that. She said they are lifetime residents of Antioch, patronized Kelly's, live in that area and have had a firsthand view of what Kelly's was like full swing and then watched the decline. Ms. Evans said that Kelly's has never been a problem in the community, that it enhanced their business and hopes the Commission will support it.

Diane Gibson-Gray said that she has lived here for over 50 years, that she works downtown where there is a problem with homeless who take over sleeping there and using the property for a toilet, and that anytime you can have a business that thrives, you prevent that from happening. She said she was flabbergasted by the website and the mailer and that the only thing they were offering was free food. She hopes the Commission approves the project.

Vince Fletcher, property owner on C Street, said he supports the reopening of Kelly's.

Kay Power, resident, said that she remembers Kelly's and that their food was excellent. She never saw problems and this would be a nice asset to Antioch. She said that they have remodeled the Historical Society which is just down the block from Kelly's and that Tony is miracle worker.

Karen Outlaw said that Tony is her landlord and that Kelly's should reopen.

Samuel Gbilia, local real estate broker on A Street, said that he started business in 1989, that he supports this project and that he asked the Commission to approve it.

Sean Wright, local resident and chiropractor, said that he supports this endeavor and that Tony has helped so many including himself. He said when he moved to Antioch he had no money, Tony answered the phone, he went in to the ABC building and Tony said if you sign a six year lease I will build it out at no cost. Mr. Wright said he was there until the fire and that he has now been able to buy his own building. He said that Tony has created business, has not asked for thank yous, that this room is filled with people who have been blessed by Tony and that this is a huge opportunity for Antioch to have this developer work here.

Gustavio Orocio, resident for over 20 years, spoke to say that he is an investor in Antioch, that he is here to support Tony, that he is impressed by how many people are in support of him and that he has helped him as well. He said that he owns a sweeping business and that he sweep streets but does not get paid for it. He is in favor of Tony as a friend and as a business owner and is here to support him.

Jeffrey Belle, resident of Antioch, said that he is pro business, that he supports Tony but has experience working with the tribal gaming and knows that when you mix business and gaming, it is a very interesting mixture. He has seen the results and would caution that there are some issues with business and gaming but is supportive of business in Antioch.

Chair Sanderson then read comments of people not wishing to speak:

Kay Porter: "As a business owner I support business downtown. I always enjoyed taking clients for dinner at Kelly's and hope for more of the same. I think you should allow this business to re-open and not allow fear to make your decision. I support the re-opening of Kelly's."

Juan: "Why is it that every comment is about the restaurant? Lets talk about the card club. If gambling is harmless entertainment, then why does it destroy so many families. Crime will not rise. Gamblers don't win/house does that. Means that gamblers will need to get the money lost by any means necessary."

Dorothy March: "At a time of financial crisis we need positive business not ways to lose money so many don't have. We do not need a heavier load on our understaffed police force. Please contact me if you would like more input as I was one of the four women who founded the Antioch Citizens for Clean Air and Water in 1973. Thank you."

Ajit Singh Sooch: "Against Kelly's cardroom."

Rita Estrada: "I am one of the persons who knows Mr. Tony Keslinke. He is a very honest and very good person. I highly recommend him. If you have any questions, please call me."

Roger Estrada: "I give my sincere recommendation to Mr. Tony Keslinke. He is a wonderful person. I know him for ten years. He is honest and correct person."

Charles Davis, resident, said that from a business side, he doesn't know much but as a person he came here from out of prison lost but always knew construction. He said that Tony gave him a chance when nobody else would and that he is fully support of whatever Tony is doing as he will bring jobs to Antioch.

CLOSED PUBLIC HEARING

The Planning Commission took a recess.

MEETING RESUMED AT 8:07 PM

Commissioner Westerman stated that there has been a good deal of talk about parking, and asked about only one handicap space behind the building and if there was a requirement for more to which CDD Wehrmeister said that the business would comply with all ADA disability parking requirements.

Vice Chair Hinojosa asked staff to go over Attachment E to clarify the picture and the parking spaces and asked if the figure was to scale.

Consultant Davidson went over the attachment noting that although it is not to scale, that the striping plan in black creates diagonal spaces to pick up additional spaces and that the white lines are existing spaces.

Vice Chair Hinojosa asked if the proposed parking plans were reviewed to satisfy turning radius to accommodate 30 spaces and that they could say with certainty that 30 spaces could be on site to which Mr. Davidson said that this a plan level drawing with basic dimensions of site, could not say with certainty and that a more detailed plan will be provided later to confirm that.

Vice Chair Hinojosa asked what happens if they are not able to support 30 stalls to which Consultant Davidson said that overall parking included the parking lot across the street which they felt would allow the facility to function adequately.

Vice Chair Hinojosa asked about loading spaces and the right of way not being acceptable for loading spaces to which the Consultant said loading would occur from the curb in front of the building. CDD Wehrmeister said that loading needs to be accommodated on site and in the event of large vehicles coming in, vehicles would be able to pull in at a time specified so as not to cause disruption. CDD Wehrmeister said that applicant would enter into an agreement with the City for the parking lot across the street to accommodate overflow parking and that there is on street parking but that the actual required spaces would be in the parking lot.

Vice Chair Hinojosa asked applicant about lighting not shining directly onto adjacent property, and is wondering if any considerations have been made to deal with lights in the parking lot, particularly with the shelter which shares a wall. The Consultant

responded that this would typically be accomplished through shielding of the light for overfill and that there can be a condition to specify that.

Vice Chair Hinojosa asked staff if this project triggers landscaping requirements which would compromise parking spaces in the back to which CDD Wehrmeister said that because the site is not being demolished or renovated, what was there would be grandfathered in and no space would be lost to landscaping. Consultant Davidson said that the diagonal spaces would create islands for landscaping opportunities.

Vice Chair Hinojosa asked about the section of the Municipal Code dealing with card rooms noting the hours be approved by the Chief of Police and questioned if that was reviewed for 24 hours 7 days a week, or to close 2:00 a.m or 6:00 a.m.

Commissioner Motts questioned staff about the fee charged per table per card room to which CA Nerland said that there are historical inconsistencies with business license tax revenue but as part of the license application from City Council there would be further discussions about the business license tax.

Commissioner Azevedo confirmed with staff that regardless of the lounge hours, the business would continue to follow ABC requirements and that applicant could clarify the hours of the restaurant.

Commissioner Miller asked staff if given the 24/7 operation if there were discussions or proposals limiting parking on the street to allow for street cleaning to which CDD Wehrmeister said that the Commission can condition the applicant to install signage on the street.

REOPENED PUBLIC HEARING

Commissioner Motts said that a speaker had mentioned having security and customer presence could be a benefit for a 24 hour operation and asked applicant if there were other reasons to which applicant said that the area is safer and better attended when Kelly's is open with onsite security and surveillance. Mr. Keslinke replied that from a business prospective, another cardroom is open 24 hours which does not have kitchen services and Kelly's would have kitchen services but possibly a limited menu during the wee hours. He said that at minimum he thinks having a 24 hour operation Thursday through Saturday and possibly Sunday through Wednesday best serves the community.

Vice Chair Hinojosa asked applicant to walk through the site plan attached to the application to try to get a sense of the cardroom location and ratio of uses. Applicant responded that the lower left is the cardroom, the middle is the restaurant and kitchen, the cocktail lounge and dancing is to the right and that the office and bathrooms are in the upper left.

Vice Chair Hinojosa stated that looking at site plan, it appeared that the cardroom looked bigger than the restaurant and asked applicant if food would be served in the cocktail lounge to which applicant responded that they are looking for an open scheme and will work with building but envision improvements to allow all the elements to work

together instead of segmented areas.

Vice Chair Hinojosa asked applicant about ingress and egress to which he responded that the cocktail has its own entrance on the northeasterly portion of the building, then proceeding south is the next entrance which leads to the cocktail and into the restaurant area, then proceeding further south on O street there is another dedicated entrance into the card room. He said that the main portal into the building goes into the restaurant and there are three egresses in the rear, all functional.

Vice Chair Hinojosa confirmed with applicant that the entrance used by people under 21 was just for the restaurant from the rear and O Street. She then asked applicant how he was going to deal with loitering, noise and criminal activity to which applicant responded that he likes to give solutions and consequences for actions, that he understands concerns and needs and does his very best to support the efforts going on there, being very clear about boundaries.

Chair Sanderson asked applicant if he had read all conditions to which he responded that he had. She then confirmed with applicant that the Use Permit is contingent upon receiving a gaming license from the State. Applicant added that the business still has an active gaming license from the State as of today showing Kelly's license to be active.

RECLOSE PUBLIC HEARING

Commissioner Azevedo stated that in looking through the staff report and trying to resolve issues that he is feeling much better about Kellys. He said that people will ask why you made this decision and that he has a laundry list of why he is going to support this project, that he feels that parking and hours of operation issues can be worked out and he thanked applicant for making a difference in our community.

Commissioner Westerman stated that over the years he has gone to Kellys although he has never been to the cardroom, that he has always had a good experience, that this is a great asset to that area and that he is glad to see Kellys is coming back.

Commissioner Motts concurred with the other commissioners. He said that he is a resident of downtown, that he has never had a problem with the previous Kellys, that he anticipates better things here with this project, and that he hopes that all stipulations can work to make it a positive venture.

Vice Chair Hinojosa stated that she is torn on this project and that she has serious concerns about this project meeting the parking requirements and some of the other issues raised in the report. She said that she is not the kind of person who believes we should tear down and build parking lots but the code is the code. She is also concerned that no issues in the staff report have been raised with attractive nuisances such as loitering and noise and that some conditions can be added to the project to prohibit loitering on the sidewalks and streets around the establishment. She said that she did not see anything in the report for designated smoking areas for patrons and she would like to see the location where that is proposed. She said it would also be nice to have a condition that live or recorded music not be audible beyond the property lines. She said

that based on the materials before the Planning Commission today and with testimony received that she has a hard time to say that the project how it stands meets the use permit requirements and that she would like to see the item continued to address items, specifically parking issues.

CA Nerland interjected that Captain Orman of the Police Department was present and available to address the Commission's questions

Commissioner Miller stated that his only concern is time of operation being open 24/7 and that he could support being open 24/7 from Thursday to Saturday but being closed between 2 AM and 6 AM and Sunday through Wednesday to give the area time to rest and to maintain for street cleaning or whatever.

Chair Sanderson asked Captain Orman if keeping the business open 24/7 with enhanced security is safer to which Captain Orman responded that while this may deter some issues with loiterers, there are other issues and concerns such as DUI accidents, fights and robberies which are very taxing on resources given staffing levels being very low at certain times of the night.

In response to Chair Sanderson's inquiry, CA Nerland stated that depending upon what the Planning Commission desires to do about the hours that the City license process would rest with the City Council following a report and recommendation from the Chief of Police.

Chair Sanderson respectfully disagreed with Vice Chair Hinojosa on parking and said that there are contingencies that even if the Planning Commission approved, the application would still have to meet requirement to get the use permit and would have to enter into an agreement with the City to cover any overflow parking issues. She said that she feels that deficiencies have been addressed in paragraph 22 of the proposed resolution. She said that there are going to be security problems, that criminal activity can happen anywhere and that she is open to passing the 24/7 operation and approving the resolution.

Commissioner Azevedo clarified with staff that there is one other card room in town which can operate 24/7 but that games generally break around 2 to 3 o'clock in the morning.

Chair Sanderson clarified with CA Nerland that the Planning Commission has two options, to move for a continuance to allow staff to provide an updated report, or to make a motion with revisions as follows:

Changing Condition 22b to add "Enter into an agreement consistent with the Municipal Code".

Add to Condition 24c that the card room shall be an ancillary use to the establishment.

Condition 24d that whatever hours of operation the Planning Commission requires to be approved by the Chief of Police, with the most restrictive prevailing

Commissioner Motts made a motion to approve.

CA Nerland stated that there is still an open question regarding hours of operation to which Commissioner Motts stated the motion would include a request for 24/7 operation with review by City Council and the Chief of Police.

Vice Chair Hinojosa stated that she is still not satisfied with the parking issue, that she would like to see an extension to submit materials and that she will not vote in favor.

Commissioner Azevedo stated that regarding parking, there is a history of entering into shared parking agreements, that historically speaking parking has not been an issue and that he is comfortable that the parking situation with the shared agreement is contingent upon that.

Commissioner Miller seconded the motion.

RESOLUTION NO. 2013-**

On motion by Commissioner Motts and seconded by Commissioner Miller, the Planning Commission approved UP-13-02, subject to all conditions with the following changes:

22b. to read "Enter into an agreement consistent with the Municipal Code and the City to secure use of the City owned lot for overflow and employee parking and to offset any public costs associated with use of this facility or enter into a similar arrangement acceptable to the Community Development Director."

24c. to read "The card room shall be an ancillary use to the establishment and the restaurant shall be fully operational during hours of operation of the card room."

24d. to read "The card room may operate 24 hours a day 7 days a week, or whatever hours are approved by the City Council and the Chief of Police, with the card room license whichever is more restrictive."

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

ORAL COMMUNICATIONS

CDD Wehrmeister stated that there does appear to be a quorum for the September 4th meeting and she wanted to let the Commission know that there will be a regular agenda with an item dealing with the Housing Element. She said that the City Council is currently embarking on a strategic plan and would like to meet with all of the boards and commissions which may in fact occur on the 4th in which case the regular meeting would be cancelled to allow the Commissioners to attend that session.



Reopening of Historic Kelly's Restaurant & Card Room in Downtown Antioch



Local Citizens Who Support Tony Keslinke in his effort to Reopen Kelly's in Downtown Antioch

Brian Bellante, Antioch Business Owner
 Jim Boccio, Antioch Property Owner
 Bill Cook, Antioch Neighborhood Watch*
 Katie Cook, Rivertown Preservation Society*
 Jay Evans & Ruth Riley-Evans, Scotto's Auto Body/Neighboring Business Owner
 Hans Ho, Antioch Neighborhood Watch*
 Nancy Kelly, Community Leader/Antioch GAP Volunteer*

ac Negrin, Antioch Business Owner
 Barney Parsons, Former Mayor of Antioch
 Kay Porter, Rivertown Business Owner
 Kay Power, Antioch Community Leader
 Susan Welch, Rivertown Resident
 Dr. Sean Wright, Antioch Chiropractor/
 Antioch Chamber of Commerce CEO*
 Joseph Adebayo, Antioch Resident/Past
 Chapter President NAACP*
 Myron Bell, Minority Business Owner
 Dale Bond, Antioch Resident
 Vince Fletcher, Local Property
 Owner/D.R. Horton Employee*
 Diane Gibson-Gray, Member, Antioch
 Unified School District Board of
 Directors*
 Jason Gonzales, Antioch Resident/
 Security & Crime Prevention
 Professional

*Titles for identification purposes only - does not imply an endorsement from the organization.

History

The historic Kelly's Restaurant & Card Room at 408 O Street in Downtown Antioch has been a popular Antioch landmark since its opening 35 years ago in 1978. Thriving primarily as a restaurant and bar for local residents, Kelly's also operated six (6) card tables, which were regulated by both the California Gambling Control Commission and the City of Antioch. In the past few years, Kelly's went into disrepair and finally closed its doors in 2012 due to the health and age of its owner.

Reopening Kelly's

Local businessperson Tony Keslinke is applying with the City of Antioch to obtain a use permit to reopen Kelly's Restaurant and Card Room. The first hearing before the Antioch Planning Commission is scheduled for August 21st. The California Gambling Control Commission, which regulates all card rooms in California, unanimously on a 5 - 0 vote approved the continuation of its state license on October 25, 2012.

The Benefits of Reopening Kelly's

The benefits to reopening Kelly's are many:

- Restoration and renovation of an historic 35-year facility
- An established place for Antioch residents to frequent in the Downtown
- Increased economic activity to supplant the current blight
- Creation of 40 full and part-time jobs
- 100% paid for with private - not taxpayer - dollars
- Reputable new owner with a track record of restoring dilapidated Antioch buildings and returning them back to productive use
- Elimination of homeless, squatters, scavengers and other would-be criminals for a fully secured and professionally-patrolled active business



The currently vacant Kelly's facility has become a magnet for the homeless and would-be criminals.



Squatters in vehicles and abandoned camper shells have taken over the abandoned 26-space parking lot behind Kelly's.



The application for reopening Kelly's has been thoroughly reviewed and has been given the go-ahead by the Antioch Police Department.

More Local Citizens Who Support Tony Keslinke in his effort to Reopen Kelly's in Downtown Antioch

Ken Gray, Antioch Community Leader

Tom Grossi, Neighboring Downtown Property Owner

Ken Joiret, Antioch Property Owner

Kim Kittell, Minority Woman-Owned Business Owner

Pastor Joseph Langston, Antioch Religious Leader

Chris Miliusis, Antioch Resident/Local Business Owner

Sandra Padilla, Latina Woman-Owned Business Owner

Martha Parsons, Former Antioch City Councilmember/Community Leader

Angelina & Norma Sandoval, Latina Business Owners

Ramesh Suman, Director, Delta Board of Realtors*

Edna Esposito, President, Sons of Italy*

Joy Motts, President, Antioch Unified School District Board of Directors*

Randy Sabatte, Antioch Fast Signs

(Partial Listing)

*Titles for identification purposes only – does not imply an endorsement from the organization.

The renovated historic Kelly's Restaurant & Card Room will have seating for 85 people in the restaurant and lounge area and a maximum of 48 people in the six-table card room.



The application for reopening Kelly's has been thoroughly reviewed and has been given the go-ahead by the Antioch Police Department.

Entities Recommending/Ratifying the Reissuance of a Permit for Kelly's

The following entities are recommending approval of the reissuance of a Use Permit for Kelly's: Antioch Police Department, Antioch Planning Department staff, and the California Gaming Control Commission.

Misconceptions about Kelly's Disseminated by Out-of-Town Special Interests and High-Priced Lawyers Employed by the California Grand Casino in Pacheco

Q: Is the applicant requesting a NEW application to open a NEW Restaurant and Card Room in Antioch?

A: NO. Until 2012, when Kelly's Restaurant closed its doors, Kelly's was a popular location for dining and entertainment in Antioch for 35 years. The applicant, a local business owner with a proven track record of turning blighted properties around, is applying to REOPEN the historic Kelly's – NOT establish a new business.

Q: How many card tables will be operating at Kelly's and will this application bring Gambling to Antioch?

A: Like the former establishment, the reopening will only permit six (6) card tables and no more at Kelly's Restaurant and Card Room, which will be fully regulated and has already been approved by the California Gambling Control Commission. Kelly's facility is 7,108 total square feet in size, 2,000 square feet of which will house the six card tables. Kelly's, like it has been for 35 years, will operate mainly as an upscale restaurant and cocktail lounge for local residents, with a minimum of space allotted to card room activities.

Q: Will the reopening of Kelly's bring more crime to Downtown Antioch?

A: NO. Unlike the propaganda disseminated by an out-of-town casino, the reopening of Kelly's will likely lower crime in the area, not increase it. Currently, the building is under disrepair and is inundated by homeless and squatters. The facility is currently an eye sore and a neighborhood crime-magnet. The historic Kelly's that operated for 35 years had no history of burden to police or first responders. The renovated Kelly's, should its permit be reissued, will have 24-hour video surveillance, a strict policy for patrons, and dusk to dawn professional security around the perimeter of the facility. The application to the City of Antioch to reopen Kelly's has been reviewed and approved by Antioch Police Department.

Q: Who is the applicant requesting reissuance of a permit to reopen Kelly's and who is financing the opposition campaign against the reopening of Kelly's?

A: Tony Keslinke, an Antioch businessperson, is applying for approval to reopen the historic Kelly's Restaurant and Card Room. Mr. Keslinke has a proven local track record of taking blighted buildings and restoring them for productive use in Downtown Antioch and Pittsburg. His office is located at 2006 A Street in Downtown Antioch. The California Grand Casino, a large 19-table gambling establishment in Pacheco, is financing a multi-thousand dollar smear campaign to prevent competition, however small, so that our residents are forced to spend their entertainment dollars outside of our town.

For more information about the reopening of the historic Kelly's Restaurant & Card Room, please contact Tony Keslinke at (925) 732-7364 or email tkeslinke@hotmail.com.

Police Department

300 L Street, Antioch, CA 94509



ALLAN CANTANDO
Chief of Police

(925) 779-6900

October 15, 2013

Mr. Anthony Keslinke
2006 A Street
Antioch, CA 94509

Subject: **Application for Card Room License at Kelly's Card Room,
408 O Street, Antioch, CA: Incomplete Notice**

Dear Mr. Keslinke:

You have indicated a desire to obtain a Card Room License from the City of Antioch, in addition to license from the State Gambling Control Commission and a use permit from the City of Antioch. As you know, the City has not had an application for a Card Room License in many years and thus no application forms exist. You provided some documentation to the Police Department regarding your operations, but the Department still has questions, as we discussed at our meeting yesterday.

Therefore, I deem your application incomplete at this point and request the following information from you. The documentation and information should be submitted in writing and verified by you that the information is accurate and you are submitting the information under penalty of perjury.

1. State Application for a Card Room License – You submitted some information from your 2009 application to the State for a Card Room License, which was apparently not granted or not completed for some reason. Can you provide the reason why this State license was not completed or granted in 2009?

In addition, we request a copy of the License application to the State for Kelly's and an indication of when that background investigation will be completed by the State. If the State will not issue a State license until the City license is granted, please have the State indicate so in writing and explain the extent of the background investigation that will occur by the State.

This will allow the City to understand specifically what and when the State will do to avoid the City duplicating efforts but also ensuring that all needed efforts are undertaken.

2. Security - Please provide information on your operational plan for using metal detectors and a license scanner/reader to ensure the safety of your patrons and that patrons are of a lawful age and not using altered or false identification.
3. Parking -- Please provide information on the use of valet parking as both a convenience and safety feature for patrons.
4. Supervision and Operations – As I understand from the Planning Commission hearing, you indicated that you will be a very active presence at the card room. Does that mean that you will be at the card room whenever it is open, seven days a week? Please provide more details regarding your presence onsite during operations of the card room and how and who will supervise the card room operations when you are not present. Please provide sufficient information regarding these individuals so that the Department can proceed with a background check of them unless the State has already done so.

Likewise, who and how will the bar and restaurant operations be supervised? Will the individuals working in the bar and restaurant be licensed by the State since these individuals will have access to the card room?

As you know, the Antioch Municipal Code section 5-4.05 requires that the Card Room License be issued only to an “established place of business of sufficient size and volume that the already established business is the major business of the place rather than the business of operating such card room.” Please indicate how you will meet this requirement. In addition, I believe that you have indicated that the card room operations will employ 34 employees but the restaurant and bar will employ 15 employees. Are these numbers accurate?

We understood from the Planning Commission hearing that you were the only investor/owner in the Kelly's business. Can you confirm as I am now understand that you are now considering having investors/other owners or concessionaires in the bar and restaurant? If so, who are these individuals and please provide sufficient information so that the Department can proceed with a background check of them?

Finally as you know, the Department is very concerned with 24/7 operations. Please indicate how those hours can be reduced to avoid an impact on the City's already limited police staffing, particularly during the night-time hours.

I have tried to be comprehensive with this letter as to the Card Room license, but it is possible that the information that you submit in response to these questions will raise further questions or requests for additional information. Your patience is appreciated.

As mentioned above, the City has not had a card room license application in many years and the Department's staffing levels unfortunately make reviewing your application a challenge. In addition, as you know, there will be implementation details with the Use Permit and the Parking Lot lease still needs to be negotiated.

Sincerely,



Leonard Orman
Police Captain

cc: Jim Jakel, City Manager
Allan Cantando, Police Chief
Lynn Tracy Nerland, City Attorney



October 25, 2013

Captain Leonard Orman
Antioch Police Department
300 L Street
Antioch, CA 94509

Dear Captain Orman,

Thank you for taking the time to meet with me to discuss the application I have before the City of Antioch for a License to operate Kelly's Card Room at 408 "O" Street in downtown Antioch. Deterring crime in Antioch is an important goal and I applaud the efforts of the Antioch Police Department in addressing crime downtown and in our neighborhoods.

I also understand the limited resources in which the Antioch Police Department operates and, if the Kelly's license is granted, I will work diligently with the P.D. on efforts to deter crime on "O" Street and in Antioch's downtown.

In my efforts to renovate the ABC Building on "A" Street, attracting new small business owners there, as well as my work to restore Friendship Manor on Cavallo Road in Antioch, I have been a committed member of the Antioch community.

If granted a license for Kelly's, I will continue to be an advocate for bringing vitality, responsibility and a new life and future to areas in Antioch currently home to the homeless, drug dealers and would-be criminals. It is my goal to work closely with the neighbors who own businesses and property on and around the Kelly's facility on "O" Street to lower crime in that neighborhood.

That being said, I welcome the opportunity to thoroughly answer the questions you outline in your letter of October 15, 2013, so that you have all the information necessary to make an informed decision on the license request before you for Kelly's Card Room.

1. **State Application for a Card Room License in 2009** - On behalf of the Antioch Police Department, you asked for more details about why no State license was granted to me in 2009. The short answer is that I never submitted an application to

the State. I entered into a contract to conditionally purchase a card room in another jurisdiction. While I received approval from the city council in that jurisdiction to move forward, I did not complete the purchase due to unsettled economic conditions and an inability to agree upon a final purchase price with the prior owner. Therefore, I did not submit an application to the state as I did not purchase the facility.

License Application for the State for Kelly's – Captain Orman, you requested a copy of the state license application for Kelly's. At this time, there is no formal license application to the state for Kelly's. Full state review and vetting will take place after a formal application has been submitted to the California Gambling Control Commission. A City of Antioch representative has already requested information regarding the state background check procedure and timing and has received a formal written response from the California Gambling Control Commission as discussed in greater detail below. Also, on April 11, 2013, I completed a Live Scan as requested by the Antioch Police Department. (*See Kelly's Public Safety Binder Section "Tony Keslinke Live Scan Application"*)

The California Gambling Control Commission's Actions on October 25, 2012 – I appeared before the commission on October 25, 2012 to answer questions about my intent to purchase Kelly's. At that time, the commission was considering revoking the state license for Kelly's as a result of non-compliance issues with its owner, Mr. Cianfichi. At that meeting, the commission called Antioch City Manager Jim Jakel on the telephone to speak about the possibility of the new-incoming city council making a determination in support of re-issuing the city license for Kelly's under new ownership. As a result of that conversation, the commission voted to keep the license intact, to give me additional time to work with the city on a new Use Permit and License for Kelly's. The transcript from the commission's October 25, 2012 meeting addresses its desire to have me hold off on a formal application until the City of Antioch can weigh in on licensure. (*See Kelly's Public Safety Binder Section "CA Gambling Control Commission Transcript October 25, 2012"*) In addition, I would like to submit for your review a letter of response from the commission to a City of Antioch representative in which he requested the time frame and process involved in the commission's licensure procedure. This letter from the commission dated August 30, 2013 again states the commission's desire to wait for local review before taking action on Kelly's. (*See Kelly's Public Safety Binder Section "CA Gambling Control Commission Letter August 30, 2013"*)

A Copy of the Application that Will Be Submitted to the State Upon Licensure Approval by the City of Antioch – Upon local approval, a full application will be

submitted to the California Gambling Control Commission. *(See Kelly's Public Safety Binder Section "Sample CA Gambling Control Commission License Application")*

Background Investigation Conducted by the Bureau of Gambling Control – In this same letter dated August 30, 2013, Tina Littleton, Executive Director of the CA Gambling Control Commission, addresses the issue of background investigations. Ms. Littleton says in her letter *"With regard to the issue of the scope or extent of the background investigation, you were referred to the Bureau of Gambling Control because they are the agency responsible for performing background investigations for applicants seeking a State gaming license."* *(See Kelly's Public Safety Binder Section "CA Gambling Control Commission Letter August 30, 2013")* We have also included for your review the Mission Statement of the Bureau, which is managed by the Office of Attorney General Kamala Harris, as well as a copy of the detailed application every individual involved in a card room establishment must fill out prior to being fully investigated. *(See Kelly's Public Safety Binder Section "CA Gambling Law, Regulations & Resource Information 2013")* In addition, the California Department of Justice's "Gambling Law, Regulations, and Resource Information 2013 Edition" in Section 19857 states the following: No gambling license shall be issued unless, based on all of the information and documents submitted, the commission is satisfied that the applicant is all of the following: (a) A person of good character, honesty and integrity. (b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this state, or to the effective regulation and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto. Furthermore, Section 19859 states that the "commission shall deny a license to any applicant who is disqualified for conviction of a felony, conviction for any misdemeanor involving dishonesty or moral turpitude within the 10-year period preceding submission of an application, association with any criminal profiteering activity or organized crime, or defiance by the applicant of any legislative or official investigatory body. Section 19867 of this same document addresses the applicant's need to pay the Bureau for the costs of investigating the applicant and processing the application. *(See Kelly's Public Safety Binder Section "CA Gambling Law, Regulations & Resource Information 2013")*

2. Security – Metal Detectors and Age Verification

We are not planning for the use of metal detectors at Kelly's – There is not a card room in California that utilizes metal detectors at the entrances of their establishments. Not even the large card rooms, such as The Oaks in Emeryville (49 tables), Club M8trix in San Jose (49 tables), or Club One in Fresno (51 tables), utilize metal detectors. *(See Kelly's Public Safety Binder Section "List of Northern California Card Rooms")* We are seeking re-licensure for a small 6-table card room – this is not a Vegas-style casino. Card players, especially in a smaller establishment, tend to be local, focused and strategic – not raucous or wild. Card rooms historically appeal to a more mature demographic, which will likely be the client base at Kelly's should its license be approved. This "mature" client base would likely be adverse to removing articles of clothing, shoes, belts and emptying out pockets. The use of metal detectors in the instance of Kelly's could also unfairly discriminate against the growing population of veterans and older Americans with disabilities and metal medical implants and pacemakers.

We are committed to using age-verification equipment at Kelly's – Identifying underage users is a responsibility of every bar and card room, regardless of its size. Kelly's will utilize an age-verification system that is pre-approved by the Antioch Police Department in order to prevent under age customers from purchasing alcohol beverages and participating illegally in the card room. We like a San Francisco company called Servall Data Systems – a system that is also used by Tailgaters Bar & Restaurant in Brentwood. *(See Kelly's Public Safety Binder Section "Servall ID & Age Verification System")* Tailgaters utilizes the Servall ID system for all who enter the establishment after 10 p.m. According to the manager of Tailgaters, they like the system because it determines whether an ID is valid and it alerts management to individuals who have been flagged in the system for past troublesome behavior. We are open to working with the Antioch Police Department to identify a favorable system and to determine the hours this system will be in use for the Bar area and for the Card Room, as well as the approval of guidelines for operation.

Other Security Options – We are open to working with the Antioch Police Department to provide the utmost in security for customers and employees alike. Some of these options may include APD approval of proposed surveillance equipment, APD real-time monitoring of the surveillance system, APD control and access to cameras inside or outside the facility as necessary, or other security measures as deemed prudent and necessary.

3. Parking & Valet Service

We are working closely with the city on providing ample parking for Kelly's patrons. We are in the process of formalizing a "Parking Lot Lease" that will allow for 25 parking spaces from 6 a.m. to 6 p.m. and a total of 40 spaces available at other times. Page 4, Section 8, of the DRAFT Parking Lease states as follows: ***"Valet Parking.*** *Tenant shall make available valet parking to patrons of Kelly's between the hours of 7:00 a.m. and 3:00 p.m. Vehicles parked by the valet service attendants may be parked on-site at Kelly's, at 408 "O" Street, Antioch, California or the Premises. As no time shall vehicles be parked or stored in the public right of way."* (See Kelly's Public Safety Binder Section "Draft Kelly's Parking Lease") As we discussed in our meeting, valet parking during agreed upon hours is both a positive customer service and a safety feature to ensure the protection of customers, especially in the evening hours. In addition, the Kelly's proposal, as approved by the Planning Commission, includes ample outdoor lighting, as well as surveillance cameras that will offer patrons additional security when entering and exiting the building. We are open to working with the Antioch Police Department on this issue.

4. Supervision and Operations

Management, Supervision & Owner's Presence – At the Planning Commission meeting on August 21, I stated that I plan on being active, "hands-on" and personally involved in decisions on all aspects of Kelly's Restaurant and Card Room operations. I take pride in my business and all of the projects that bear my name. Kelly's will be no exception. That being said, I cannot memorialize an "hour by hour or day by day" accounting of the time I will personally be present at the Kelly's facility: Some weeks it may be every day, most hours of the day; others it may be most days, some hours of the day. Lamar Wilkinson, owner licensee of the California Grand Casino in Pacheco, for example, is not required to be physically present during its 24/7 – 19 card table operation. But the State Gambling Control Commission requires him to have a "Key Employee" on the premises at all times to manage the Card Room and its activities. (See Kelly's Public Safety Binder Section "Sample CA Gambling Control Commission Key Employee Application") Usually, an establishment of this size has several "approved" Key Employees on the payroll, as the Card Room cannot legally operate without a Key Employee in charge of its operations. If the Card Room is opened 24/7, that means that there needs to be an owner licensee or a Key Employee on-site and managing its operations 24-hours a day. If Kelly's licensure receives approval, it will be my responsibility to make sure the law is followed to a tee in this regard.

Key Employees & Approval by Commission – The California Gambling Control Act, Division 3, Chapter 1, Article 1, Section 2050 (a) specifically states: *A gambling establishment shall have on the premises, at all times that the establishment is open to the public, an owner licensee or a key employee who shall have the responsibility and authority to ensure immediate compliance with the Act and these regulations. (See Kelly's Public Safety Binder Section "CA Gambling Law, Regulations & Resource Information 2013")* This Key Employee is not a regular employee – he or she must submit a 14-page application to the CA Bureau of Gambling in the Attorney General's Office; he or she must be fully investigated and vetted before being issued this "Key Employee" designation, as well as being fully trained and knowledgeable about all California laws, regulations, practices, etc., as it relates to operating a fully-licensed Card Room. If I am not physically present, and most likely, even if I am present, I will have State-approved Key Employees who will assist with the efficient and lawful operation of Kelly's Restaurant & Card Room. I cannot provide to you, at this time, the names of the Key Employees who will assist me in the management and operation of Kelly's, but I can assure you that these professionals will be experienced, fully vetted and approved by the State. Upon licensure approval, I will begin the process of identifying appropriate Key Employee personnel, and will be happy to forward their names and State Key Employee application materials to the Antioch Police Department for full review.

Supervision of the Kelly's Restaurant and Bar – In your letter dated October 15th, you indicated that you have questions about the operations of Kelly's "bar and restaurant." Currently, Kelly's Bar and Restaurant (limited menu) is operating and open to the public and is legally permitted to do so. If the city approves licensure for the card room, I will be purchasing the restaurant and bar business and the building which houses it, along with the license to operate it as a restaurant and bar, in addition to the smaller card room area. We are currently researching options to make the restaurant and bar more appealing facility and menu-wise, which would include hiring a dynamic chef and restaurant/bar manager to provide quality service to local residents. I assume you are more concerned with the access of the employees of the restaurant and bar to the card room. I appreciate the opportunity to address this important issue as the law is very clear on this.

State-Approved Work Permit & ID Badge Display Requirements for Workers - The California Gambling Control Act, Chapter 2 in its entirety requires that every employee working in or having access to a licensed Card Room must apply with the State and have issued a "Work Permit" and a State-issued identification badge that must be worn at the facility at all times during the hours of employment. *(See Kelly's Public Safety Binder Section "Sample CA Gambling Control Commission Work*

Permit Application") In addition, an application for a work permit can be denied by the State for any employee who, within the past 10 years, has been involved in a misdemeanor with use of a firearm or other deadly weapon; a misdemeanor involving a gaming activity; a misdemeanor involving a violation of a city or county ordinance; a misdemeanor involving a violation of the Gambling Control Act; or a misdemeanor involving dishonesty or moral turpitude. Each applicant for a Work Permit is fully investigated and vetted so as to be eligible to work in or near a card room facility. The Work Permit is also required under the Antioch Municipal Code, Chapter 4 Section 5-4.10 CARD ROOM WORK PERMIT REQUIRED. "No person shall work as a card room employee without first obtaining a work permit from the Commission, nor shall any licensee of a card room employ any person as a card room employee who does not possess a valid work permit." Furthermore, Section 5-4.13 CARD ROOM WORK PERMIT; SUSPENSION AND REVOCATION. "The Chief of Police may temporarily suspend a work permit on the ground that the permittee has violated any provision of this chapter or the Act pending action by the Commission." (See Kelly's Public Safety Binder Section "Antioch Municipal Code") Each and every employee in the restaurant, bar and card room at Kelly's will be required to have a state-issued Work Permit and badge. I commit to working closely with the Antioch Police Department to ensure that each permitted employee is following the provisions set forth in the California Gambling Control Act.

Antioch Municipal Code Chapter 4: CARD ROOMS, Section 5-4.05 – This section of the Antioch Municipal Code specifically says: "In addition to the other requirements contained in this chapter, no license shall be issued for a card room other than in an established place of business of sufficient size and volume that the already established business is the major business of the place rather than the business of operating such card room." Currently, Kelly's Restaurant and Bar, located at 408 "O" Street, is open for business solely as a restaurant and bar – there is no card room operating there. When the card room was open at the Kelly's location, it was a small portion of the business, as most of the building was dedicated to restaurant and bar patrons – not card players. I see no difference in this configuration if Kelly's is re-issued its license to open and operate the card room. As the new owner of the entire business, I plan to renovate the building, retaining the restaurant and bar as the primary attraction for customers, with a small secluded area for six maximum card tables for players. I envision couples and families coming to Kelly's for the quality of the food and the local atmosphere – not necessarily for the card room functions. Kelly's Use Permit was fully approved on August 21st by the Planning Commission, which took into account the number of local jobs the establishment will create once opened, which, in total, will be approximately 50 new jobs for Antioch residents. It is difficult in this licensure

phase to know exactly how many employees I will need for the restaurant vs. the bar vs. the card room. If Kelly's is re-issued its license, we will be in a better place to more accurately plan for the number of employees needed for specific tasks at Kelly's.

I am the Sole Investor in Kelly's, the Sole Owner and the Sole Applicant - I am the sole owner/investor in Kelly's Restaurant & Card Room. This does not preclude my bringing in a renowned chef/restaurateur to manage the restaurant at Kelly's and to offer "specialty" food for local restaurant patrons. Should I decide to move forward with this type of restaurant branding, the persons involved will not be partners in the business, but managers or contractors. And, as stated previously, each and every person employed person or contractor with physical access to the card room must apply for a state Work Permit, must be fully investigated and vetted by the state, and, upon approval, must wear a state-issued ID badge at all times. There is no exception to this requirement in the law. As requested in your letter, as the business comes together, I will be happy to provide the Antioch Police Department with the names of potential managers, employees, etc. and any other information requested so each and every employee can be properly reviewed by local law enforcement.

Why 24/7 Operation of the Card Room Will Not Become a Burden to Police - The Antioch Police Department does a yeoman's job dealing with crime despite its limited resources. Please know that I am committed to helping lower crime in Antioch, not the reverse. There are a number of points I would like to make in support of approving a 24/7 hours of operation at Kelly's:

Nearly all of the Small and Large Card Rooms throughout Northern California are Open 24/7, Bringing Top-Rate Security and Surveillance of their Facilities and Surrounding Areas - Look what the California Grand Casino has done for safety in the Pacheco neighborhood where it operates. The late night and early morning professional security and surveillance at that facility is so tight that it has actually resulted in "cleaning up" that region of the County. We have researched Northern California's licensed card rooms, some with as little as 3 tables and as many as 60 tables, and have listed at least 19 that thrive safely opened 24/7. *(See Kelly's Public Safety Binder Section "List of Northern California Card Rooms".)*

The Neighborhood around Kelly's is Currently Riddled with Homeless Individuals and Squatters, Causing Issues for Neighbors - A 24/7 facility will bring with it added dusk to dawn security that could actually deter the homeless

and criminal activity currently present on that block. Samples of that criminal activity are described in the attached letters provided by the surrounding business owners on "O" Street. : *(See Kelly's Public Safety Binder Section "Kelly's Neighbors in Support of 24/7 Operation")*

Kelly's Operating Plan Calls for Dusk to Dawn Professional Security, Commercial Outdoor Lighting of the Perimeter, Parking Attendants and, now Valet Service – We recognize that in an emergency there is no substitute for a highly-trained and experienced police officer. But there are many "minor incidents" that can be prevented by having professional security, commercial lighting and parking lot security personnel – especially in the night and early morning hours. In addition, the value of having a dusk to dawn professionally-trained security officer on the premises is that he or she can deal swiftly and effectively with minor incidents – limiting the number of calls for service to Antioch PD that may otherwise be necessary if he or she was not on the premises. *(See Kelly's Public Safety Binder Section "Kelly's Operations Manual")*

Surrounding Neighbors and Property Owners Support 24/7 Operation for the Dusk to Dawn Security it will Bring the Neighborhood – We have heard from dozens of local residents, property and business owners in the block surrounding Kelly's. They passionately support keeping Kelly's open 24/7 for the security it will offer them from being vandalized, burglarized, etc. All three business owners on "O" Street have all registered their support for a 24/7 operation at Kelly's. Here is an excerpt of written comments submitted by neighbors specifically on the 24/7 issue: *(See Kelly's Public Safety Binder Section "Kelly's Neighbors in Support of 24/7 Operation")*

"To close Kelly's at two a.m. will leave a window of vulnerability and create opportunity for those who are up to no good. Additionally, I believe that the logistics of closing the operation at that hour of the night creates a window of opportunity for more serious and well thought out crimes against the establishment. With this in mind it is my sincere hope that Chief Cantando will agree to allow Kelly's to operate on a twenty four hour schedule."

- James Phillips
Neighboring Business Owner

"We are the business owners of Scotto's Auto Body, 415 "O" Street, Antioch, CA 94509. Our business is directly across the street from Kelly's Restaurant/Bar/Cardroom. We are writing to you to express our 100% support of the re-opening of Kelly's on a 24/7 basis.

Maybe some of the council members and local police don't recall or don't know that Kelly's was a reputable business bringing people of kind character to the establishment when it was thriving.

... we, as business owners, are PRAYING for the 24/7 hours of operation to be approved which will put a much needed security guard and much needed street lighting and much needed security cameras in that area."

- Ruthie Riley Evans
Jay Evans
Scottos Auto Body

Past Record of Calls for Service for Kelly's and the 19th Hole NOT Overly Cumbersome – As part of the Planning Commission's review, City staff requested from Captain Stephen McConnell a record of calls for service at Kelly's; he also included information for calls for service for the 19th Hole. (*See Kelly's Public Safety Binder Section "Calls for Service at Kelly's & the 19th Hole"*) Below is a sampling of incidents reported by the Antioch Police Department:

19TH HOLE

- STARTED FIGHT AFTER DRINKING
- TWO DOORS DOWN AT BEAUTY STORE FRONT WINDOW IS SMASHED OUT
- LARGE GROUP IN BAR, GROUP HAD ALTERCATION
- RP SAYS HE WANTS TO TURN HIMSELF IN FOR STEALING FROM HIS PARENTS

KELLY'S

- FEMALE RAN INSIDE LOCATION FOR SAFETY
- TO THE REAR OF KELLY'S BAR MALE FELL AND IS UNRESPONSIVE
- BARTENDER CALLING FOR ELDERLY MALE WITH NO CELL PHONE
- SUBJECT SLEEPING IN FRONT OF DOOR AND RP CANNOT OPEN

Additional Security Options to Consider – In order to further prevent incidents and the need for APD resources, I would be happy to discuss the possibility of

working with the Police Department to provide "controlled secured access" to the outside entrances and exits to the card room after the bar closes from 2:00 a.m. to 6:00 a.m. Another option I would be willing to discuss is a one year probationary 24/7 operational period from the date of opening, upon which after a year the Antioch Police Department and the city could review the calls for services, the responsiveness of the owner, etc. to determine if the city should continue approval of the 24/7 hours of operation. I am open to discuss these and other options to minimize the potential burden, if any, to APD.

In addition to answering the specific questions addressed in your October 15th letter, I would like to request that the Antioch Police Department take into consideration the following information:

Kelly's Restaurant and Bar is fully licensed and currently open to the public.

If approval is provided, it is my intention to renovate and modernize the entire Kelly's facility, so it is more upscale, attracting a wider range of local residents who are interested in good food and weekend entertainment – instead of leaving Antioch for their entertainment and dining enjoyment.

The Use Permit for Kelly's Restaurant & Card Room was approved on August 21, 2013. The Kelly's Use Permit, also including the 24/7 card room, was approved by the Antioch Planning Commission on a 5 to 1 vote on August 21st. Prior to this approval, I worked with Sergeant Morefield of the Antioch Police Department in April and May 2013. At that time, we submitted a Security and Surveillance Plan to the city to ensure that Kelly's operations remain controlled and safe at all times. The Planning Commission Staff Report issued on August 15 recommended approval, stating "the Security and Surveillance Plan (Plan) outlines the steps and procedures in place to closely monitor and control all gambling activity and has been reviewed and *approved* by the Antioch Police Department. (See Kelly's Public Safety Binder Section "Planning Commission Staff Report")

I envision Kelly's to be a dining and entertainment venue for the whole family. We are currently researching chef and menu options, in the hope of being able to offer Antioch families reliable and good-tasting food options at a price families can afford.

Neighboring businesses support the re-establishment of the Kelly's Card Room for the additional surveillance and security it will offer local property owners. The immediate area surrounding Kelly's has been overrun with homeless individuals and squatters who are taking over vacant properties in the neighborhood. The Antioch property owners who have businesses on "O" Street and the immediate vicinity not only

support the reopening of Kelly's Card Room, but are the biggest advocates for the card room being open 24/7 for the protection it will offer them, their properties and for its ability to deter potential criminals and squatters. *(See Kelly's Public Safety Binder Section "Kelly's Neighbors in Support of 24/7 Operation")*

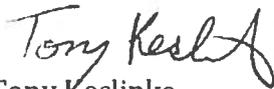
I assure you it is my responsibility to be fully versed on all compliance regulations as outlined in the California Gambling Act and the California Gambling Law, Regulations, and Resource Information Guide so as to be a responsible card room owner and operator - In addition, I have retained Bob Lytle as a consultant. I have also entered into preliminary discussion with Mr. Lytle to be Kelly's Card Room "Compliance Director". Mr. Lytle worked for 23 years for the California Attorney General's Office. His last position before retiring was Director of the Division of Gambling Control, which is responsible for regulations of card rooms in California. *(See Kelly's Public Safety Binder Section "Bob Lytle - Compliance Director")* I am confident in Mr. Lytle's expertise in assisting Kelly's in complying with each and every local and state regulation.

In closing, I am hopeful that I was successful in thoroughly answering the questions posed in your October 15th letter. If there are other questions or issues that you have, please let me know and I will be as responsive as possible to provide those answers.

I am excited about transforming Kelly's into a local business that all of Antioch can be proud of and will want to patronize. It is also extremely important to me to have the issues important to public safety fully addressed, as I value Antioch Police Department's work to protect the Antioch community.

Thank you, again, for taking the time to review the Kelly's application and to review this documentation, which I hope will allay most of your concerns.

Sincerely,


Tony Keslinke

cc: City Manager Jim Jakel
Mayor Wade Harper
Vice-Mayor Mary Rocha
Councilmember Gary Agopian
Councilmember Monica Wilson
Councilmember Tony Tiscareno



November 4, 2013

Mr. Jim Jakel
City Manager
City of Antioch
35 Civic Dr.
Antioch, CA 94509

Dear Mr. Jakel,

This letter is provided as a follow-up to our previous discussions concerning the last outstanding issues that require attention so the conditions of approval can be finalized. First and foremost, I would like to restate my commitment to the city and to Captain Orman of the Antioch Police Department that I will always work closely and cooperatively with them to ensure that Kelly's does not place an additional burden on their already strained resources. Further, I am grateful of the time and efforts that the city and the police department have undergone in working to come to a situation which will make this a better and safer project for all involved.

The first topic to discuss is my personal presence at the Kelly's facility once it is in full operation should it receive final approval to operate as a licensed card room. As stated in my letter dated October 25, 2013 provided in response to Captain Orman's letter of the Antioch Police Department, I will be personally involved in all decisions regarding the management aspects of the Kelly's facility. This includes the hiring decisions of all "Key Employees" and others in management positions within the business. I will also personally make key decisions regarding the rules and regulations that will dictate the culture and operational tone of the entire facility. While I am not indicating that I will be at the facility on any predefined set schedule, I will operate this business much as I have all other business that I have been involved with during my professional career. In essence, I will be present at the facility as the specific business climate dictates which will require dynamic decision making on my part resulting in periods that will require many hours of my involvement far in excess of the "typical" 40 hour work week. Conversely, there may be periods in which my involvement could be much less than this amount. In reality, the better job that I do in selecting and motivating successful key employees, the more smoothly the facility will run and, in theory, the less that my personal presence will be required at the premises. However, my commitment to Kelly's and to my Antioch businesses and properties remains steadfast and unparalleled. Soon I will be responsible for the management of more than 50,000 square feet of commercial and residential real estate, the operation of a 35 bed assisted living facility for the elderly, and hopefully a successful restaurant, cocktail bar, and card room all totaling an employment base of almost 100 employees located in Antioch. This concentration of assets in one city demands that I pay close attention to all of these assets. Even now, before some of these projects have fully launched, I am in Antioch 5-6 days a week rotating between the various functions of these operations and projects.

Further, you asked me to clarify how this position reconciles with previous comments made at the planning commission involving my participation in the ongoing operation of the business. I have reviewed the minutes of August 21, 2013 meeting. After the review of both my initial comments to the commission as well as my responses to the commissioners questions I find nothing in the record that is in contradiction with the foregoing statements. In fact, there appears to be complete consistency between the statements made before the commission and my current representations as to my involvement plan with Kelly's.

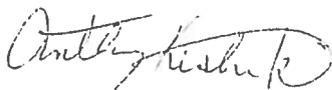
Regarding the indemnification verbiage, I would suggest that the conditions of approval include a provision that I will indemnify and hold harmless the City of Antioch from any referendum or initiative brought before the city in a general election on matters which name Kelly's specifically and relate to the business of Kelly's for a period of 18 months from the date of the City Council vote on the Kelly's matter.

On the final topic that I believe needs clarification, namely the security and valet hours, I would like to offer the following. A condition of approval that Kelly's has one armed security guard at all times of operation and a second armed security guard at a minimum from 7:00 pm to 6:00 am or until close of business, whichever is earlier. The valet service will also be offered at a minimum on all Friday, Saturday, and Sundays, which are prior to Mondays that are national holidays, from 7:00 pm to 6:00 am or until close, whichever is earlier. As discussed, the valet may be the second security officer or possibly a separate valet employee.

In summary, my commitment to complete success at Kelly's is beyond question. I am investing 100% private capital in a venture that I intend to own and operate solely and personally with the final say on all business matters. I hope to make this a facility that the entire region will enjoy and that all of the residents will be proud of. It will be one that promotes civic pride, provides dining and entertainment pleasure to residents, and will continue to give back to so many of the worthy and needy organizations and causes in the City of Antioch.

Thank you again and please extend my gratitude to the Antioch Police Department and especially Captain Orman for all of the efforts in making this a successful project.

Sincerely,



Anthony Keslinke

**STAFF REPORT TO THE MAYOR AND CITY COUNCIL FOR
CONSIDERATION AT THE COUNCIL MEETING OF NOVEMBER 12, 2013**

PREPARED BY: Brian Nunnally, Economic Development Analyst 
APPROVED BY: Michelle Fitzter, Economic Development Director 
DATE: November 6, 2013
SUBJECT: Proposed lease of City-owned property (APN 074-080-029) by
Mesa Outdoor

RECOMMENDATION:

It is recommended that the Council approve the lease of City-owned property.

SUMMARY:

Mesa Outdoor (“Mesa”) is proposing to lease City-owned property for the purpose of erecting and maintaining a billboard along State Route 4 (SR4) just east of the Antioch-Pittsburg border near the intersection of Delta Fair and Century Boulevards (see *Attachment A* for map).

BACKGROUND:

In November 2011 Mesa Outdoor approached Staff about the possibility of locating a billboard within Antioch city limits at a SR4-visible location. As part of its initial steps, in February 2012 Mesa applied for and received preliminary conformance approval from the California Department of Transportation, which indicates that the above-proposed location satisfies all State requirements. Subsequently, City Staff researched similar deals and contracted with a billboard appraiser for a Billboard Revenue Analysis to determine a fair market value monthly lease amount and continued negotiations with Mesa while Mesa sought, and in October 2013 received, Planning Commission approval.

FINANCIAL IMPACT:

In addition to a one-time construction bonus payment of \$100,000 to the City, Mesa has proposed to pay the City \$3,000 per month as a minimum monthly payment for the first four years of the 30-year lease, and upon the fifth anniversary, the monthly rent will increase each lease year by the percentage change in CPI for the prior twelve months, not to exceed 3 percent for any one year. After the first year of operations and each year thereafter, the City will be entitled to 25% of the net revenue generated by the sign to the extent that 25% of the net revenue exceeds the minimum monthly payment. Net revenue will include all revenue from the sign minus advertising agency commissions subject to a 15% maximum agency commission.

In the event that a beneficial development proposal is submitted to the City for the property any time prior to expiration of the 30-year lease, Mesa and the City have negotiated a buyout option that would allow Mesa to recoup a portion of its investment while still allowing the City to move forward with development plans if the City so desired. The buyout option will be amortized over a 10-year period but will at no time drop below a \$100,000 minimum. In addition, within 120 days after the 30-year term ends or if the lease is terminated early for any reason, Mesa must pay to remove the billboard and footing and restore the property to its pre-lease condition or Mesa may opt to leave the footing in place and pay the City \$30,000 for its removal, which is 50 percent above the current industry removal estimate of \$20,000.

To ensure transparency, Mesa has committed to creating a separate LLC for the project and agreed to report its full tax return to the city each year for the purposes of verifying revenue. The average monthly net revenue from the sign will be calculated each year and then multiplied by 0.25 and compared to the minimum monthly payment. The City's monthly rent revenue for the next year will be the greater of 25% of monthly net revenue from the previous year, or the minimum monthly payment of \$3,000 per month increasing by the CPI per annum.

OPTIONS:

- Approve the lease
- Do not approve the lease
- Provide alternate direction

ATTACHMENTS:

- A. Lease Exhibits
- B. Proposed Lease

Exhibit A

APN# 074-080-029 - Property Description

Area Map:



Site Map: Final location to be determined between City and Mesa.



Exhibit B
Billboard Description

The proposed billboard will have the standard outdoor advertising “bulletin” dimensions preferred by advertisers and typically used on freeways. The advertising faces will measure 14’ high by 48’ wide, and will be set at a “V” angle for easier reading from the road. The top of the sign will be positioned approximately 30-40 feet above grade level on Highway 4. Final dimensions, height, and design are subject to change based on a planning review by the City of Antioch.

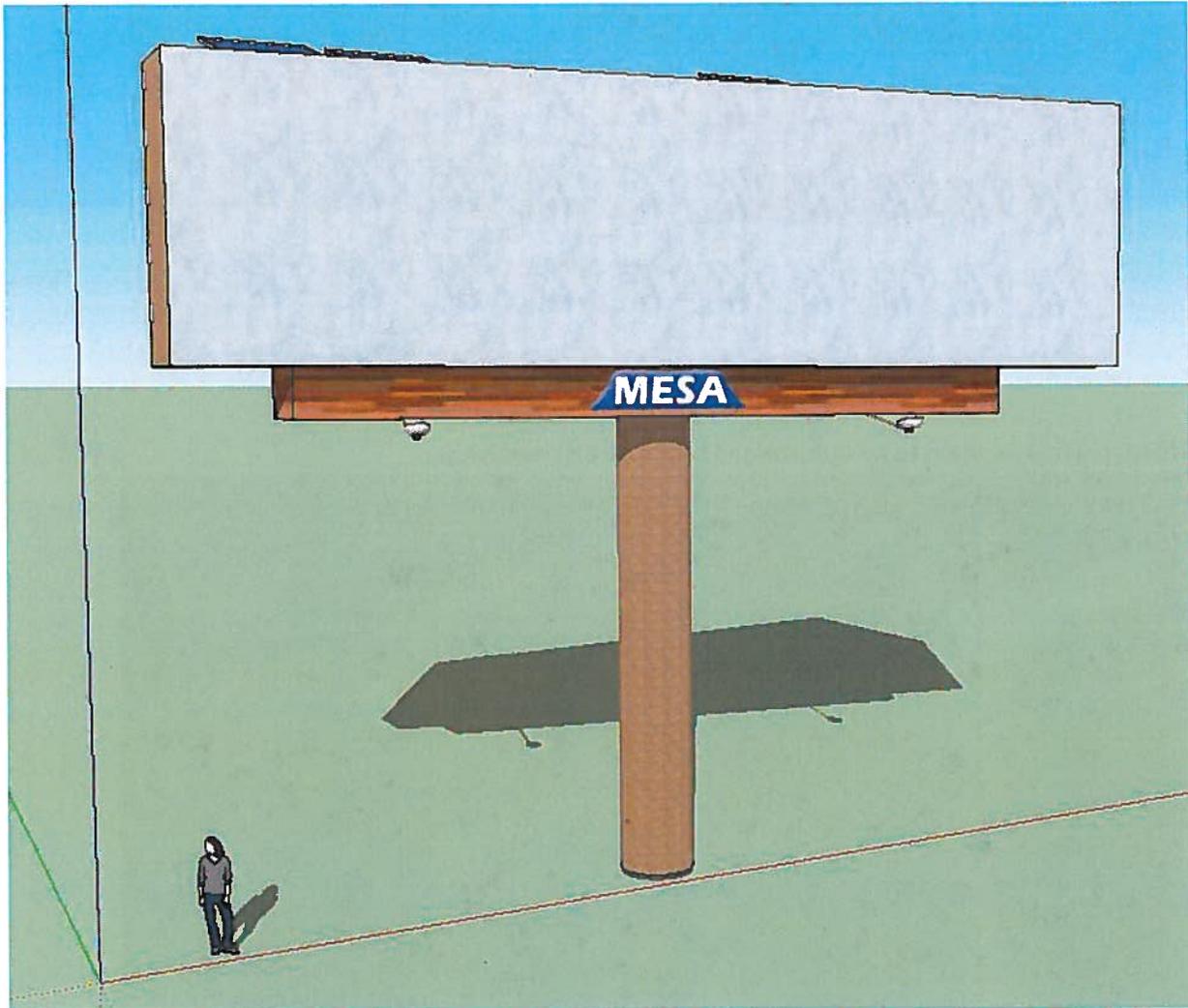


Exhibit C
Hazardous Substances

No hazardous substances have been identified in connection with the project.

Exhibit D
Amber Alert Guidelines

Amber Alert Guidelines to not apply to this project.

Exhibit E
Mitigation Monitoring Program

The Mitigation Monitoring Program will include monthly checks for graffiti and other vandalism to the structure.

Exhibit F
Memorandum of Lease

This memorandum of Lease, dated _____, 20__, for the purposes of identification, is between the **City of Antioch** (the "City"), a California municipal corporation; and **Mesa Outdoor, LLC** ("Mesa"), a California Limited Liability Company.

Background

The City and Mesa have entered into a *Lease for Billboard* dated _____, 20__, (the "Lease"), by which the City leased to Mesa the real property described and depicted in **Exhibit A** to this Memorandum of Lease (the "Premises").

The City and Mesa entered into this Memorandum of Lease to give constructive notice to all third parties of Mesa's rights and obligations under the Lease.

With these background facts in mind, the City and Mesa agree as follows:

1. **Initial Term.** The City leases the Premises to Mesa for an "Initial Term" of thirty years, beginning _____, 20__, and ending _____, 20__.
2. **Other Provisions.** Mesa's lease of the Premises from the City is subject to the terms and conditions of the Lease, which are incorporated by reference into this Memorandum of Lease.
3. **Addresses.** The addresses of the City and Mesa are as follows:

City of Antioch
Attn: Brian Nunnally
P.O. Box 5007
Antioch, CA 94531

Mesa Outdoor
Attn: Mike McCoy
582 Market Street, Suite 1508
San Francisco, CA 94104

4. **Assignment and Sublease.** A party to the Lease may not assign its rights and obligations under the Lease without the other party's prior written consent, except as provided in the Lease.
5. **Information Only.** This Memorandum of Lease is for informational purposes only. It does not modify or otherwise affect the Lease in any way.

City of Antioch

Mesa Outdoor

By: _____

By: _____

Date:

Date:



BILLBOARD LEASE

between

**CITY OF ANTIOCH,
a California Municipal corporation
("City")**

and

**MESA OUTDOOR , LLC
a California limited liability company
("Tenant")**

BASIC INFORMATION

The following Basic Information provides a brief synopsis of the critical terms of this Lease and a reference for certain specific terms of this Lease. The Basic Information, the Recitals below, and all exhibits attached are incorporated into and made a part of the Lease. If there is any conflict between the Basic Information and terms of the Lease, the terms of the Lease will control.

1. City: CITY OF ANTIOCH, a California Municipal corporation
P.O. Box 5007
Antioch, CA 94531

Notice: City Manager
Email:
Telephone:
Facsimile:

2. Tenant: MESA OUTDOOR, LLC, a California limited liability company
582 Market Street, Suite 1508
San Francisco, CA 94104

Notice: Mike McCoy
Email:
Telephone:
Facsimile:

3. Effective Date: _____, 2013

4. City Property. That certain real property owned by City legally described in and depicted on Exhibit A, commonly known and referred to as _____ in the City of Antioch, County of Contra Costa, State of California.

5. Premises: That certain portion of the City Property described in and depicted on Exhibit A.

6. Permitted Use: Operation of one two-sided billboard to display outdoor advertising on the Premises.

7. Term: 30 years.

8. Monthly Rent: \$3,000/month for the first four years, and upon the fifth anniversary of the Operations Phase, the Monthly Rent will increase each Lease Year by the percentage change in CPI for the prior 12 months not to exceed 3% for any one year, as described in detail in Schedule 1.

9. Percentage Rent: In addition to the Base Rent, Tenant must pay twenty-five percent (25%) of the Gross Revenue of the Billboard to the extent such revenue exceeds the Monthly Rent each Lease Year, as described in detail in Schedule 1.

CITY'S INITIALS _____

TENANT'S INITIALS _____

Billboard Lease

This Billboard Lease ("Lease"), is effective as of _____, 2013, and is between the **City of Antioch**, a California municipal corporation ("City"), and **Mesa Outdoor, LLC**, a California limited liability company ("Tenant").

RECITALS

A. City owns that certain parcel of land located in the City of Antioch, County of Contra Costa, State of California, located near State Route 4, as more particularly shown on the attached Exhibit A and incorporated herein by reference (the "City Property").

B. Tenant desires to lease a portion of the City Property as more particularly shown on Exhibit A (the "Premises") for the purposes of constructing and operating a billboard sign.

C. State Route 4 is a heavily traveled route for commuters, tourists and visitors driving through the community daily to reach Bay Area and Central Valley/Sierra Mountain destinations.

D. A freeway sign at this location will provide an opportunity for economic development and a marketing tool to increase awareness about the City of Antioch and will provide promotional and advertising opportunities for local businesses.

E. The Antioch City Council has determined that it is in the best interests of City, and for the common benefit of the citizens residing in City, to enter into this Lease with Tenant for the installation, operation and maintenance of a freeway sign at the Premises.

F. City desires to lease to Tenant, and Tenant desires to lease from City, the Premises, all as further set forth in this Lease.

AGREEMENT

ARTICLE 1 DEFINITIONS.

For purposes of this Lease, unless a different meaning is clearly required, the following terms will have the following meanings and be capitalized throughout this Lease:

1.1 "Billboard" means the two-sided outdoor-advertising sign that Tenant will install and operate on the Premises in accordance with the criteria set forth in Exhibit B to this Lease.

1.2 "Business Day" means any day City's main offices located at Third & H Streets, Antioch, California, are open to the public.

1.3 "Caltrans" means the California Department of Transportation.

1.4 "Caltrans Permits" means all permits and approvals, if any, that Tenant must obtain from Caltrans to install, operate, and maintain the Billboard in accordance with this Lease.

1.5 "City Permits" means all building permits, conditional use permits, site plan review, architectural review, and other permits, entitlements, and agreements that City, acting in its

governmental capacity, must issue or approve for Tenant to install, operate, and maintain the Billboard in accordance with this Lease.

1.6 "Commencement Date" means the date as of which both of the following have occurred: (i) City has finally approved the Plans (defined in Section 7.2), and (ii) Tenant has received all necessary governmental permits and approvals for the Billboard, including the Caltrans Permits and City Permits (as described more fully in Article 7).

1.7 "Effective Date" means the date as of which both City and Tenant have signed this Lease, as indicated by the dates in the signature blocks below.

1.8 "Gross Revenue" means all revenue Tenant collects from the Billboard, less any commissions paid, not to exceed (15%) of such revenue.

1.9 "Hazardous Materials" means any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local Law or regulation, including the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act, together with asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl ("PCB") or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by product thereof.

1.10 "Hazardous Materials Laws" means all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force concerning the management, use, generation, storage, transportation, presence, discharge or disposal of Hazardous Materials.

1.11 "Lease Year" means one of the consecutive 12-month periods during the Term.

1.12 "Off-site Outdoor Advertising" means an advertising sign that directs attention to a business, profession, commodity, service or entertainment which is conducted, sold or offered at a location other than on the same lot or parcel upon which the sign is located.

1.13 "Operational" means the Billboard is capable, legally and functionally, of displaying advertising.

1.14 "Premises" is defined in the Basic Information.

1.15 "Rent" means the Monthly Rent and Percentage Rent described in Schedule 1.

1.16 "Sign Structure" means the portion of the Billboard other than the advertising faces, and it includes all ancillary equipment and utilities installed on the Premises. The Sign Structure is more particularly described in Exhibit B.

1.17 "Term" means the entire time this Lease is in effect. As specified in Article 4, it consists of the Initial Term and any period of holding over.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF TENANT

2.1 Corporate Status

Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California. It is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Lease.

2.2 Authorization

Tenant has the authority to enter into and perform its obligations under this Lease. The managers or directors of Tenant have taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Lease. The person signing this Lease on behalf of Tenant has authority to do so.

2.3 Lease Will Not Cause Breach

To the best of Tenant's knowledge, after reasonable investigation, neither the execution or delivery of this Lease, nor the performance of this Lease by Tenant: (i) conflicts with, violates, or results in a breach of any applicable law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which Tenant is a party or by which Tenant or any of its properties or assets are bound, or constitutes a default thereunder.

2.4 No Litigation

To the best of Tenant's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Tenant wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Tenant of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Lease or which would have a material adverse effect on the financial condition of Tenant or any surety guaranteeing Tenant's performance under this Lease, which has not been waived by City in writing.

2.5 No Adverse Judicial Decisions

To the best of Tenant's knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Lease or may subject this Lease to legal challenge.

2.6 Ability to Perform

Tenant possesses the business, professional, and technical expertise to cause the installation, maintenance, and operation of the Billboard in the manner required under this Lease.

The representations and warranties set forth in this Article 2 are made as of the Effective Date.

ARTICLE 3 LEASE OF PREMISES.

City hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from City, upon the covenants, terms, and conditions set forth in this Lease.

ARTICLE 4 TERM.

4.1 Term

The "Initial Term" of this Lease will consist of two phases:

4.1.1 The "Pre-Operations Phase," which will begin on the Effective Date and end on the earlier of (A) the date the Billboard becomes Operational or (B) the 120th day after the Commencement Date.

4.1.2 The "Operations Phase," which will begin when the Pre-Operations Phase ends and will expire 30 years thereafter.

4.2 Expiration of Lease; Holding Over

This Lease will expire automatically at the end of the Initial Term. If Tenant holds over on the Premises after the expiration of the Initial Term with the consent of City, such holding over will be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Lease that applied at the expiration of the Initial Term.

ARTICLE 5 CONSIDERATION.

As consideration for the rights and benefits it enjoys under this Lease, including the use and occupancy of the Premises during the Term, Tenant must do all of the following:

5.1 Monthly Rent

Each month during the Operations Phase, Tenant must pay City the "Monthly Rent" set forth in Schedule 1 in accordance with the terms set forth in this Section 5.1.

5.1.1 Manner of Payment. Monthly Rent is due and payable in advance on the first day of each calendar month without notice, demand, offset or deduction. Tenant must remit the Monthly Rent to City at the address designated in the Basic Information, or at such other address as City may designate from time to time in writing to Tenant for the payment of Monthly Rent.

(a) Late Charge. If Tenant fails to pay any installment of Monthly Rent within ten (10) calendar days after the same is due and payable, such unpaid amount will be subject to a late payment charge equal to five percent (5%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult—if not impossible—to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay, and Tenant must promptly pay such charge to City together with any unpaid interest

(b) Default Interest. If any Monthly Rent is not paid within fifteen (15) calendar days following the due date, such unpaid amount will bear simple interest at the rate of 10% per year or the maximum permitted by law, whichever is lower ("Default Rate") from the due date until paid. However, interest will not be payable on late charges incurred by Tenant, nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest will not excuse or cure any default by Tenant.

(c) Application of Payments. All payments received by City from Tenant will be applied to the oldest obligation owed by Tenant to City. No designation by Tenant, either in a separate writing, on a check or money order, or otherwise will modify this Article 5 or have any force or effect.

5.1.2 Proration for First Monthly Rental Payment. If the Operations Phase begins on a day other than the first day of a month, then the first month's installment of Monthly Rent will be prorated.

5.1.3 Adjustment of Monthly Rent Schedules. Commencing on the fifth anniversary of the Operations Phase and each Lease Year thereafter, the Monthly Rent may increase as provided in Schedule 1.

5.2 Additional Consideration

5.2.1 Construction Bonus. Tenant will pay City a one-time "Construction Bonus" of \$100,000 in accordance with Schedule 1.

5.2.2 Percentage Rent. Tenant must pay City the "Percentage Rent", if any, set forth in Schedule 1 in accordance with the terms set forth in this Section 5.2.2.

(a) Reports. Tenant must furnish to City an annual statement of Gross Revenue within forty-five (45) days after the end of each Lease Year. The statement of Gross Revenue must include a designation of gross advertising revenue actually collected for the Billboard, as well as a designation for all permissible commissions paid in accordance with this Lease. Such statement must be in a form acceptable to City. Each statement must be signed and certified to be correct by a duly authorized officer of Tenant. Tenant must keep and make available at its local office complete and accurate books of account, records, cash receipts and other pertinent data, in accordance with good accounting practices and in a form approved by City, showing the Gross Revenue, including without limitation, accurate records of every sale and other transaction made for any advertising display on the Billboard and any commissions paid by Tenant pursuant to this Lease. Such books of account, records, cash receipts and other pertinent data must be kept for a period of at least five (5) years after the end of each Lease Year. The receipt by City of any statement, or any payment of Percentage Rent (as defined in Schedule 1) for any period, will not bind City as to the correctness of the statement or payment. Additionally, Tenant will create a separate LLC for the Billboard and this Lease and submit its full tax return to the City for the purposes of transparency and accurately determining Percentage Rent in accordance with Schedule 1.

(b) Inspection and Audit. Tenant must maintain and make available at its local office, for City's review and audit, all contracts, leases, invoices, and other records that are relevant to the accurate determination of the Percentage Rent in accordance with Schedule 1. After the Percentage Rent for a Lease Year has been determined in accordance with Schedule

1, Tenant must retain the related records for at least five (5) years. City, at its sole option, will be entitled, at any time and from time to time during the Term, to inspect, examine, copy and audit Tenant's books, records and cash receipts as related to Gross Revenue. The purpose of such examination is to enable City to ascertain, clearly and accurately, Tenant's Gross Revenue and to verify that the form and method of Tenant's record keeping provide adequate and proper control and check of all such revenues. Tenant must cooperate fully with City and City's agents in making the examination. City, at its option, will also be entitled once during each Lease Year and once after the Expiration Date or other termination of this Lease, to cause an independent audit of such records to be performed by a certified public accountant designated by City, provided such accountant is not paid on a contingency fee basis. The audit will be conducted during usual business hours at Tenant's office. If the audit shows that there is a deficiency in the payment of any Percentage Rent, then Tenant must immediately upon notice pay the deficiency to City, together with interest thereon at the Default Rate, which interest will accrue from the date on which such deficient amount would have been due until such deficiency is paid. City will pay the costs of the audit unless the audit shows that Tenant understated Gross Revenue by more than two percent (2%) in which case Tenant will pay all City's costs of the audit.

ARTICLE 6 USE OF PREMISES.

6.1 Condition of Premises

The Premises and all improvements thereon, are being leased to Tenant in its current, existing, "AS IS" condition. City makes no representations or warranties of any kind, express or implied, written or oral, about any of the following: the physical condition of the Premises; the suitability of the Premises for Tenant's anticipated use; any limitations on Tenant's use of the Premises, including limitations arising from zoning laws, environmental laws, or other laws, regulations, or governmental requirements; the costs of conducting Tenant's business on the Premises; or the condition of the soils or ground waters of the Premises. By taking possession of the Premises, Tenant accepts the Premises "AS IS" and acknowledges that the Premises are satisfactory for Tenant's purposes. Tenant has ascertained the condition of the Premises through its own independent investigation and has relied solely on that independent investigation when entering into this Lease.

6.2 Permitted Uses

Tenant has the exclusive right to display Off-site Outdoor Advertising on the City Property, excluding any on-site outdoor signage advertising activities conducted thereon. City will not authorize any other Off-site Outdoor Advertising on the City Property, excluding any on-site outdoor signage advertising activities conducted thereon. Tenant's right to conduct Off-site Outdoor Advertising on the Premises includes the following:

- (a) Installing, operating, maintaining, repairing, improving, repositioning (with City's consent) the Billboard and any utilities installed in connection with the Billboard.
- (b) Installing and maintaining utility wires, poles, cables, conduits, and pipes over or under the City Property from the nearest accessible public right-of-way.
- (c) All rights of ingress and egress over the City Property that Tenant needs to access the Billboard.

(d) Subject to the criteria set forth in Exhibit C to this Lease, licensing the use of the Billboard, or any portion it, for any lawful purpose related to outdoor advertising.

(e) Removing the Billboard on or from the Premises when this Lease terminates.

Tenant acknowledges and agrees that except as provided in this section, Tenant may not use the Premises, including the City Property, for any other purpose including the collocation of any telecommunications facilities on the Sign Structure.

6.3 Prohibited Uses

6.3.1 Hazardous Substances. Neither Tenant nor any of Tenant's representatives or agents may use, handle, store, transport, treat, generate, release or dispose of any Hazardous Materials anywhere in, on, under or about the Premises, the Billboard, any portion thereof, or any improvements thereon. Notwithstanding the foregoing, Tenant may use, handle, store, transport, treat, generate, release or dispose of any Hazardous Materials in such limited amounts as are customarily used to install, operate, maintain, repair, improve, reposition, or remove the Billboard in accordance with this Lease, and so long as Tenant is at all times in full compliance with all applicable environmental laws. Tenant must cause any and all Hazardous Materials brought onto, used, generated, handled, treated, stored, released or discharged by Tenant or its authorized representatives on or under the Billboard, the Premises, any portion thereof, or any improvements thereon to be removed therefrom and transported for disposal in accordance with applicable laws, including Hazardous Materials Laws. City will have the right to enter the Premises, any portion thereof, or any improvements thereon from time to time to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Tenant's compliance with its obligations concerning Hazardous Materials and Hazard Materials Laws. Tenant must immediately notify City in writing upon its actual knowledge of: (a) any release or discharge of any Hazardous Material by Tenant or its authorized representatives; (b) any voluntary clean-up or removal action instituted or proposed by Tenant, (c) any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened against Tenant, or (d) any claim made or threatened by any person against Tenant, the Billboard, the Premises, any portion thereof, or any improvements thereon relating to Hazardous Materials or Hazardous Materials Laws. Tenant must also supply to City as promptly as possible, and in any event within five (5) business days after Tenant receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Billboard, the Premises, any portion thereof, or any improvements thereon or Tenant's use thereof and concerning Hazardous Materials or Hazardous Materials Laws. In the event Tenant institutes a cleanup or removal action, Tenant must provide copies of all work plans and subsequent reports submitted to the governmental agency with jurisdiction to City in a timely manner. Tenant must indemnify and defend City any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses and consultant fees and expenses) caused or alleged to have been caused by the presence of Hazardous Materials in, on, under, about, or emanating from the Billboard, the Premises, any portion thereof, or any improvements thereon, due to the acts of Tenant or its authorized representatives in accordance with the provisions of Section 11.3.

6.3.2 Unlawful Activities. Tenant may not use or permit the Premises to be used in any way that violates this Lease or any valid and applicable statute, ordinance, regulation,

rule, or order of any federal, state, or local governmental entity (including City). Tenant may not maintain or commit, or permit the maintenance or commission of, any public or private nuisance as defined by any law applicable to the Premises on or after the Effective Date. Tenant hereby waives any rights to compensation it may have if a court finds that the Billboard constitutes a public or private nuisance under any valid and applicable federal, state, or local law and for that reason orders Tenant to remove or modify the Billboard.

6.3.3 Encumbrances. Tenant may not encumber the Premises or any part of the Premises or the Billboard or any part of the Billboard, for any purpose, without City's prior written consent, which City may withhold for any reason. Tenant must keep the Premises and the Billboard free of all liens and other encumbrances other than those, if any, to which City consents.

6.4 Unobstructed Use

6.4.1 City may not allow on any City owned property any tree, vegetation, or improvement, nor may City approve on any private property any structure, that materially obstructs the view of the display area of the Billboard from State Route 4 (each an "Obstruction").

6.4.2 If Tenant notifies City in writing that an Obstruction exists, and if City authorized, allowed or actively caused the Obstruction, then City must remove or remedy the Obstruction at its own cost within 15 days after receiving the notice. If the City does not remove such Obstruction within such 15-day period, then Tenant will have the right, in addition to all other remedies granted to Tenant under this Lease, to abate the Monthly Rent payable hereunder from and after such 15-day period until the City removes such Obstruction.

6.4.3 If Tenant notifies City in writing that an Obstruction exists, and if City did not authorize, allow or actively cause the Obstruction, then City may remove or remedy the Obstruction at its own cost within 15 days after receiving the notice. If City does not remove or remedy the Obstruction within the fifteen 15 days, then, at no cost to City, and after coordinating with the appropriate department of City, Tenant may remove any Obstruction that is a tree or vegetation on City property as described in the notice.

6.4.4 Tenant's exercise of its rights under this Section 6.4 are in addition to any other remedies it may have under this Lease.

6.4.5 Tenant acknowledges that as of the Effective Date, the adjacent property to the east of the City Property and Premises is owned by a public agency over which City does not have any land use regulatory control, and, as such, City and Tenant have limited recourse in the event any obstruction of the Billboard is created or maintained on such property.

ARTICLE 7 INSTALLATION AND OPERATION OF BILLBOARD

Tenant must install and operate the Billboard on the Premises in accordance with this Article 7 and consistent with Article 6, all at no cost to City.

7.1 Permitting Costs

Tenant will bear all costs associated with permitting and entitling the Billboard as provided in the City's fee schedule.

7.2 Plans and Specifications

At no cost to City, Tenant must prepare complete plans and specifications for the Billboard, working closely with City to develop plans and specifications that are mutually acceptable (the "Plans"). Tenant must submit the Plans to City for final approval, which City will not withhold unreasonably. The Billboard must be designed to comply with all applicable state, county, and City codes and regulations. At a minimum, the Plans must comply with the criteria set forth in Exhibit B to this Lease.

7.3 Caltrans Permits

Tenant is responsible for insuring that the Billboard complies with all requirements of California's Outdoor Advertising Act and Regulations if Caltrans determines that the Premises fall within the scope of the Act. In addition, Tenant is responsible for obtaining any and all permits required from Caltrans to install the Billboard on the Premises. As soon as practicable after the Effective Date, Tenant must apply to Caltrans for all necessary Caltrans Permits, if any, and City will cooperate with Tenant in that effort, all at no cost to City. During the Term, Tenant will be the permittee under the Caltrans Permits and must perform all obligations under the Caltrans Permits at no cost to City. Prior to the issuance of City building permits, Tenant must submit evidence reasonably satisfactory to City that it has obtained all necessary permits from Caltrans. Upon termination of this Lease, City will relinquish any interest it may have in the Caltrans Permits and execute any documents needed to confirm that Tenant is the sole owner of the Caltrans Permits.

7.4 City Permits

Prior to starting construction, Tenant must apply for all necessary building and electrical permits for the Billboard. City will diligently process Tenant's applications for all City Permits. This Lease does not commit City in advance to approve City Permits; and this Lease does not constrain City's discretion, acting as a government, with respect to City Permits specifically or to the Billboard generally, and nothing contained herein will be construed to mean that City is agreeing or has agreed to exercise its discretionary authority in support of any approvals or entitlements that may be required to construct the Billboard.

7.5 Installation

Tenant must begin installing the Billboard as soon as practicable after the Commencement Date and must diligently pursue installation to completion without unnecessary interruption so that the Billboard is Operational by the 120th day after the Commencement Date. Tenant will be excused, however, for any delays in beginning or completing installation that are caused by a Force Majeure Event, as defined in Section 13.5. Tenant must use reasonable diligence to avoid such delays and to resume work as promptly as possible after such a delay.

7.6 Ownership

Tenant will at all times own the Billboard. Upon the expiration or other termination of this Lease for any reason, Tenant must remove the Billboard in accordance with Section 7.13.

7.7 Security Fencing/Bollards

Before beginning installation of the Billboard, Tenant must enclose with a temporary security fence the portion of the Premises Tenant needs to install, operate, maintain, and repair the Billboard. If required by City in connection with the permitting of the Billboard, Tenant must maintain the temporary security fence until Tenant replaces it with permanent bollards around the base of the Sign Structure to protect the Billboard from damage. Tenant must install and maintain the temporary fence and the permanent bollards at no cost to City and must consult with City on the location and design of each. Tenant must install the permanent bollards at the beginning of the Operations Phase and maintain those bollards until the end of the Term.

7.8 Maintenance

At no cost to City, Tenant must maintain and repair the Billboard and Tenant's other improvements in good condition and repair, reasonable wear and tear excepted. Tenant's maintenance obligation under this Section 7.8 includes the obligation to remove promptly any graffiti from the Billboard. In no event will Tenant be required to maintain any portion of the City Property, exclusive of Tenant's improvements thereon. City is not obligated to maintain or repair the Billboard or any of Tenant's improvements, but will, at its sole cost, maintain the City Property in good condition. If, however, Tenant does not maintain the Billboard in accordance with this Lease, then City may notify Tenant in accordance with Section 13.1 that City will perform the maintenance described in the notice if Tenant does not do so within 10 Business Days. If Tenant does not perform the needed maintenance within the 10 Business Days after the notice is given, then City may perform the maintenance described in the notice, and Tenant must reimburse City's costs.

7.9 Insured Damage or Destruction

7.9.1 Restoration. This Lease will continue in full effect if the Billboard is damaged or destroyed in whole or part by any cause covered by the fire-and-casualty insurance Tenant is required to maintain under Section 12.1(c). No loss or damage by fire or any other cause resulting in either partial or total destruction of the Billboard, or any portion thereof, will (except as otherwise provided in Section 7.10, below) operate to terminate this Lease or to relieve or discharge Tenant from the payment of any Monthly Rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Billboard, or any portion thereof, including any personal property owned by Tenant and used or intended to be used in connection with the Premises, so damaged or destroyed. Tenant also covenants that all insurance proceeds will be applied to the repair, reconstruction and/or replacement described herein, subject to the following:

(a) Tenant must repair or replace the Billboard at no cost to City using the insurance proceeds Tenant receives or is entitled to receive under the fire-and-casualty policy. Tenant must promptly apply for, and diligently pursue the issuance of, any permits or approvals it needs to repair or replace the Billboard. Within 30 days after obtaining the necessary permits and approvals and applicable insurance proceeds, Tenant must begin work to repair or replace the Billboard. Tenant must complete the work within 120 days after the work begins and must pay any costs that exceed the available insurance proceeds.

(b) Tenant may elect not to repair or replace the Billboard if:

(i) the cost to repair or replace it exceeds fifty percent (50%) of its full replacement cost immediately before it is damaged or destroyed, and the damage or destruction occurs during the last two years of the Initial Term; or

(ii) Tenant is unable, after using good faith efforts, but without having to resort to litigation, to obtain all permits, including, without limitation, the City Permits.

(c) If Tenant elects, under this Section 7.9, not to repair or replace the Billboard, then Tenant must:

(i) notify City in writing of its election;

(ii) use the insurance proceeds Tenant receives for the damage or destruction to remove the Billboard and restore the Premises in accordance with Section 7.13.

Except as otherwise permitted by this Section 7.9.1, Tenant's failure to make such full repair, restoration and replacement under any conditions in which it was elected or required so to do will constitute a default by Tenant under this Lease.

7.9.2 Procedures for Repair and Restoration. In the event of any damage or destruction, Tenant must promptly give City written notice of such damage or destruction and the date on which such damage or destruction occurred. Tenant must promptly make proof of loss and must proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided above, amounts received on account of any losses pursuant to insurance policies must be used and expended for the purpose of fully repairing or reconstructing the portions of the Billboard which has been destroyed or damaged.

7.10 Uninsured Damage or Destruction

This Lease will continue in full effect if the Billboard is damaged or destroyed in whole or part by any cause not fully covered by the fire-and-casualty insurance Tenant maintains, subject to the following:

7.10.1 The Monthly Rent thereafter due under this Lease will abate from the date of the casualty until Tenant has completed the repair or replacement of the Billboard.

7.10.2 Tenant may repair or replace the Billboard at no cost to the City. If Tenant elects to repair the casualty, Tenant must promptly apply for, and diligently pursue the issuance of, any permits or approvals it needs to repair or replace the Billboard. Within 30 days after obtaining the necessary permits and approvals, Tenant must begin work to repair or replace the Billboard and diligently pursue the completion thereof. If Tenant elects to not repair or restore the Billboard, Tenant must notify the City in writing of its election, in which event this Lease will terminate the day the City receives written notice of such election; and then Tenant must remove the Billboard and restore the Premises in accordance with Section 7.13.

7.11 Utilities

At no cost to City, Tenant must provide and pay for all utility connections, utility equipment, and utility service required to install, operate, maintain, repair, improve, or reposition the Billboard throughout the Term. Tenant must coordinate with City and the applicable utility companies for utility tie-ins and electrical power sources that Tenant may need to operate the Billboard. When purchasing electricity needed to operate the Billboard, Tenant must participate in the "Green Option" program offered by Pacific Gas & Electric ("PG&E"), so that 100% of the Billboard's electrical needs come from renewable resources. If PG&E discontinues the Green Option program, then Tenant must participate in any comparable program that PG&E then offers. Alternatively, Tenant may contract with a solar company to develop a solar energy plan to offset a significant portion (i.e., 50% or more) of the energy required to operate the Billboard.

7.12 Advertising Rights

During the Term, Tenant will have the exclusive right to enter into agreements for advertising on the Billboard. In operating the Billboard, Tenant must conform to all valid and applicable laws and regulations, including laws and regulations pertaining to outdoor advertising, including the advertising criteria set forth in Exhibit C.

Tenant must, within 48 hours after written demand from City, at Tenant's risk and expense, remove any advertising material or message that does not comply with the advertising criteria set forth in Exhibit C, and which is not being disputed by Tenant. If Tenant fails to promptly cause the removal of such advertising, City may (but is not required to), without further process of law, cause the removal of the advertising. Tenant must reimburse City's costs of such actions upon demand and will bear the risk of any damage to the Billboard resulting from such actions. City may exercise such remedies without prejudice to any other remedies it may be entitled to exercise under this Lease, at law or in equity.

Tenant agrees to ensure that businesses or organizations located within the City or residents of the City will be able to purchase advertising on the Billboard in such manner and at such rates as offered to businesses, organizations or persons located or residing outside of the City and that it will not permit any exclusivity contracts or arrangements with advertisers that would violate this covenant.

7.13 Removal of Billboard

Within 120 days after the Term ends, whether the Term expires as scheduled or is terminated early for any reason, Tenant must remove the Billboard from the Premises and must restore the Premises to their pre-lease condition, all at no cost to City. Tenant may leave the footing for the Billboard pole in place at the expiration or termination of the Lease, provided that Tenant pays City \$30,000, which the parties agree represents a reasonable contribution towards the cost of removing such footing as part of any future development of the City Property.

7.14 Compliance with Law

During the Term and while removing the Billboard after the Term in accordance with Section 7.13, Tenant, at no cost to City, must comply with all valid and applicable statutes, ordinances, regulations, rules, and orders that concern Tenant's use and occupancy of the Premises and the Billboard and are enacted or issued by any federal, state, or local governmental entity with jurisdiction over the Premises or the Billboard (including City) whether enacted or issued before, on, or after the Effective Date.

ARTICLE 8 EVENTS OF DEFAULT; EARLY TERMINATION.

8.1 Defaults by Tenant

Tenant will be in default under this Lease upon occurrence of any of the following:

8.1.1 Tenant is at any time be in default in the payment of Rent or any other monetary sum called for by this Lease for more than 10 days following written notice from City to Tenant; or

8.1.2 Tenant is at any time be in default in the keeping and performing of any of its other covenants or agreements herein contained, and should such other default continue for 30 days after written notice thereof from City to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30 day period and to thereafter diligently pursue completion of such cure; or

8.1.3 Tenant violates Section 13.2 of this Lease; or

8.1.4 The Billboard is not Operational by the 365th day after the Commencement Date.

8.2 City's Remedies for Default by Tenant

Upon the occurrence of any such default, in addition to any and all other rights or remedies of City hereunder, or by law or in equity provided, City will have the sole option to exercise the following rights and remedies:

8.2.1 Without prejudice to its other remedies at law or in equity, City may terminate this Lease, at any time and in its sole discretion, effective 30 days after City gives Tenant written notice of termination.

8.2.2 City will have the remedy described in California Civil Code section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations), as amended from time to time, and successor statutes thereto.

8.3 City Damages

Should City elect to terminate this Lease, City will be entitled to recover from Tenant, as damages:

8.3.1 The worth at the time of the award of the unpaid Rent that had been earned at the time of termination of this Lease;

8.3.2 The worth at the time of the award of the amount by which the unpaid Rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

8.3.3 The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term of this Lease after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and

8.3.4 Any other amount (and court costs) necessary to compensate City for all detriment proximately caused by Tenant's default, including costs of alterations and improvements in connection with reletting.

8.4 City Remedies Cumulative

Each right and remedy of City provided for herein or now or hereafter existing at law or in equity, by statute or otherwise will be cumulative and will not preclude City from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at Law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment of Rent will be deemed an accord and satisfaction of full payment of Rent; and City may accept such payment without prejudice to City's right to recover the balance of such Rent or to pursue other remedies.

8.5 Default by City

City will not be in default under this Lease unless City fails to perform obligations required of City within 30 days after written notice is delivered by Tenant to City specifying the obligation which City has failed to perform; provided, however, that if the nature of City's obligation is such that more than 30 days are required for performance, then City will not be in default if City commences performance within such 30-day period and thereafter diligently prosecutes the same to completion. All obligations of City hereunder will be construed as covenants, not conditions.

8.6 Tenant's Remedies for Default by City

If the City is in default under this Lease beyond any applicable cure period, Tenant's exclusive remedies will be an action for specific performance or injunctive relief, or if such remedies cannot make Tenant whole, then an action or claim for actual damages may be brought; provided, however, that Tenant expressly waives the right to any cause of action or claim for consequential, economic, or incidental damages, including lost profits, as well as any cause of action or claim for exemplary or punitive damages. Tenant also waives the benefit of any laws granting it the right to perform any City obligation or the right to place a lien upon the property of City and/or upon Rent due City, or withhold Rent on account of any City default. Notwithstanding the foregoing, in the event that the remedies of injunctive relief or specific performance are not adequate and Tenant is entitled to monetary damages, then in no event will City's monetary liability to Tenant with respect to a default or breach of this Agreement (excluding any award of attorney fees and costs) exceed the amount established below as the parties agree to place a cap on any claim for monetary damages. The cap will be based on the total actual costs incurred by Tenant associated with the permitting and construction of the Billboard as of the date it becomes Operational (collectively, the "Construction Cost Amount"). The Construction Cost Amount will be amortized over a 10-year period on each anniversary of the Operations Phase; provided, however that the Construction Cost Amount will never be reduced by amortization below \$100,000. By way of example, if the Construction Cost Amount is \$200,000, and a breach occurs following the third anniversary of the Operations Phase, then any monetary damage claim by Tenant would be capped at \$140,000 (\$200,000 - \$60,000 [3 years of amortized costs] = \$140,000). The cap on monetary damages and the limitations on

remedies set forth above are solely for the benefit of City and will not apply to any private entity that is City's successor-in-interest to ownership of the Premises and landlord under this Lease. In the event of such a transfer in interest to a private entity, then Tenant will have the right to seek all remedies that may be available to Tenant at law or in equity without any limitation.

8.7 Tenant's Early Termination Rights

Tenant may terminate this Lease effective 30 days after Tenant gives the City written notice of termination, if any of the following circumstances occur:

8.7.1 The view of the Billboard's display area from the portion of State Route 4 adjacent to the Premises is materially obstructed, and Tenant did not cause the obstruction.

8.7.2 Tenant cannot safely use the Premises to install, operate, maintain, repair, or improve the Billboard because of a non-remediable condition, and Tenant did not cause the condition.

8.7.3 There is a material diversion of traffic from, or a material reduction or change in the directional flow of traffic on, the portion of State Route 4 adjacent to the Premises, and the diversion or disruption continues uninterrupted for at least 24 consecutive months. Or, if the Billboard becomes uneconomical, as determined by Tenant in its sole discretion, to operate.

8.7.4 Through no fault of its own, Tenant cannot obtain or maintain the governmental permits required to install, operate, maintain, repair, or improve the Billboard, including the Caltrans Permits and the City Permits or there is a legal challenge to such permits and approvals and Tenant elects not to defend such challenge beyond its obligation to indemnify City pursuant to Section 11.4.

8.7.5 Use of the Billboard for its intended purpose is prevented or limited by law, or Tenant is required by any court or other governmental entity, for reasons other than eminent domain, to remove the Billboard from the Premises.

8.7.6 Tenant is unable to obtain or maintain any utilities required to operate the Billboard through no fault of its own.

8.7.7 The City is in default under Section 8.5.

8.8 Tenant's Right To Renegotiation

If any of the circumstances identified in Section 8.7 occurs, then, at its discretion and in lieu of termination, Tenant may request that the City negotiate on reducing Monthly Rent to an amount that reasonably reflects the diminished value of the Billboard to Tenant, and on receiving the request the City will negotiate in good faith with Tenant. The City is not required, however, to agree on a reduction in Monthly Rent.

ARTICLE 9 TAXES

Tenant is responsible for and must pay or otherwise discharge, without abatement or deduction, all taxes levied on, or related to, Tenant's outdoor-advertising activities on the Premises. This obligation includes payment of any of the following:

9.1 Possessory Interest Taxes

This Lease creates a possessory property interest in Tenant. Tenant acknowledges and agrees that Tenant's leasehold and/or other property interests may be subject to property taxation, and Tenant to the payment of property taxes levied on such interest. Such taxes are referred to herein as "Possessory Interest Taxes," and must be paid by Tenant during the term of this Lease.

9.2 Sales Taxes

The sale of advertising space on the Billboard may be subject to sales or similar tax. Tenant acknowledges and agrees that such activities may subject Tenant to the payment of sales taxes levied on such interest, and Tenant agrees that all such sales taxes must be paid by Tenant (or Tenant's customers) during the term of this Lease.

9.3 Personal Property Taxes

Tenant must pay before delinquency all taxes, assessments, license fees and other charges levied and assessed against Tenant or City with respect to any real-property tax allocated to the Billboard and/or personal-property tax levied on Tenant's personal property on the Premises ("Personal Property Taxes"), which may become payable during the Term or are attributable to Tenant's use or occupancy of the Premises. On demand by City, Tenant must furnish City with satisfactory evidence of these payments. Notwithstanding the foregoing, Tenant will have the right to contest the imposition or collection of any such Personal Property Taxes, which Tenant reasonably believes, was improperly assessed or calculated.

9.4 Other Taxes

In addition to the taxes set forth in Sections 9.1 – 9.3, Tenant must pay before delinquency all other taxes, impositions, general or special assessment, surcharge, fee, levy, penalty, bond, or similar charge is levied on any business conducted on the Premises or any portion thereof), general and special taxes including gross receipts tax, excise tax levied by any Taxing Authority (defined below), or any improvements, any portion thereof, or any improvements thereon by any authority having the power to tax, including any federal, state or county government or any political subdivision thereof ("Taxing Authority"). In the event any Personal Property Taxes, and other taxes, as described in this Article 9 or any other costs to be borne by or due from Tenant are not assessed or charged against the Premises separately from other City-owned property, City will reasonably allocate such on a pro-rata basis.

9.5 Tenant's Tax Liability Prorated

Tenant's liability to pay any taxes and new assessments will be prorated on the basis of a 365-day year to account for any fractional portion of a fiscal tax year included in the Term at its inception and expiration or other termination in accordance with this Lease.

ARTICLE 10 EMINENT DOMAIN

10.1 Definitions

For the purposes of this Article 10, the following definitions will apply:

(a) "Condemning Entity" means any entity that by law may exercise the power of eminent domain to acquire possession of, and title to, any of the following: the Billboard, the entire Premises, or an Essential Part of the Premises.

(b) "Essential Part of the Premises" means any portion of the Premises that is reasonably necessary for installing, operating, maintaining, repairing, or improving the Billboard in accordance with this Lease.

10.2 Termination Events

This Lease will terminate if a Condemning Entity acquires the Billboard, the entire Premises, or an Essential Part of the Premises:

(a) by using the power of eminent domain; or

(b) through negotiations under the threat of using the power of eminent domain.

10.3 Termination Date; Rent Refund; Caltrans Permits

Termination under this Article 10 will occur on the date the Condemning Entity obtains possession of, or title to, the Billboard, the entire Premises, or the Essential Part of the Premises, whichever occurs first. Within 15 Business Days after the termination date, City will:

(a) refund to Tenant any pre-paid Monthly Rent for the unexpired portion of the Term; and

(b) relinquish any interest it may have in the Caltrans Permits and execute any documents needed to confirm that Tenant is the sole owner of the Caltrans Permits.

10.4 Compensation

If termination occurs under this Article 10, then Tenant and City may each independently seek to recover from the Condemning Entity all compensation and other remedies provided by law for the interests taken from them. But City may not seek or recover compensation for Tenant's lost interests, and Tenant may not seek or recover compensation for City's lost interests. Without limiting the preceding, Tenant may seek to recover some or all of the following from the Condemning Entity:

(a) compensation for its lost advertising income, for the value of the Billboard, for lost goodwill, and for its interest in this Lease; and

(b) financial assistance for relocating the Billboard.

ARTICLE 11 INDEMNIFICATION

11.1 Definitions

For the purposes of this Article 11, the following definitions will apply:

11.1.1 "Person" is to be interpreted broadly and includes Tenant and Tenant's directors, officers, employees, contractors, and agents; and City and City's elected officials, officers, employees, contractors, and agents.

11.1.2 "Liabilities" means all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal) that arise directly or indirectly from Tenant's possession or use of the Premises.

11.1.3 "Occurrence" means (A) the death of, or injury to, any Person; and (B) damage to, or destruction of, any real property, personal property (including intellectual property), or the environment (broadly interpreted to include the air, soil, soil vapor, surface water, groundwater, flora, and fauna on or about the Premises).

11.2 General Indemnity

Except to the extent claims are caused by the sole negligence or willful misconduct of the City and its employees, agents, and representatives and not waived by Tenant pursuant to Section 11.6 below, Tenant must indemnify, protect, defend, and hold harmless City and its elected officials, officers, employees, volunteers, lenders, agents, and representatives and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (a) any Tenant default under this Lease (including in the performance or non-performance of any obligation on Tenant's part to be performed under the terms of this Lease); (b) Tenant's performance of the installation of the Billboard (including design, development, and construction); (c) Tenant's or Tenant's representatives or agents use of the City Property, the Billboard, any portion thereof, or any improvements thereon, the conduct of Tenant's business or any activity, work or thing done, permitted or suffered by Tenant or its representatives or agents in or about the City Property or any portion thereof, or any improvements thereon, except that with regard to the presence of Hazardous Materials, the Premises or any improvements thereon, Tenant will not be responsible for conditions that may have existed prior to the Effective Date or were not caused by Tenant or its authorized representatives; and (d) any act, error or omission of Tenant or its representatives or agents in or about the Premises, any portion thereof, or any improvements thereon (collectively, "Indemnification"). Tenant must provide such Indemnification by and through counsel reasonably approved by City. Without limiting the foregoing, Tenant's obligation under this section includes Liabilities arising from any of the following:

(a) Any Occurrence that is caused by, or related in any way to, a verbal or nonverbal display on the Billboard.

(b) Tenant's failure to perform any provision of this Lease due to no fault of City, to comply with any requirement of law applicable to Tenant, or to fulfill any requirement

imposed by any governmental entity (including City when acting as a government) on Tenant or on Tenant's use of the Premises.

(c) Any claim that Tenant's policies with respect to the allocation of advertising time violate any person's or persons' First Amendment rights.

Tenant agrees that its obligation under this Section 11.2, includes the reasonable costs of attorney fees incurred by City's City Attorney office to monitor and consult with Tenant regarding the defense of any such Liabilities, including providing direction with regard to strategy, preparation of pleadings, settlement discussions, and attendance at court hearings, mediations, or other litigation related appearances. City will use its best efforts to avoid duplicative attorney work or appearances in order to keep litigation costs to a reasonable minimum. Tenant further acknowledges and agrees that settlement of any Liabilities requires the consent of City. City agrees that its consent will not be unreasonably withheld provided that Tenant is financially able (based on demonstrated assets) to fulfill its obligation to indemnify City for the costs of any such settlement as required under this Lease.

Except to the extent claims are caused by the negligence or willful misconduct of Tenant or its employees, agents or authorized representatives or not waived pursuant to Section 11.6 below, the City must indemnify, protect, defend, and hold harmless Tenant and its employees, agents, and authorized representatives and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (a) the City's or City's representatives or agents use of the Premises, the conduct of City's business or any activity, work or thing done, permitted or suffered by City or its representatives or agents in or about the City Property or any portion thereof; and (b) any act, error or omission of the City or its representatives or agents in or about the City Property, any portion thereof, or any improvements thereon.

11.3 Hazardous Materials

Except with regard to the presence of Hazardous Materials on the Premises prior to the Effective Date, Tenant must indemnify, defend and hold City harmless from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses and consultant fees and expenses) caused or alleged to have been caused by Tenant's use, storage, handling, treatment, generation, presence, discharge or release of Hazardous Materials in violation of Tenant's obligations under this Lease, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including claims made against City with respect to bodily injury, death or property damage sustained by third parties caused or alleged to have been caused by Tenant's use, storage, handling, treatment, generation, presence, discharge or release of Hazardous Materials.

The City must indemnify, defend and hold Tenant harmless from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses and consultant fees and expenses) caused or alleged to have been caused by the City's use, storage, handling, treatment, generation, presence, discharge or release of Hazardous Materials on the Premises, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including claims made

against Tenant with respect to bodily injury, death or property damage sustained by third parties caused or alleged to have been caused by the City's use, storage, handling, treatment, generation, presence, discharge or release of Hazardous Materials.

11.4 Legal Challenges

Tenant must indemnify, defend (with attorneys reasonably approved by City), protect, and hold harmless City and City's elected officials, officers, and employees in any litigation brought to challenge the award or validity of this Lease, the validity of City Permits or the Caltrans Permits, or the validity of City ordinances that authorize the installation and operation of the Billboard on the Premises. Tenant's obligation to indemnify under this section includes liability for attorneys' fees awarded to a party who successfully challenges the validity of this Lease, of City Permits or the Caltrans Permits, or of any authorizing ordinance. Tenant agrees that its obligation under this Section 11.4, includes the reasonable costs of attorney fees incurred by City's City Attorney office to monitor and consult with Tenant regarding the defense of any such Liabilities, including providing direction with regard to strategy, preparation of pleadings, settlement discussions, and attendance at court hearings, mediations, or other litigation related appearances. City will use its best efforts to avoid duplicative attorney work or appearances in order to keep litigation costs to a reasonable minimum. Tenant further acknowledges and agrees that settlement of any Liabilities requires the consent of City. City agrees that its consent will not be unreasonably withheld provided that Tenant is financially able (based on demonstrated assets including insurance) to fulfill its obligation to indemnify City for the costs of any such settlement as required under this Lease.

11.5 Not a Construction Contract

This Lease is not intended nor will it be construed to be a construction contract. To the extent this Lease is construed by a court of law to be a construction contract, all indemnity obligations construed to be related to construction contracts will be read as if including the carve out "except to the extent claims are caused by the sole or active negligence or willful misconduct of the indemnified party."

11.6 Exemption of City from Liability

Tenant, as a material part of the consideration to City, hereby assumes all risk of damage to its property (including any personal property and the Billboard), and injury to or death of Tenant's employees, agents or contractors in, upon or about the Billboard or the Premises, any portion thereof, or any improvements thereon, arising from any cause, and Tenant hereby waives all claims in respect thereof against City, except to the extent such claims are caused by City's sole negligence or willful misconduct. Tenant hereby agrees that City will not be liable for injury to Tenant's business or any loss of income therefrom or for damage to its personal property, or injury to or death of Tenant, its representatives, or agents, whether such damage or injury is caused by fire, electricity, gas, water or rain, or from the breakage, leakage or other defects of wires, or lighting fixtures, or from any other cause, whether such damage or injury results from conditions arising within or about the Billboard or the Premises, any portion thereof, or any improvements thereon or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, except damage or injury caused solely by City's sole negligence or willful misconduct. City will not be liable for any damages arising from any act or neglect of any other tenant or occupant, if any, of the Premises, any portion thereof, or any improvements thereon not owned by the City, or Landlord's failure to enforce the terms of any agreements with parties other than Tenant.

11.7 Survival

Each party's obligations under this Article 11 will survive expiration or termination of this Lease.

ARTICLE 12 INSURANCE

12.1 Types of Policies

During the Term and during Tenant's removal of the Billboard in accordance with Section 7.13, at no cost to City, Tenant must procure and maintain the following forms and amounts of insurance covering Tenant's possession and use of the Premises ("Tenant's Insurance"). Such insurance must be primary to and not contributing with any other insurance, self-insurance or joint self-insurance maintained by City, and must name the City as an additional insured.

(a) Commercial General Liability Insurance. A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability (including Tenant's indemnification obligations under this Lease), premises liability, products and completed operations liability, owner's protective coverage, broad form property damage, and bodily injury (including wrongful death) and advertising injury coverage. If necessary, Tenant must provide for restoration of the aggregate limit.

(b) Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance, if required by law, which complies with all applicable state statutes and regulatory requirements, and employer's liability insurance coverage in statutory amounts.

(c) Premises Insurance. Property insurance, including fire and extended coverage, sprinkler leakage, vandalism and malicious mischief coverage, insuring the Billboard for its full replacement value against damage or destruction by fire or by any of the perils commonly covered under the standard extended-coverage endorsement to fire-insurance policies issued on real property in Contra Costa County. In addition, during installation of the Billboard, the policy must include coverage for course of construction, vandalism, and malicious mischief and must insure the Billboard and all materials delivered to the Premises for their full insurable value. All insurance proceeds that become payable under this policy while this Lease is in effect will be paid to Tenant in trust and applied by Tenant to the cost of repairing and restoring the Billboard as required by, and except as otherwise provided in, Section 7.9.

(d) Other Insurance. Any other form or forms of insurance as City may reasonably require from time to time, in form, amounts and for insurance risks against which a prudent tenant would protect itself, but only to the extent such risks and amounts are available in the insurance market at commercially reasonable costs.

12.2 Insurer Qualifications

Tenant's Insurance must be written by companies licensed to do business in California and having a "General Policyholders Rating" of at least A-/ VII (or such higher rating as may be required by a lender having a lien on the Tenant's leasehold interest) as set forth in the most current issue of "Best's Insurance Guide."

12.3 Certificates of Insurance

Tenant must deliver to City certificates of insurance for Tenant's Insurance, in the form of the ACORD standard certificate of insurance, prior to the Commencement Date. Tenant must, at least 30 days prior to expiration of the policy, furnish City with certificates of renewal or "binders" thereof. Each certificate must, if standard insurance industry practice, expressly provide that such policies must not be cancelable or otherwise subject to modification except after 30 days' prior written notice to the parties named as additional insureds as required in this Lease. If Tenant fails to maintain any insurance required in this Lease, Tenant must be liable for all losses and costs resulting from such failure.

12.4 Notice

Each of the policies must endeavor to require the insurer to give City at least 30 days' advance written notice before the policy is cancelled or materially changed.

12.5 Other Requirements

The general-liability and automobile-liability policies must each:

(a) name City and City's elected officials, officers, employees, and agents as additional insureds;

(b) provide that Tenant's insurance coverage is primary insurance with respect to City and City's elected officials, officers, employees, and agents to the extent they are additional insureds;

(c) any umbrella liability policy or excess liability policy must provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of Tenant's Insurance will not limit Tenant's liability under this Lease;

(d) provide that Tenant's insurance applies separately to each insured against whom a claim is made or a suit brought, except with respect to the applicable policy limits;

(e) provide that City's insurance and self-insurance are in excess of Tenant's insurance and will not contribute with it;

(f) waive any right to recover against City for claims for damages to Tenant's personal property to the extent covered (or required by this Lease to be covered) by Tenant's Insurance. This provision is intended to waive fully, and for the benefit of City, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by Tenant pursuant to this Lease must include a waiver of subrogation endorsement attached to the certificate of insurance.

12.6 Notification of Incidents

Tenant must notify City within 24 hours after the occurrence of any accident or incident on or about the Billboard, the Premises, any portion thereof, or any improvements thereon of which Tenant has knowledge and which could give rise to a claim against City, City's insurance, Tenant, or Tenant's Insurance, except that Tenant will not be obligated to give City notice of any

accident or incident which could give rise to a claim under Tenant's workers' compensation insurance. Tenant's notice must be accompanied by a copy of any report(s) relating to the accident or incident.

12.7 No Limit on Indemnification

Nothing in this Article 12 limits Tenant's obligations under Article 11.

ARTICLE 13 MISCELLANEOUS

13.1 Notices

Any notice or other communication to be given under this Lease must be in writing and will be considered properly given and effective only when addressed to the persons identified below and (i) mailed postage prepaid by certified or registered mail, return receipt requested, or (ii) delivered by personal or courier delivery, or (iii) sent by facsimile (immediately followed by one of the preceding methods). Notices or communications will be deemed served upon the earlier of receipt or three (3) days after the date of mailing. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this Section 13.1.

If to City:

City Manager
City of Antioch
P.O. Box 5007
Antioch, CA 94531

Facsimile: XXX

If to Tenant:

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

Facsimile: XXX

13.2 Assignments and Subleases

Neither party may assign or otherwise transfer this Lease or any interest herein, and this Lease is not assignable by operation of law, without the other party's prior written consent, which the other party will not unreasonably withhold. An assignment or transfer of this Lease does not occur, for purposes of this section, if Tenant (a) merges with another company, reorganizes its stock, undergoes a similar corporate restructuring, (b) sells any of its assets or stock, or (d) assigns this Lease to a subsidiary or affiliate of Tenant. Notwithstanding the foregoing, so long as City owns the Premises, Tenant may not assign this Lease without the prior written consent of City, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, that such proposed assignee has experience in the outdoor advertising industry comparable to that of Tenant. City must respond in writing within 30 days of receipt of any request by Tenant for an assignment of this Lease. Any assignee of this Lease approved by City must provide City with an assignment and assumption of this Lease in a form reasonably acceptable to City's City Attorney prior to the effective date of such assignment. Tenant may not sublease the Premises or any part of the Premises, or the Billboard or any part of the Billboard, without City's prior written consent, which City may withhold or condition in its reasonable discretion. Upon the assignment of this Lease in accordance with this Section 13.2, Tenant will be forever released of all obligations accruing after the date of the transfer. Any assignment, transfer, or sublease made contrary to this section will be null and void.

13.3 Successors and Assigns

Subject to the restrictions set forth herein, each of the terms, covenants and conditions of this Lease will extend to and be binding on and will inure to the benefit of not only City and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Lease reference is made to either City or Tenant, the reference will be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

13.4 City's Right to Enter and Inspect the Premises

City and its authorized representatives will have the right to enter upon and inspect the Premises at any time to determine Tenant's compliance with this Lease.

13.5 Force Majeure

13.5.1 "Force Majeure Event" means a cause of delay that is not the fault of the party who is required to perform under this Lease and is beyond that party's reasonable control, including the elements (including floods, earthquakes, windstorms, and unusually severe weather), fire, energy shortages or rationing, riots, acts of terrorism, war or war-defense conditions, acts of any public enemy, epidemics, the actions or inactions of any governmental entity (excluding City) or that entity's agents, litigation, labor shortages (including shortages caused by strikes or walkouts), and materials shortages.

13.5.2 Except as otherwise expressly provided in this Lease, if the performance of any act required by this Lease to be performed by either City or Tenant is prevented or delayed because of a Force Majeure Event, then the time for performance will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused. An extension of time for any such Force Majeure Event will be for the period of the enforced delay and will commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Lease may also be extended in writing by the mutual agreement of City and Tenant.

13.5.3 This Section 13.5 does not excuse (A) Tenant's obligation to pay Monthly Rent when due and payable; or (B) either party's obligation to perform an act when performance is rendered difficult or impossible solely because of that party's financial condition. Tenant expressly agrees that adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant's inability to sell advertising time on the Billboard or other lack of funding, or to complete the installation of the Billboard will not constitute grounds of enforced delay pursuant to this Section 13.5. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Commencement Date.

13.6 Waiver of Breach

A party's failure to insist on strict performance of this Lease or to exercise any right or remedy upon the other party's breach of this Lease will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any provision in

this Lease will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in writing and signed by the waiving party.

13.7 Relationship of the Parties

This Lease does not create any relationship or association between City and Tenant other than that of landlord and tenant, and it is expressly understood and agreed that City does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the conduct of Tenant's business or otherwise; nor does this Lease does create between City and Tenant the relationship of principal and agent.

13.8 Attorney's Fees

In the event that any action is brought by either party as against the other party for the enforcement or declaration of any right or remedy in or under this Lease or for the breach of any covenant or condition of this Lease, the prevailing party will be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court including, but not limited to, attorneys' fees.

13.9 Severability

If any term, provision, condition or covenant of this Lease or its application to any party or circumstances is held, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, will not be affected, and will be valid and enforceable to the fullest extent permitted by Law.

13.10 Memorandum of Lease

City will record with the County Recorder's Office a memorandum of this Lease in the form attached as Exhibit D promptly after the execution of this Lease.

13.11 Further Assurances

Each party will execute all additional documents or instruments and take all necessary action that either party reasonably considers necessary to carry out the proper purposes of this Lease, including any revisions to this Agreement necessary to address compliance with the California Subdivision Map Act with respect to preserving and protecting Tenant's interest in the Premises.

13.12 Estoppel Certificates

Either party must, from time to time during the Term upon not less than 20 days' prior written notice from the other party, execute, acknowledge and deliver to the other party, or such persons or entities designated by such other party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Monthly Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any

such certificate delivered pursuant to the provisions hereof may be relied upon by the other party or any prospective purchaser or encumbrancer of its estate. The City Manager will be authorized to execute, acknowledge and deliver any such certificate on behalf of City.

13.13 Time of Essence

Time is expressly made of the essence with respect to the performance by the parties of each and every obligation and condition of this Lease.

13.14 Interpretation

This Lease is to be interpreted and applied in accordance with California law without regard to conflict-of-laws principles, except that the rule of interpretation in California Civil Code section 1654 will not apply. Schedule 1 and Exhibits A, B, C, and D are expressly incorporated into and form a part of this Lease. This Lease will be interpreted as though prepared jointly by both parties

13.15 Integration and Modification

This Lease constitutes the entire agreement between the parties and there are no conditions, representations or agreements regarding the matters covered by this Lease which are not expressed herein. It supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and may be modified only by another written agreement signed by both parties. City and Tenant agree to mutually consider reasonable requests for amendments to this Lease that may be made by either of them, provided such requests are consistent with this Lease and would not materially alter the basic business terms included in this Lease. No amendment will be effective unless in writing and signed by both parties.

13.16 Quiet Possession

So long as Tenant is not in default under this Lease and is paying the Rent and performing all of the covenants and conditions of this Lease, Tenant must quietly have, hold and enjoy the Premises during the Term without interruption or disturbance from City or any other persons claiming by, through or under City.

13.17 Surrender

Upon the expiration or other termination of the Term of this Lease, and notwithstanding anything herein contained to the contrary, Tenant must surrender to Premises, all portions thereof, and all improvements thereon, in good condition and repair, reasonable wear and tear excepted, and remove the Billboard in accordance with the provisions of Section 7.13.

13.18 Nonliability

No member, official or employee of City will be personally liable to Tenant, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Lease. Tenant hereby waives and releases any claim it may have against the members, officials or employees of City with respect to any default or breach by City or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Lease.

13.19 Applicable Law; Venue

The laws of the State of California, without regard to conflict of law principles, will govern the interpretation and enforcement of this Lease. Any action to enforce or interpret this Lease must be filed in the Superior Court for Contra Costa County, California.

13.20 Commission

Each party represents to the other that it has not been represented by any broker in connection with this Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "Commission") is due or payable. Each party agrees to indemnify and hold the other harmless from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Commission based upon any statement, representation or agreement of the other party.

13.21 Counterparts

The parties agree that this Lease may be executed in counterparts, each of which will be deemed an original, and said counterparts will together constitute one and the same agreement, binding all of the parties, notwithstanding all of the parties are not signatory to the original or the same counterparts.

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—SIGNATURES BEGIN ON NEXT PAGE—

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

LANDLORD:

CITY OF ANTIOCH, a California municipal corporation

By: _____
Name:
Its: City Manager

ATTEST:

, City Clerk

APPROVED AS TO FORM:

, City Attorney

—AND—

TENANT:

MESA OUTDOOR, LLC, a California limited liability company

By: _____
Name:
Its:

By: _____
Name:
Its:

**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF NOVEMBER 12, 2013**

Prepared by: Mike Boccio, Acting Chief Building Official 
Approved by: Tina Wehrmeister, Community Development Director 
Date: November 7, 2013
Subject: Adoption of the 2013 California Building Standards Codes with Local Amendments and Amendments to the Construction and Demolition Debris Recycling Ordinance

RECOMMENDATION

1. Motion to read the ordinances by title only.
2. Motion to introduce an ordinance amending and adding specific Local Amendments to chapters of Title 8 of the Antioch Municipal Code, adopting by reference the California Code of Regulations Title 24, 2013 Edition of the California Building Standards Codes and related model codes and amending Chapters 1 through 19 of Title 8 of the Antioch Municipal Code.
3. Motion to introduce an ordinance amending Section 6-3.202 of the Antioch Municipal Code, dealing with Thresholds for Covered Projects under the Construction and Demolition Debris Recycling Ordinance.

BACKGROUND/DISCUSSION

Building & Fire Codes

Every three years, the State of California amends and adopts the Building, Mechanical, Plumbing, Electrical, Energy, California Green, Historical and Fire Codes, which are subsequently published by the Building Standards Commission. The new codes will become effective statewide on January 1, 2014. These codes are part of a larger document called Title 24 of the California Code of Regulations. The City Council last adopted building code ordinances in November, 2010 in conjunction with the 2010 Editions adopted by the State. By adopting the ordinances at this time, local amendments can be orderly and effectively included into enforcement efforts.

The codes can be modified locally to reflect unique situations or special needs provided that findings can be made that the modifications are reasonably necessary because of local climatic, topographical, or geological conditions. Staff is proposing amendments to the Plumbing (CPC) and Fire (CFC) Codes and has provided the necessary findings in the attached ordinance.

The proposed local change to the Plumbing Code would require all new residential construction to be equipped with an automatic gas shutoff valve in case of an earthquake. This requirement is already being implemented in many surrounding jurisdictions.

The Fire Code was amended significantly County-wide in 2010 with local amendments and findings adopted by the County Board of Supervisors and subsequently adopted by all nine local jurisdictions. The County and Fire District felt that these changes created reasonable and consistent fire safety requirements. Based on the success of the 2010 process the Fire District did not make any additional local amendments in 2013, with the exception of removing sections that are now incorporated into the State Code and some minor administrative changes/clarifications.

Construction and Demolition Debris Recycling

The 2010 edition of the California Building Standards Codes' construction waste requirements were not as stringent as the City's Construction and Demolition Recycling Ordinance (C&D Ord) adopted in 2004. The 2013 edition, however, includes an expansion of the projects required to meet the 50% reduction in construction waste landfilled. In order to ensure that our program is consistent with the 2013 edition, updates needed to be made to the covered project thresholds. The current C&D Ord has a threshold of all projects valued at \$75,000 or more and all capital improvement projects. The proposed update expands the covered projects in §6-3.202 A to include all new structures (regardless of project value), additions and alterations with a total project cost of \$75,000 or more and Demolition of any structure or portion of a structure over 120 square feet. Additionally, in §6-3.202 D, Projects sponsored by the City, reference to Redevelopment Agency projects has been removed.

FINANCIAL IMPACT

None. This update will ensure that the City is in compliance with State building regulations and will not impact the Building Permit fee schedule adopted with the City-wide Master Fee Schedule.

OPTIONS

None considered. The proposed ordinance amendments are consistent with State building standards effective January 1, 2014. Proposed local amendments are necessary to protect public health and safety as described in the ordinance findings.

ATTACHMENTS

A. Proposed Ordinance adopting the 2013 California Construction Codes and Local Amendments, as to amend The City of Antioch Code of Ordinances with the following exhibits:

Exhibit 1: Findings for adoption of local amendments to the Fire Code.

Exhibit 2: Contra Costa Fire Protection District Ordinance No. 2013-22.

B. Proposed Ordinance amending Section 6-3.202 of the Antioch Municipal Code, dealing with Thresholds for Covered Projects under the Construction and Demolition Debris Recycling Ordinance.

ATTACHMENT "A"

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
AMENDING SPECIFIED CHAPTERS OF TITLE 8 "BUILDING REGULATIONS" OF THE
ANTIOCH MUNICIPAL CODE, ADOPTING BY REFERENCE THE CALIFORNIA CODE OF
REGULATIONS TITLE 24, 2013 EDITION OF THE CALIFORNIA BUILDING STANDARDS
CODES AND RELATED MODEL CODES TO THE ANTIOCH MUNICIPAL CODE WITH
APPENDICES AND AMENDMENTS THERETO**

SECTION 1. Findings.

Pursuant to California Health and Safety Code sections 17958.7 and 18941.5(b), the City Council hereby finds that modifications are reasonably necessary to Municipal Code section 8-5.01, referencing the 2013 California Plumbing Code, to protect the health, safety and welfare of individuals in the City of Antioch because of the following local geological conditions in the City of Antioch:

The City of Antioch is located in the eastern portion of the San Francisco East Bay area, which is densely populated and located in an area of high seismic activity, as indicated by the United States Geological Survey and California Division of Mines and Geology. The City is located in Seismic Design Category D, one of the highest earthquake risk areas in the United States. Buildings and other structures in Seismic Design Category D can experience major ground shaking and significant seismic damage. The City is in close proximity to the Hayward, Calaveras, Concord, Antioch, and Mt. Diablo faults, as well as other lesser faults. The Concord and Antioch faults have a potential for a Magnitude 6 earthquake, while the Hayward and Calaveras faults have a potential for a Magnitude 7 earthquake.

In the event of earthquake, damage to structures can be expected, which could cause the collapse of buildings. Secondary impacts could include ruptured electric or gas lines and breaks in water and sewer lines. The potential for a major seismic event would create a City-wide demand for emergency response that would exceed staff resources.

The local amendment set forth in proposed Municipal Code section 8-5.01 addresses the importance of automatic gas shutoff in the event of a seismic event.

Furthermore, the City of Antioch adopts and incorporates by reference the findings adopted by the Contra Costa Fire Protection District (Contra Costa Board of Supervisors) for local amendments to the Fire Code. Those findings are included as Exhibit 1 to this ordinance.

SECTION 2. Section 8-1 of the Antioch Municipal Code is hereby amended to read in its entirety as follows:

Sec. 8-1.01. Adoption of the 2013 California Building Code.

The California Building Code, 2013 Edition, based on the 2012 International Building Code, published by the International Code Council (ICC), as adopted and amended by the California Building Standards Commission in the California Building Standards Code, Title 24 of the California Code of Regulations, is hereby adopted by reference. Also adopted by reference are Appendix Chapter 1 Administrative; Appendix Chapter I; Patio Covers, and Appendix Chapters J; Grading. Copies are on file in the offices of the Building Official.

SECTION 3. Section 8-1.07 is deleted in its entirety from the Antioch Municipal Code.

SECTION 4. Section 8-3.01 of the Antioch Municipal Code is hereby amended in its entirety to read as follows:

Sec. 8-3.01. Adoption of the 2013 California Electrical Code.

The California Electrical Code, 2013 Edition, based on the 2011 Edition of the National Electrical Code published by the National Fire Protection Association, as adopted and amended by the California Building Standards Commission in the California Building Standards Code, Title 24 of the California Code of Regulations, is hereby adopted by reference. Copies are on file in the offices of the Building Official.

SECTION 5. Section 8-4.01 of the Antioch Municipal Code is hereby amended in its entirety to read as follows:

Sec. 8-4.01. Adoption of the 2013 California Residential Building Code.

The California Residential Building Code, 2013 Edition, based on the 2012 International Residential Code, as adopted and amended by the California Building Standards Commission in the California Building Standards Code, Title 24 of the California Code of Regulations is hereby adopted by reference. Copies are on file in the offices of the Building Official.

SECTION 6. Section 8-4.02 is deleted in its entirety from the Antioch Municipal Code.

SECTION 7. Section 8-5.01 of the Antioch Municipal Code is hereby amended to read in its entirety as follows:

Sec. 8-5.01. Adoption of the 2013 California Plumbing Code.

(A) The California Plumbing Code, 2013 Edition, based on the 2012 Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials, as adopted and amended by the California Building Standards Commission in the California Building Standards Code, Title 24 of the California Code of Regulations, is hereby adopted by reference. Also adopted by reference are the "IAPMO Installation Standards", 2007 Edition, published by the International Association of Plumbing and Mechanical Officials. Copies are on file in the offices of the Building Official.

(B) In addition, The California Plumbing Code, 2013 Edition, Section 1210.18 shall include the following, "All new single and multiple family dwelling construction shall be equipped with an Earthquake-Actuated Gas Shutoff Valve".

SECTION 8. Section 8-7.01 of the Antioch Municipal Code is hereby amended in its entirety to read as follows:

Sec. 8-7.01. Adoption of the 2013 California Green Building Standards Code.

The 2013 California Green Building Standards Code, based on the 2008 California Green Building Standards Code published by the State of California, Department of

Housing and Community Development, Division of Codes and Standards, as adopted and amended by the California Building Standards Commission in the California Building Standards Code, Title 24 of the California Code of Regulations is hereby adopted by reference. Copies are on file in the offices of the Building Official.

SECTION 9. Section 8-8.01 of the Antioch Municipal Code is hereby amended in its entirety to read as follows:

Sec. 8-8.01. Adoption of the 2013 California Mechanical Code.

The California Mechanical Code, 2013, published by the International Association of Plumbing and Mechanical Officials, as adopted and amended by the California Building Standards Commission in the California Building Standards Code, Title 24 of the California Code of Regulations, is hereby adopted by reference. Also adopted by reference are Appendix Chapters A, B, C, and D. Copies are on file in the offices of the Building Official.

SECTION 10. Section 8-11.01 of the Antioch Municipal Code is hereby amended to read as follows:

Sec. 8-11.01. Adoption of the 2013 California Energy Code.

The 2013 California Energy Code, based on the 2008 California Energy Code published by the State of California, Department of Housing and Community Development, Division of Codes and Standards, as adopted and amended by the California Building Standards Commission in the California Building Standards Code, Title 24 of the California Code of Regulations is hereby adopted by reference. Copies are on file in the offices of the Building Official.

SECTION 11. Section 8-15.01 of the Antioch Municipal Code is hereby amended in its entirety to read as follows:

Sec. 8-15.01. Adoption of the 2013 California Fire Code.

- (A) The 2013 California Fire Code (California Code of Regulations, Title 24, Part, 9 [based on the 2012 International Fire Code published by the International Code Council]), including Chapters 1-10 and 12-80, Appendix B, Appendix C, Appendix D, Appendix F, Appendix H, Appendix I, Appendix J, and Appendix K are adopted by reference and shall be controlling and enforceable within the Jurisdictional boundaries of the City.
- (B) In addition, those amendments to the California Fire Code adopted by the Contra Costa County Fire Protection District pursuant to Ordinance Number 2013-22 (Exhibit 2) are adopted by reference and shall be controlling and enforceable within the jurisdictional boundaries of the City. Copies of the 2013 California Fire Code and Contra Costa Fire Protection District Ordinance 2013-22 are on file with the Community Development Department.

SECTION 12. Section 8-15.02 is deleted in its entirety from the Antioch Municipal Code.

SECTION 13. Section 8-16.01 of the Antioch Municipal Code is hereby amended in its entirety to read as follows:

Sec. 8-16.01. Adoption of the 2013 California Historical Building Code.

The 2013 California Historical Code published by the International Code Council, as adopted and amended by the California Building Standards Commission in the California Building Standards Code; Title 24 of the California Code of Regulations is hereby adopted by reference. Copies are on file in the offices of the Building Official.

SECTION 14. Section 8-17.01 of the Antioch Municipal Code is hereby amended in its entirety to read as follows:

Sec. 8-17.01. Adoption of the 2013 California Existing Buildings Code.

The 2013 California Existing Buildings Code based on the 2012 International Existing Buildings Code published by the International Code Council, as adopted and amended by the California Building Standards Commission in the California Building Standards Code; Title 24 of the California Code of Regulations is hereby adopted by reference. Copies are on file in the offices of the Building Official.

SECTION 15. Section 8-18.01 of the Antioch Municipal Code is hereby amended in its entirety to read as follows:

Sec. 8-18.01. Adoption of the 2013 California Referenced Standards Code.

The 2013 California Referenced Standards Code published by the International Code Council, as adopted and amended by the California Building Standards Commission in the California Building Standards Code; Title 24 of the California Code of Regulations is hereby adopted by reference. Copies are on file in the offices of the Building Official.

SECTION 16. Section 8-19.01 of the Antioch Municipal Code is hereby amended in its entirety to read as follows:

Sec. 8-19.01. Adoption of the 2013 California Administrative Code.

The 2013 California Administrative Code published by the International Code Council, as adopted and amended by the California Building Standards Commission in the California Building Standards Code; Title 24 of the California Code of Regulations is hereby adopted by reference. Copies are on file in the offices of the Building Official.

SECTION 17. This ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption. The ordinance or summary shall be posted and published in a newspaper of general circulation printed and published in the City of Antioch as set forth in State Law.

SECTION 18. The Building Official shall file a copy of this ordinance with the State Department of Housing and Community Development and the State of California Building Standards Commission.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was introduced at a regular meeting of the City Council of the City of Antioch, held on the 12th day of November, 2013, and passed and adopted at a regular meeting thereof, held on the ____ day of _____, 2013.

AYES:

NOES:

ABSENT:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

EXHIBIT 1

CONTRA COSTA COUNTY, CONTRA COSTA COUNTY FIRE PROTECTION DISTRICT AND CROCKETT-CARQUINEZ FIRE PROTECTION DISTRICT FINDINGS OF NEED FOR CHANGES OR MODIFICATIONS IN THE 2013 CALIFORNIA BUILDING STANDARDS CODE, TITLE 24, PART 9, CALIFORNIA FIRE CODE, DUE TO LOCAL CONDITIONS

I. Changes or Modifications

Pursuant to Section 17958 of the State of California Health and Safety Code, the Contra Costa County Board of Supervisors, in its capacity as the Board of Supervisors and the Board of Directors of the Contra Costa County Fire Protection District and the Crockett-Carquinez Fire Protection District (collectively "Fire District"), in its ordinance adopting and amending the 2013 California Building Standards Code, Title 24, Part 9, California Fire Code, changes, modifies, and amends Section 903.1 through Section 907.8.7.

II. Finding

Pursuant to Sections 17958.5 and 17958.7 of the State of California Health and Safety Code, the Contra Costa County Board of Supervisors, in its capacity as the Board of Supervisors and the Board of Directors of the Contra Costa County Fire Protection District and the Crockett-Carquinez Fire Protection District, finds that the above referenced change, modification, and amendment is needed and is reasonably necessary because of certain local climatic, geological, and topographic conditions as described below.

A. Climatic

1. Precipitation and Relative Humidity

(a) Conditions

Precipitation ranges from 15 to 24 inches per year with an average of approximately 20 inches per year. Ninety-six (96) percent falls during the months of October through April and four (4) percent from May through September. This is a dry period of at least five (5) months each year. Additionally, the area is subject to occasional drought. Relative humidity remains in the middle range most of the time. It ranges from forty-five (45) to sixty-five (65) percent during spring, summer, fall, and from sixty (60) to ninety (90) percent in the winter. It occasionally falls as low as fifteen (15) percent.

(b) Impact

Locally experienced dry periods cause extreme dryness of untreated wood shakes and shingles on buildings and non-irrigated grass, brush and weeds, which are often near buildings with wood roofs and sidings. Such dryness causes these materials to ignite very readily and burn rapidly and intensely.

Because of dryness, a rapidly burning grass fire or exterior building fire can quickly transfer to other buildings by means of radiation or flying brands, sparks

and embers. A small fire can rapidly grow to a magnitude beyond the control capabilities of the Fire District resulting in an excessive fire loss.

2. Temperature

(a) Conditions

Temperatures have been recorded as high as 114⁰ F. Average summer highs are in the 90⁰ range, with average maximums of 105⁰ F.

(b) Impact

High temperatures cause rapid fatigue and heat exhaustion of firefighters, thereby reducing their effectiveness and ability to control large building and wildland fires.

Another impact from high temperatures is that combustible building material and non-irrigated weeds, grass and brush are preheated, thus causing these materials to ignite more readily and burn more rapidly and intensely. Additionally, the resultant higher temperature of the atmosphere surrounding the materials reduces the effectiveness of the water being applied to the burning materials. This requires that more water be applied, which in turn requires more Fire District resources in order to control a fire on a hot day. High temperatures directly contribute to the rapid growth of fires to an intensity and magnitude beyond the control capabilities of the Fire District.

3. Winds

(a) Conditions

Prevailing winds in the area are from the south or southwest in the mornings and from the north or northwest in the afternoons. However, winds are experienced from virtually every direction at one time or another. Velocities are generally in the fourteen (14) mph to twenty-three (23) mph ranges, gusting to twenty-five (25) to thirty-five (35) mph. Forty (40) mph winds are experienced occasionally and winds up to fifty-five (55) mph have been registered locally. During the winter half of the year, strong, dry, gusty winds from the north move through the area for several days creating extremely dry conditions.

(b) Impact

Winds such as those experienced locally can and do cause fires, both interior and exterior, to burn and spread rapidly. Fires involving non-irrigated weeds, grass and brush can grow to a magnitude and be fanned to intensity beyond the control capabilities of the Fire District very quickly even by relatively moderate winds. When such fires are not controlled, they can extend to nearby buildings, particularly those with untreated wood shakes or shingles.

Winds of the type experienced locally also reduce the effectiveness of exterior water streams used by the Fire District on fires involving large interior areas of buildings, fires which have vented through windows and roofs due to inadequate built-in fire protection and fires involving wood shake and shingle building

exteriors. Local winds will continue to be a definite factor towards causing major fire losses to buildings not provided with fire resistive roof and siding materials and buildings with inadequately separated interior areas or lacking automatic fire protection systems. National statistics frequently cite wind conditions, such as those experienced locally, as a major factor where conflagrations have occurred.

4. Summary

These local climatic conditions affect the acceleration, intensity, and size of fire in the community. Times of little or no rainfall, of low humidity, and high temperatures create extremely hazardous conditions, particularly as they relate to wood shake and shingle roof fires and conflagrations. The winds experienced in this area can have a tremendous impact upon structure fires. During wood shake and shingle roof fires, or exposure fires, winds can carry sparks and burning brands to other structures, thus spreading the fire and causing conflagrations. In building fires, winds can literally force fires back into the building and can create a blow torch effect, in addition to preventing "natural" ventilation and cross-ventilation efforts.

B. Geological and Topographic

1. Seismicity

(a) Conditions

Contra Costa County is located in Seismic Risk Zone 4, which is the worst earthquake area in the United States. Buildings and other structures in Zone 4 can experience major seismic damage. Contra Costa County is in close proximity to the San Andreas Fault and contains all or portions of the Hayward, Calaveras, Concord, Antioch, Mt. Diablo, and other lesser faults. A 4.1 earthquake with its epicenter in Concord occurred in 1958, and a 5.4 earthquake with its epicenter also in Concord occurred in 1955. The Concord and Antioch faults have a potential for a Richter 6 earthquake and the Hayward and Calaveras faults have the potential for a Richter 7 earthquake. Minor tremblers from seismic activity are not uncommon in the area.

The fire environment of a community is primarily a combination of two factors: the area's physical **geologic** characteristics and a historic pattern of urban-suburban development. These two factors, alone and combined, create a mixture of environments which ultimately determines the area's fire protection needs. The Fire District has 3 distinct areas. They are: the West, which includes the City of San Pablo and the communities of North Richmond, El Sobrante, and East Richmond Heights. The Central includes the Cities of Lafayette, Martinez, Pleasant Hill, Concord, Walnut Creek, Clayton and the communities of Clyde, Pacheco, Alhambra Valley and Alamo. The East includes the Cities of Antioch, Pittsburg and the community of Bay Point.

Because of the size of the Contra Costa County Fire Protection District (304 Square miles) the characteristics of the fire environment changes from one location to the next. Therefore the District has not one, but a number of fire

environments, each of which has its individual fire protection needs from two major oil refineries, to heavy industrial facilities, freeways, rail lines, waterways, port facilities, wildland areas, urban and suburban town settings and major downtown areas.

Interstates 80 and 680, State Highways 4, 24 and 242, Bay Area Rapid Transit District (BART) and major thoroughfares travel throughout the District. There are 2 major rail lines which run through the District. An overpass or underpass crossing collapse would alter the response route and time for responding emergency equipment. This is due to the limited crossings of the major highways and rail lines.

Earthquakes of the magnitude experienced locally can cause major damage to electrical transmission facilities, which, in turn, cause power failures while at the same time starting fires throughout the Fire District. The occurrence of multiple fires will quickly deplete existing fire district resources; thereby reducing and/or delaying their response to any given fire. Additionally, without electrical power, elevators, smoke management systems, lighting systems, alarm systems and other electrical equipment urgently needed for building evacuation and fire control in large buildings without emergency generator systems would be inoperative, thereby resulting in loss of life and/or major fire losses in such buildings.

(b) Impact

A major earthquake could severely restrict the response of the Fire District and its capability to control fires involving buildings of wood frame construction, with ordinary wood shake and shingle exteriors, or with large interior areas not provided with automatic smoke and fire control systems.

2. Soils

(a) Conditions

The area is replete with various soils, which are unstable, clay loam and alluvial fans being predominant. These soil conditions are moderately to severely prone to swelling and shrinking, are plastic, and tend to liquefy.

Throughout the Fire District, the topography and development growth has created a network of older, narrow roads. These roads vary from gravel to asphalt surface and vary in percent of slope, many exceeding twenty- (20) percent. Several of these roads extend up through the winding passageways in the hills providing access to remote, affluent housing subdivisions. Many of these roads are private with no established maintenance program. During inclement weather, these roads are subject to rock and mudslides, as well as down trees, obstructing all vehicle traffic. It is anticipated that during an earthquake, several of these roads would be practically impassable.

3. Topographic

(a) Conditions

i. Vegetation

The service area of the Contra Costa County Fire Protection District has a varied topography and vegetative cover. A conglomeration of flat lands, hills, and ridges make up the terrain. Development has occurred on the flat lands in the District and in the past 15 years development has spread into the hills, valleys and ridge lands of the District.

Highly combustible dry grass, weeds, and brush are common in the hilly and open space areas adjacent to built-up locations six (6) to eight (8) months of each year. Many of these areas frequently experience wildland fires, which threaten nearby buildings, particularly those with wood roofs, or sidings. This condition can be found throughout the Fire District, especially in those fully developed areas and those areas marked for future development.

ii. Surface Features

The arrangement and location of natural and manmade surface features, including hills, creeks, canals, freeways, housing tracts, commercial development, fire stations, streets and roads, combine to limit efficient response routes for Fire District resources into and through many areas.

iii. Buildings, Landscaping and Terrain

Many of the "newer" large buildings and building complexes have access and landscaping features or designs which preclude, or greatly limit, efficient approach or operational access to them by Fire District vehicles. In addition, the presence of security gates, roads of inadequate width and grades which are too steep for Fire District vehicles create an adverse impact on fire suppression efforts.

When Fire District vehicles cannot gain access to buildings involved with fire, the potential for complete loss is realized. Difficulty reaching a fire site often requires additional fire personnel and resources to successfully and safely mitigate the event. Access problems often result in severely delaying, misdirecting, or making fire and smoke control efforts unsuccessful.

(b) Impact

The above local geological and topographical conditions increase the magnitude, exposure, accessibility problems, and fire hazards presented to the Contra Costa County Fire Protection District. Fire following an earthquake has the potential of causing greater loss of life and damage than the earthquake itself. Hazardous materials, particularly toxic gases, could pose the greatest threat to the largest number, should a significant seismic event occur. Public Safety resources would

have to be prioritized to mitigate the greatest threat, and may likely be unavailable for smaller single dwelling or structure fires.

Other variables may intensify the situation:

1. The extent of damage to the water system.
2. The extents of isolation due to bridge and/or freeway overpass collapse.
3. The extent of roadway damage and/or amount of debris blocking the roadways.
4. Climatic conditions (hot, dry weather with high winds).
5. Time of day will influence the amount of traffic on roadways and could intensify the risk to life during normal business hours.
6. The availability of timely mutual aid or military assistance.
7. The large portion of dwellings with wood shake or shingles coverings could result in conflagrations.

III. Summary

Local climatic, geologic, and topographic conditions impact fire prevention efforts, and the frequency, spread, acceleration, intensity, and size of fire involving buildings in this community. Further, they impact potential damage to all structures from earthquake and subsequent fire. This was the case in the October 17, 1989 Loma Prieta earthquake that measured 6.9 and occurred on the San Andreas fault, centered near Santa Cruz. This event caused several residential fires and numerous commercial buildings were damaged.

Therefore, based on the findings declared in this document, it is found reasonably necessary that the 2013 California Fire Code be changed or modified to mitigate the effects of the above conditions.

The changes and/or modifications to the 2013 California Fire Code, as expressed in Ordinance #2013-22 of Contra Costa County, the Contra Costa County Fire Protection District and the Crockett-Carquinez Fire Protection District, are found to be necessary to mitigate the above described impacts which are caused by the above described local climatic, geological and topographic conditions.

Ordinance #2013-22 is attached in its entirety.

EXHIBIT 2

SD.1

ORDINANCE NO. 2013-22

FIRE CODE

ORDINANCES OF THE COUNTY OF CONTRA COSTA, THE CROCKETT-CARQUINEZ FIRE PROTECTION DISTRICT, AND THE CONTRA COSTA COUNTY FIRE PROTECTION DISTRICT ADOPTING THE 2013 CALIFORNIA FIRE CODE WITH AMENDMENTS.

The Contra Costa County Board of Supervisors, as the Board of Supervisors for Contra Costa County and as the Board of Directors of the Crockett-Carquinez Fire Protection District and the Contra Costa County Fire Protection District, ordains as follows:

SECTION 1. ADOPTION OF THE CALIFORNIA FIRE CODE.

Contra Costa County, the Crockett-Carquinez Fire Protection District and the Contra Costa County Fire Protection District hereby adopt the 2013 California Fire Code (California Code of Regulations, Title 24, Part 9 [based on the 2012 International Fire Code published by the International Code Council]), including Chapters 1-10 and 12-80, Appendix B, Appendix C, Appendix D, Appendix F, Appendix H, Appendix I, Appendix J, and Appendix K, as amended by the changes, additions and deletions set forth in this ordinance. The 2013 California Fire Code, with the changes, additions, and deletions set forth this ordinance, is adopted by this reference as though fully set forth in this ordinance. As of the effective date of this ordinance, the provisions of the fire code are controlling and enforceable within the limits of each jurisdiction.

SECTION 2. AMENDMENTS TO THE CALIFORNIA FIRE CODE.

The 2013 California Fire Code is amended by the changes, additions and deletions set forth in this Section 2. Chapter and Section numbers used below are those of the 2013 California Fire Code.

Chapter 1. Scope and Administration.

Section 101.1 is amended to read:

101.1 Title. This code is the Fire Code of Contra Costa County, the Crockett-Carquinez Fire Protection District, and the Contra Costa County Fire Protection District, and is hereinafter referred to as "this code".

Section 102.1 is amended to add item 5, to read:

102.1 Construction and design provisions. The construction and design provisions of this code shall apply to:

5. Where not otherwise limited by law, the provisions of this code shall apply to vehicles, ships, and boats that are permanently affixed to a specific location within the boundaries of this jurisdiction.

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Section 105.6 is amended to read:

105.6 Required operational permits. The fire code official is authorized to issue operational permits for the operations set forth in Chapter 1, Sections 105.6.1 through 105.6.54.

Section 105.6 is amended by adding subsections 105.6.48 through 105.6.54, to read:

105.6.48 Asbestos removal. A permit is required to conduct asbestos-removal operations regulated by Section 3318.

105.6.49 Battery systems. A permit is required to operate stationary lead-acid battery systems having a liquid capacity of more than 50 gallons (189 L) pursuant to Section 608.

105.6.50 Christmas tree sales. A permit is required to use a property for the purpose of selling cut Christmas trees.

105.6.51 Firework aerial display. A permit is required to conduct a firework display regulated by California Code of Regulations, Title 19 and Chapter 56 of this code.

105.6.52 Model rockets. A permit is required to sell model rockets equipped with model rocket motors or to launch model rockets more than three times from the same site on any day pursuant to California Code of Regulations, Title 19, Division 1, Article 17.

105.6.53 Temporary water supply. A permit is required to use a temporary water supply for construction of residential projects or subdivisions pursuant to Section 3312.1.

105.6.54 Tire storage. A permit is required to store more than 1,000 cubic feet (28.3m3) of tires inside buildings pursuant to Chapter 34.

Section 105.7 is amended to read:

105.7 Required construction permits. The fire code official is authorized to issue construction permits for the operations set forth in Chapter 1, Sections 105.7.1 through 105.7.21.

Section 105.7 is amended by adding sections 105.7.17 through 105.7.22 as follows:

105.7.17 Access for fire apparatus. Plans shall be submitted and a permit is required to install, improve, modify, or remove public or private roadways, driveways, and bridges for which Fire District access is required by the Fire Code. A permit is required to install a gate across a fire apparatus access road pursuant to Section 503.

105.7.18 Construction, alteration, or renovation of a building for which a building permit is required. Plans shall be submitted to the fire code official for all land developments or for the construction, alteration, or renovation of a building within the jurisdiction where a building permit is required.

Exception: Non-sprinklered Group R-3 Occupancies where work does not involve a substantial addition or expansion.

105.7.19 Medical gas systems. A construction permit is required for the installation of or modification to a medical gas system pursuant to Section 5306.

105.7.20 Refrigeration equipment. A permit is required to install a mechanical refrigeration unit or system regulated by Chapter 6.

105.7.21 Land Development, Subdivisions. Plans shall be submitted to the fire code official for all land developments or improvements proposed within the jurisdiction that involve the subdivision of land.

105.7.22 Water supply for fire protection. Plans shall be submitted to the fire code official for the purpose of determining whether adequate water supplies, fire hydrants, and associated systems are provided for all facilities, buildings or portions of buildings either constructed or moved into the District pursuant to Section 507.

Section 105.8 is added to read:

105.8 Responsibility of permittee. Work performed under a construction permit shall be in accordance with the approved plans and with all requirements of this code and any other laws or regulations applicable thereto. No Fire District approval relieves or exonerates any person from the responsibility of complying with the provisions of this code, nor does any Fire District approval establish any vested rights with respect to any work performed that is performed or completed in violation of this code.

Section 108.1 is amended to read:

108.1 Board of Appeals established. In order to hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code, there is hereby created a board of appeals. The board of appeals is comprised of the Board of Directors.

Section 108.3 is deleted.

Section 109.4 is amended in its entirety to read:

109.4 Violation penalties. Every person who violates any provision of this fire code is guilty of an infraction or misdemeanor, which will be determined by the Fire District, in accordance with Health and Safety Code Section 13871. Each infraction or misdemeanor will be punishable by an administrative fine, in accordance with Government Code Section 53069.4. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten (10) days that prohibited conditions are maintained shall constitute a separate offense. The application of the aforesaid penalty shall not be held to prevent the enforced removal of prohibited conditions. This section is a declaration of Health and Safety Code section 13871 and is not intended to create a different or separate penalty.

Section 111.4 is amended to read:

111.4 Failure to comply. Any person who continues any work after having been served with a stop work order is subject to citation, except any work that a person is directed by the fire code official to perform to remove a violation or unsafe condition.

Chapter 2. Definitions.

Section 202 is amended by adding the following definitions to read:

Administrator. Fire Chief.

All-weather driving surface. A roadway with a minimum surface finish of one layer of asphalt or concrete that is designed to carry the imposed weight loads of fire apparatus.

Board of Directors. The Contra Costa County Board of Supervisors as the governing body of the Crockett-Carquinez Fire Protection District and the Contra Costa County Fire Protection District.

Board of Fire Commissioners. An advisory commission appointed by the Board of Directors to act as set forth in this ordinance and by resolutions of the Board of Directors.

Driveway. A private roadway that provides access to no more than two (2) single-family dwellings.

Fire Code Official. In the Contra Costa County Fire Protection District, the Fire Code Official is the Fire Marshal. In the Crockett-Carquinez Fire Protection District, the Fire Code Official is the Fire Chief.

Firebreak. A continuous strip of land upon and from which all rubbish, weeds, grass or other growth that could be expected to burn has been abated or otherwise removed in order to prevent extension of fire from one area to another.

Firetrail. A graded firebreak of sufficient width, surface, and design to provide access for personnel and equipment to suppress and to assist in preventing a surface extension of fires.

Nuisance Fire Alarm. The activation of any fire protection or alarm system which results in the response of the Fire District and is caused by malfunction, improper maintenance, negligence, or misuse, of the system by an owner, occupant, employee, or agent, or any other activation not caused by excessive heat, smoke, fire, or similar activating event.

Response time. The elapsed time from receipt of call to the arrival of the first unit on scene.

Running time. The calculated time difference between leaving the first-due station and arriving on the emergency scene.

Rural area. An area generally designated for agricultural or open space uses with parcels more than 10 acres (4.046873ha) in size.

Rural residential area. An area generally designated for single family residential use with parcels between three (1.2140619ha) and 10 (4.046873ha) acres in size.

Sky Lantern. An airborne lantern typically, but not necessarily, made of paper with a wood frame containing a candle, fuel cell composed of waxy flammable material, or other open flame that serves as a heat source, which heats the air inside the lantern to cause it to lift into the air. Sky candles, fire balloons, and airborne paper lanterns are considered sky lanterns under this code.

Sprinkler Alarm and Supervisory System (SASS): A Dedicated Function Fire Alarm System located at the protected premise installed specifically to monitor sprinkler water-flow alarm, valve supervisory, and general trouble conditions where a Building Fire Alarm is not required.

Substantial Addition or Expansion. Addition, expansion, remodel, or renovation of any structure where the addition of new fire area exceeds fifty percent of the existing fire area.

Temporary fire department access road for construction. An approved temporary roadway for emergency vehicle use during construction of residential subdivision projects.

Temporary fire department access road for construction of one (1) residential (R3) unit. A temporary roadway for emergency vehicle use during construction of an individual residential (R3) structure where a fire department access road is required as part of the project.

Temporary water supply. Water stored for firefighting purposes in an approved aboveground tank during combustible construction.

Tree litter. Any limbs, bark, branches and/or leaves in contact with other vegetation or left to gather on the ground.

Chapter 3. General Precautions Against Fire.

Section 304.1.2 is amended to read:

304.1.2 Vegetation. Hazards created by the growth of weeds, grass, vines, trees or other growth capable of being ignited and endangering property shall be mitigated in accordance with Section 319.

Section 304.1.4 is added to read:

304.1.4 Clothes Dryers. Clothes dryers shall be frequently cleaned to maintain the lint trap, mechanical and heating components, vent duct and associated equipment free from accumulations of lint and combustible materials.

Section 308.1.4 Exception 1 is amended to read:

Exception 1. Residential Occupancies.

Section 308.1.6.3 is added to read:

308.1.6.3 Sky lanterns. No person shall release or cause to be released an untethered sky lantern. A sky lantern shall be tethered in a safe manner to prevent it from becoming airborne, and it must be constantly attended until extinguished.

Section 319 is added to Chapter 3, to read:

319 Exterior Fire Hazard Control.

319.1 General.

319.1.1 Jurisdictional Authority. The Board of Directors, as the supervising, legislative and executive authority of the jurisdiction, hereby delegates to the Board of Fire Commissioners of the jurisdiction all its powers, duties and rights to act pursuant to Part 5 (commencing with Section 14875), Division 12, of the Health and Safety Code, to clear or order the clearing of rubbish, litter or other flammable material where such flammable material endangers the public safety by creating a fire hazard. Fire hazard abatement will be conducted in accordance with the provisions of said Part 5 and this ordinance. In the application of the provisions of said Part 5 to fire hazard abatement proceedings under this ordinance and the Fire Protection District Law of 1987, the terms "Board of Directors" or "Board," when used in Part 5, means the Board of Fire Commissioners of this jurisdiction under this section; and the officers designated in Health and Safety Code Section 14890 are the employees of the jurisdiction.

319.1.2 Retention of Jurisdictional Authority. If no Board of Fire Commissioners has been appointed for the jurisdiction, then the Board of Directors retains its powers and rights to act pursuant to said Part 5.

319.1.3 Contract for Services. The Board of Directors reserves and retains the power to award a contract for fire hazard abatement work when the employees of the jurisdiction are not used to perform the abatement work.

319.2 Definitions.

Weeds. All weeds growing upon streets or private property in the jurisdiction, including any of the following:

1. Weeds that bear seeds of a fluffy nature or are subject to flight.
2. Sagebrush, chaparral (including Chainise, Coyote Brush/Greasewood, Brooms, and Buckwheat), and any other brush or weeds that attain such large growth as to become, when dry, a fire menace to adjacent improved property.
3. Weeds that are otherwise noxious or dangerous.
4. Poison oak and poison sumac when the conditions of growth constitute a menace to public health.
5. Dry grass, brush, tree litter, litter, or other flammable materials that endanger the public safety by creating a fire hazard.

Rubbish. Waste matter, litter, trash, refuse, debris and dirt on streets, or private property in the jurisdiction which is, or when dry may become, a fire hazard.

Streets. Includes alleys, parkways, driveways, sidewalks, areas between sidewalks and curbs, highways, public right of ways, private road, trails, easements, and fire trails.

Person. Includes individuals, firms, partnerships, and corporations.

Defensible Space. The area within the perimeter of a parcel providing the key point of defense from an approaching wildland or escaping structure fire.

Priority Hazard Zone. An area where the threat from wildfire is severe due to proximity to open space, topography, degree of space, density of homes amount of vegetation (native and ornamental) and other conditions favorable to fast moving fires.

Reduced Fuel Zone. The area that extends from thirty (30) feet to one hundred (100) feet or more away from the structure or to the property line, whichever is closer to the structure.

Cost of Abatement. Includes all expenses incurred by the jurisdiction in its work of abatement undertaken and administrative costs pursuant to Section 319.5 of this Ordinance.

319.3 Weeds and Rubbish a Public Nuisance. The Board hereby declares that all weeds growing upon private property or streets in this jurisdiction and all rubbish on private property or streets in this jurisdiction are public nuisances. Such weed nuisance is seasonal and recurrent.

319.4 Abatement of Hazard.

319.4.1 Prohibition. No person who has any ownership or possessory interest in or control of parcel of land shall allow to exist thereon any hazardous rubbish, weeds, trees, or other vegetation that constitutes a fire hazard. Destruction by burning within this jurisdiction is unlawful unless the written permission of the fire chief is first obtained, and all other applicable permits are obtained from appropriate governing agencies or jurisdictions.

319.4.2 Specific Requirements. The District shall develop minimum abatement standards for land in residential, rural and/or rural residential, business, industrial areas, or land which is unused or vacant. Such standards may be modified periodically as circumstances dictate.

319.4.2.1 Clearance of Weeds from Streets. The Fire Code Official is authorized to cause areas within 10 feet (3048 mm) on each side of portions of streets which are improved, designed or ordinarily used for vehicular traffic to be cleared of flammable vegetation and other combustible growth. The Fire Code Official is authorized to enter upon private property to do so, to the extent allowed by law.

319.5 Abatement Procedures.

319.5.1 Abatement Order. The fire code official may order the abatement of the weeds and rubbish described in Sections 304.1.2 and 319.2. On making the order, the fire code official will mail a copy of a notice to the owners of the affected property as their names and addresses appear upon the last county equalized assessment roll, or as their names and addresses are known to the fire code official. As an alternative to mailing, the notice may be posted upon the affected property and published in the jurisdiction, not less than 15 days prior to the date of the abatement hearing. Copies of the notice will be

headed with the words "Notice to Abate Weeds and Rubbish" in letters at least one inch high. The notice will be in substantially the following form:

NOTICE TO ABATE WEEDS AND RUBBISH

You are hereby notified that weeds and rubbish constitute a fire hazard on the following described property owned by you:

(Describe property by common street designation, by metes and bounds, Assessor's code area and parcel number, or by reference to attached map).

You must remove the weeds and rubbish within fifteen (15) days from the date of this notice. If you fail to do so, the (jurisdiction) Fire Protection District will remove it, and the cost of the abatement, including administrative costs, will be collected as property taxes and will be a lien on your property until paid.

You are further notified that the Board of Supervisors has declared that such weeds and rubbish constitute a public nuisance and that such weeds also constitute a seasonal and recurring nuisance.

You may appear before the Board of Fire Commissioners of this jurisdiction on (time and date) at (place-room, street, address, and city) to show cause why this order should not be enforced.

(Signed): (Name of fire code official of name of jurisdiction)

319.5.2 Hearing Date. A date for hearing on the notice will be sent at least fifteen (15) days after the date of the notice. The date of the notice is the date on which the notice is placed in the United States mail or the date on which it is posted on the property. At the hearing, the property owner or his agent may appear to show cause why the order should not be enforced. For good cause shown, the Board of Fire Commissioners may extend the time for compliance with the order or may rescind the order.

319.5.3 Contract Award. If the owner fails to comply with the order, the fire code official may have the weeds and rubbish abated either by employees of this jurisdiction or by contract. If a contract is awarded, it will be by public bid, awarded to the lowest responsible bidder. A contract may include work on more than one parcel. Concerning any contract previously awarded as provided in this subsection and that has been fully extended as provided in that contract, it may thereafter be extended on its same terms and conditions for a further period (not to exceed one year) by agreement of the Board of Supervisors and the involved contractor.

319.5.4 Abatement Report of Costs. The fire code official or his or her designee abating the nuisance will keep an account of the cost of abatement in front of or on each separate parcel of land and will render an itemized report in writing to the Board of Fire Commissioners showing the cost of removing the weeds and rubbish on or in front of each separate lot or parcel of land, or both. Before the report is submitted to the Board of Fire Commissioners, a copy of it will be posted for at least three days on or near the chamber door of the Board with a notice of the time and when the report will be submitted to the Board for confirmation. At the time fixed for receiving and considering the report, the Board of Fire Commissioners will hear it and any objections of any of the property owners liable to be assessed for the work of abatement. Thereupon, the Board of Fire Commissioners may make such modifications in the report as it deems necessary, after which the report will be confirmed. The amount of the cost, including administrative costs, of abating the

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nuisance in front of or upon the various parcels of the land mentioned in the report as confirmed will constitute special assessment against the respective parcels of land, and are a lien on the property for the amount of the respective assessments. Such lien attaches upon recordation, in the office of the County Recorder, of a certified copy of the Resolution of Confirmation.

319.5.5 Cost Assessments. Upon confirmation of the report of cost by the Board of Fire Commissioners and the recordation of the Resolution of Confirmation, a copy of the report of cost will be sent to the County Auditor, who will enter the amount of the assessments against the parcels. Thereafter the amount of the assessments will be collected at the same time and in the same way as County taxes are collected. The owners are subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection, and enforcement of county taxes are applicable to these assessment taxes.

319.6 Alternate Mitigation. In lieu of ordering abatement as provided in Section 319.5.1, the fire code official of this jurisdiction may order the preparation of firebreaks/fuelbreaks around parcels of property where combustible weeds, crops, or brush are present. In determining the proper width for firebreaks/fuelbreaks, the fire code official will consider the height of the growth, weather condition, topography, and the accessibility to the property for fire protection equipment. The procedure set forth in Section 319.5.1 for the abatement of weeds and rubbish shall apply to the preparation of firebreaks/fuelbreaks.

319.7 Subsurface Fires.

319.7.1 Peat Fire. It is the duty of each person, firm, corporation, or association not to permit a peat fire in or a fire involving combustible vegetable matters under the surface of the natural ground to remain upon the property. It is hereby declared that it is the duty of any person as herein defined to take all necessary precautions to extinguish any subsurface fire involving peat or vegetable material at the owner's own cost and expense.

319.7.2 Fire Suppression Costs. If there exists upon the lands or property of any person as herein defined a subsurface fire involving the burning or combustion of peat, vegetable matter or vegetation, and the owner or occupant thereof has not taken reasonable precautions within a reasonable time to extinguish or minimize such fire or combustion, this jurisdiction may, in addition to its regular duties to extinguish or minimize such fire or combustion, go upon the lands of any person as herein defined and extinguish such fire or combustion. Any costs incurred by the Fire District in fighting the fire and for the cost of proving rescue or emergency medical services shall be a charge against the property owner. The charge shall constitute a debt of the property owner and is collectable by the jurisdiction incurring those costs in the same manner as in the case of an obligation under a contract, express or implied. (See Health and Safety Code §13009.)

Section 320 is added to Chapter 3 to read:

320 Automobile Wrecking Yards.

320.1 General. The operation of automobile wrecking yards shall be in accordance with this section.

320.2 Definitions.

Automobile Wrecking Yard. An area that stores or dismantles salvaged vehicles.

Automobile Dismantling. The operation of dismantling or removing parts from salvaged vehicles including engines or engine parts.

320.3 Requirements.

320.3.1 Permits. An operation permit is required for all automobile wrecking yards, automobile dismantling operations, and similar operations.

320.3.2 Fire Apparatus Access Roads. Fire apparatus access roads shall be constructed throughout the site in accordance with this code and shall be maintained clear of all vehicles and stored items.

320.3.3 Welding and cutting. Welding and cutting operations shall be conducted in an approved location, clear of all flammable liquids and combustible materials, including weeds, tires and all other debris.

320.3.4 Housekeeping. Combustible rubbish accumulated on site shall be collected and stored in approved containers, rooms or vaults of noncombustible materials. Combustible vegetation, cut or uncut, shall be removed when determined by the fire code official to be a fire hazard.

320.3.5 Fire Protection. Offices, storage buildings and vehicles used for site operations shall each be provided with at least one portable fire extinguisher with not less than a 4A:40B:C rating. When required by the fire code official, additional fire extinguishers shall be provided.

320.3.6 Tire storage. Tires shall be stored in racks or in a manner as approved by the fire code official.

320.3.6.1 Distance from Water Supply. Tire storage shall be located on-site and no further than 500 feet from a fire hydrant or an approved water supply as determined by the fire code official.

320.3.7 Storage Piles. Storage piles shall be located a minimum of 20 feet from property lines and shall have an unobstructed access road on all sides of not less than 20 feet.

320.3.8 Burning operations. The burning of salvaged vehicles and salvaged or waste materials is prohibited.

320.3.9 Motor vehicle fluids. Motor vehicle fluid shall be drained from salvaged vehicles when such liquids are leaking onto the ground and prior to dismantling or removing engine/motor parts.

320.3.9.1 Mitigation of leaking fluids. Precautions shall be taken to prevent fluids from salvaged vehicles from leaking onto the ground. Supplies or equipment capable of mitigating leaks from fuel tanks, crankcases, brake systems and transmissions shall be kept available on site. Single-use plugs, diking and absorbent materials shall be disposed of as hazardous waste and removed from the site in a manner in accordance with federal, state and local requirements.

320.3.10 Fuel tanks. Fuel tanks of salvaged vehicles shall be emptied of all flammable (gasoline, diesel) fuels in an approved manner and stored in approved tanks.

320.3.10.1 Repair of vehicle fuel tanks. The repair of fuel tanks, including cutting, welding or drilling of any kind, is prohibited.

320.3.11 Lead acid batteries. Lead acid batteries shall be removed from all salvaged vehicles and stored in an approved manner in a location approved by the fire code official.

Chapter 4. Emergency Planning and Preparedness.

Section 401.5 is amended by adding a new subsection 401.5.1 to read:

401.5.1 Nuisance Fire Alarm fee. A fee may be charged for false and/or nuisance fire alarms in accordance with a fee schedule adopted by the Board of Directors.

Section 403.2 is amended to read:

403.2 Public Safety Plan. In other than Group E occupancies, where the fire code official determines that an indoor or outdoor gathering of persons has an adverse impact on public safety through diminished access to buildings, structures, fire hydrants and fire apparatus access roads or where such gatherings adversely affect public safety services of any kind, the fire code official shall have the authority to order the development of, or prescribe a plan for, the provision of an approved level of public safety.

Chapter 5. Fire Service Features.

Section 503.1 is amended to add subsection 503.1.4 to read:

503.1.4 Access to Open Spaces. When existing access to open land or space, or to fire trail systems maintained for public or private use, is obstructed by new development of any kind, the developer shall provide an alternate means of access into the area that is sufficient to allow access for fire personnel and apparatus. The alternate means of access must be approved by the fire code official.

Section 503.2.1 is amended by adding the following exception:

Exception: A minimum 16 foot wide driveway is acceptable for access to one or two single-family dwellings.

Section 505 is amended by adding Section 505.3, to read:

505.3 Street names and addressing. Street names and addressing shall be submitted for review and approval to the fire code official, whose approval will not be unreasonably withheld. The purpose of the review is to verify that new street names and addressing will not duplicate existing street names and addressing.

Section 507.2 is amended by adding subsection 507.2.3, to read:

507.2.3 Suburban and rural water supply storage. Swimming pools and ponds shall not be considered water storage for the purposes of Section 507.1.

Chapter 6. Building Services and Systems.

Section 603.6 is amended by adding subsection 603.6.6, to read:

603.6.6 Sparks from chimneys. A chimney that is used with either a fireplace or heating appliances in which solid or liquid fuel is used shall be maintained with spark arresters that are required for incinerators pursuant to the California Mechanical Code.

Chapter 8. Interior Finish, Decorative Materials and Furnishings.

Section 806 is amended by adding subsections 806.1.4, 806.1.5 and 806.1.6, to read:

806.1.4 Flame retardants. Cut trees shall be treated by a California State Fire Marshal-licensed fire retardant applicator. Trees shall be properly treated with an approved flame retardant.

806.1.5 Tags. Trees shall bear a tag stating date of placement in the public building, type of flame-retardant treatment used, name of the person who applied the flame retardant, the name of the person affixing the tag, a permit expiration date and the name of the designated individual making daily tests.

806.1.6 Daily tests. Trees shall be tested daily by a designated individual. The test shall include a check for dryness and adequate watering.

Chapter 9. Fire Protection Systems.

Section 901.6.2.2 is added to read:

901.6.2.2 Inspection Records. Records of all inspections, testing and maintenance for all water based fire suppression systems shall be completed on the forms found in Annex B of NFPA 25, California Edition.

Section 902 is amended to add:

Substantial Addition or Expansion. Addition, expansion, remodel, or renovation of any structure where the addition of new fire area exceeds fifty percent of the existing fire area.

Section 903.2 is adopted in its entirety except as amended below:

903.2.1.1 Group A-1. An automatic sprinkler system shall be provided for Group A-1 occupancies where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet.
2. The fire area has an occupant load of 300 or more.
3. The fire area is located on a floor other than a level of exit discharge serving such occupancies.
4. The fire area contains a multi-theater complex.

903.2.1.3 Group A-3. An automatic sprinkler system shall be provided for Group A-3 occupancies where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet.
2. The fire area has an occupant load of 300 or more.
3. The fire area is located on a floor other than a level of exit discharge serving such occupancies.
4. The structure exceeds 10,000 square feet, contains more than one fire area containing exhibition and display rooms, and is separated into two or more buildings by fire walls of less than four hour fire resistance rating without openings.

903.2.1.4 Group A-4. An automatic sprinkler system shall be provided for Group A-4 occupancies where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet
2. The fire area has an occupant load of 300 or more.
3. The fire area is located on a floor other than a level of exit discharge serving such occupancies.

903.2.1.6 Group B. An automatic sprinkler system shall be provided for Group B occupancies where the fire area exceeds 5,000 square feet.

903.2.3 Group E. Except as provided for in Section 903.2.19 for a new public school campus an automatic sprinkler system shall be provided for Group E occupancies as follows:

1. Throughout all Group E fire areas greater than 5,000 square feet in area.
2. Throughout every portion of educational buildings below the lowest level of exit discharge serving that portion of the building.

Exception: An automatic sprinkler system is not required in any area below the lowest level of exit discharge serving that area where every classroom throughout the building has at least one exterior exit door at ground level.

3. In rooms or areas with special hazards such as laboratories, vocational shops and other such areas where hazardous materials in quantities not exceeding the maximum allowable quantity are used or stored.
4. Throughout any Group E structure greater than 10,000 square feet in area, which contains more than one fire area, and which is separated into two or more buildings by fire walls of less than four hour fire resistance rating without openings.

903.2.4 Group F-1. An automatic sprinkler system shall be provided throughout all buildings containing a Group F-1 occupancy where one of the following conditions exists:

1. A Group F-1 fire area exceeds 5,000 square feet.
2. A Group F-1 fire area is located more than three stories above grade plane.
3. The combined area of all Group F-1 fire areas on all floors, including any mezzanines, exceeds 10,000 square feet.

903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy where one of the following conditions exists:

1. A Group M fire area exceeds 5,000 square feet.
2. A Group M fire area is located more than three stories above grade plane.
3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 10,000 square feet.
4. A Group M occupancy is used for the display and sale of upholstered furniture.
5. The structure exceeds 10,000 square feet, contains more than one fire area containing a Group M occupancy, and is separated into two or more buildings by fire walls of less than 4-hour fire-resistance rating.

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all Group R occupancies, *including manufactured and mobile homes, regardless of whether or not the manufactured or mobile home is located in a mobile home park.*

903.2.8.2 Group R-3 Substantial Addition or Expansion. An automatic sprinkler system shall be provided throughout all existing Group R-3 dwellings where a substantial addition or expansion occurs and the new total fire area of the structure exceeds 3,600 square feet.

903.2.9 Group S-1. An automatic sprinkler system shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

1. A Group S-1 fire area exceeds 5,000 square feet.
2. A Group S-1 fire area is located more than three stories above grade plane.
3. The combined area of all Group S-1 fire areas on all floors, including any mezzanines, exceeds 10,000 square feet.

903.2.9.1 Repair garages. An automatic sprinkler system shall be provided throughout all buildings used as repair garages in accordance with Section 406 of the California Building Code, as shown:

1. Buildings having two or more stories above grade plane, including basements, with a fire area containing a repair garage exceeding 5,000 square feet.
2. Buildings no more than one story above grade plane, with a fire area containing a repair garage exceeding 5,000 square feet
3. Buildings with repair garages servicing vehicles parked in basements.

903.2.10 Group S-2 enclosed parking garages. An automatic sprinkler system shall be provided throughout buildings classified as enclosed parking garages in accordance with Section 406.4 of the California Building Code as follows:

1. Where the fire area of the enclosed parking garage exceeds 5,000 square feet; or
2. Where the enclosed parking garage is located beneath other occupancy groups.

Section 903.3.1.1.2 is added to read:

903.3.1.1.2 Undeclared Use. In buildings of undeclared use with floor to structure height greater than 14 feet (356 mm), the fire sprinkler system shall be designed to conform to Extra Hazard Group I design density. In buildings of undeclared use with floor to structure height less than 14 feet (356 mm), the fire sprinkler system shall be designed to conform to Ordinary Group II design density. Where a subsequent occupancy requires a system with greater capability, it shall be the responsibility of the owner and/or the occupant to upgrade the system.

Section 903.3.5 is amended to add subsection 903.3.5.3 to read:

903.3.5.3 Non-permissible water supply storage. Swimming pools and ponds shall not be considered water storage for the purposes of Section 903.3.5.

Section 903.3.8 is amended to read:

903.3.8. Floor control valves. Individual floor control valves and waterflow detection assemblies shall be provided for each floor in multi-floor buildings at an approved location.

Exception: Group R-3 and R-3.1 Occupancies

Section 903.4.2 is amended to read:

903.4.2 Alarms. One approved audible and visual device shall be connected to every automatic sprinkler system at an approved location. Such sprinkler water-flow alarm devices shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Audible and visual alarm devices shall be provided on the exterior of the building in an approved location. Where a fire alarm system is installed, actuation of the automatic sprinkler system shall actuate the building fire alarm system.

Section 903.6 is amended by adding subsections 903.6.1 and 903.6.2 to read:

903.6.1 Substantial Addition or Expansion. An automatic sprinkler system shall be provided throughout all existing buildings where a substantial addition or expansion occurs *and* the total fire area of the structure exceeds 5,000 square feet. Group R-3 substantial additions or expansions shall comply with Section 903.2.8.2.

903.6.2 Change of occupancy classification. Any existing building that undergoes a change of occupancy classification into a higher hazard category shall comply with the requirements of Section 903.2. Relative hazard categories of occupancy groups shall be established based upon the Heights and Areas Hazard Categories of Table 1012.4 of the 2012 edition of the International Existing Building Code, as published by the International Code Council. The requirements of Section 903.2 shall not be required when a change of occupancy classification is made to an equal or lesser hazard category. Group L occupancies shall be considered a relative hazard of 1 (highest hazard). R-3.x occupancies shall be considered a relative hazard of 4 (lowest hazard).

Section 907.4.4 is added to read:

907.4.4 Monitoring of other fire systems. In buildings equipped with a fire alarm system or sprinkler alarm and supervisory service (SASS) system, where other fire suppression or extinguishing systems are installed in the building (including but not limited to commercial kitchen suppression systems, pre-action fire suppression systems, dry chemical systems, and clean agent systems), these other suppression systems shall be monitored by the SASS dedicated function fire alarm system and transmitted as a specific signal to the Central Station. The system shall be monitored in compliance with Section 907.6.5.

Section 907.5.2.3.1 is amended to read:

907.5.2.3.1 Public and common areas. Visible alarm notification appliances shall be provided in public use areas and common use areas, including but not limited to:

1. Sanitary facilities including restrooms, bathrooms, shower rooms and locker rooms.
2. Corridors, hallways, aisles with shelving and/or fixtures obstructing the required light intensity for that area.
3. Music practice rooms.
4. Band rooms.
5. Gymnasiums.
6. Multipurpose rooms.
7. Occupational shops.
8. Occupied rooms where ambient noise impairs hearing of the fire alarm.
9. Lobbies.
10. Meeting/Conference rooms.
11. Classrooms.
12. Medical exam rooms.
13. Open office areas.
14. Sales floor areas.
15. Break or lunch rooms.
16. Copy or work rooms.
17. Computer server rooms exceeding 200 sq. ft.
18. File or Storage rooms exceeding 200 sq. ft.

Section 907.6.5 is amended to read:

907.6.5 Monitoring of fire alarm systems. A fire alarm system required by this chapter, or by the California Building Code, shall be monitored by a UL-listed central station service in accordance with NFPA 72 and this code.

Exception: Monitoring by a UL listed central station is not required for:

1. Single and multiple station smoke alarms required by section 907.2.11
2. Group I-3 occupancies shall be monitored in accordance with section 907.2.6.3.4
3. Residential Day Care Facilities (occupancy load of 14 or less)
4. One and two family dwellings
5. Residential Care Facilities licensed by the state with an occupant load of 6 or less.
6. Occupancies with a local fire alarm system that will give an audible and visible signal at a constantly attended location, as approved by the Fire Code Official.

Section 907.8.6 is added to read:

907.8.6 Certification. New fire alarm systems shall be UL-Certified. A Certificate of Completion and other documentation as listed in NFPA 72 shall be provided for all new fire alarm system installations. It is the responsibility of the building owner or owner's representative to obtain and maintain a current and valid Certificate.

Section 907.8.7 is added to read:

907.8.7 Posting of Certificate. The UL Certificate shall be posted in a durable transparent cover within 3 feet of the fire alarm control panel within 45 days of the final acceptance test/inspection.

Chapter 10. Means of Egress.

Section 1027.5 is amended by adding a new subsection 1027.5.1, to read:

1027.5.1 Exit discharge surface. Exterior exit pathway surfaces shall be suitable for pedestrian use in inclement weather, and shall terminate at a public way as defined in the California Building Code.

Chapter 33. Fire Safety During Construction and Demolition.

Section 3301.3 is added to read:

3301.3 Permits. Permits shall be obtained for asbestos removal operations, temporary fire department access roads for construction, and temporary water supplies as set forth in sections 105.6 and 105.7.

Section 3318 is added to read:

Section 3318 Asbestos removal.

3318.1 General. Operations involving removal of asbestos or asbestos-containing materials from buildings shall be in accordance with Section 3318.

Exception: Section 3318 does not apply to the removal of asbestos from:

1. Pumps, valves, gaskets and similar equipment.
2. Pipes, ducts, girders or beams that have a length less than 21 linear feet (6400 mm).
3. Wall or ceiling panels that have an area of less than 10 square feet (0.93 m²) or a dimension of less than 10 linear feet (3048 mm).
4. Floor tiles when their removal can be completed in less than four hours.
5. Group R-3 occupancies.

3318.2 Notification. The fire code official shall be notified 24 hours prior to the commencement and closure of asbestos-removal operations. The permit applicant shall notify the building official when asbestos abatement involves the removal of materials that were used as a feature of the building's fire resistance.

3318.3 Plastic Film. Plastic film that is installed on building elements shall be flame resistant as required for combustible decorative material, in accordance with Section 807.

3318.4 Signs. Approved signs shall be posted at the entrance, exit and exit-access doors, decontamination areas and waste disposal areas for asbestos-removal operations. The signs shall state that asbestos is being removed from the area, that asbestos is a suspected carcinogen, and that proper respiratory protection is required. Signs shall have a reflective surface. Lettering shall be a minimum of 2 inches (51 mm) high.

Chapter 50. Hazardous Materials – General Provisions.

Section 5001.5 is amended by adding subsection 5001.5.3 to read:

5001.5.3 Emergency response support information. Floor plans, material safety data sheets, Hazardous Materials Management Plans (HMMP), Hazardous Material Inventory Statements (HMIS), and other information must be stored at a readily accessible location, as determined by the fire code official. This location may be in cabinets located outside of facilities or buildings. Information may be required to be maintained in a specific electronic media format to facilitate computer aided dispatching.

Section 5003.9.1 is amended by adding subsection 5003.9.1.2 to read:

5003.9.1.2 Documentation. Evidence of compliance with provisions of this chapter as well as with state and federal hazardous material regulations shall be maintained on site and available for inspection by fire department personnel.

Chapter 56 Explosives and Fireworks.

Section 5601 is amended to add Sections 5601.2, 5601.3, 5601.4 and 5601.5, to read:

5601.2 Fireworks. The possession, manufacture, storage, sale, handling and use of fireworks are prohibited. The possession, manufacture, storage, sale, handling and use of fireworks or pyrotechnic materials within the jurisdiction of the District are prohibited.

Exceptions:

1. Fireworks may be temporarily stored only if they are aerial or theatrical piece fireworks stored in conjunction with an approved and permitted aerial or set display.
2. Snap Caps and Party Poppers classified by the State Fire Marshal as pyrotechnic devices.

5601.2.1 Prohibited and Limited Acts. The storage of explosive materials is prohibited in any central business district and in all zoning districts except districts zoned for industrial or agricultural uses. In districts where the storage of explosive materials is permitted, the quantities of explosives and distances shall be in accordance with International Fire Code Sections 3301.8.1 and 3301.8.1.1.

5601.3 Rocketry. The storage, handling and use of model and high-power rockets shall comply with the requirements of the California Code of Regulations, Title 19, Chapter 6, Article 17 and, when applicable, NFPA 1122, NFPA 1125, and NFPA 1127.

5601.3.1 Ammonium nitrate. The storage and handling of ammonium nitrate shall comply with the requirements of Chapter 63 and NFPA 490.

Exception: The storage of ammonium nitrate in magazines with blasting agents shall comply with the requirements of NFPA 495.

5601.4 Residential uses. No person shall keep or store, nor shall any permit be issued to keep or store, any explosives, fireworks or pyrotechnic material at any place of habitation, or within 100 feet (30 480mm) thereof.

Exception: Storage of smokeless propellant, black powder, and small arms primers for personal use and not for resale in accordance with Section 5601.

5601.5 Sale and retail display. The possession, manufacture, storage, sale, handling and use of fireworks or pyrotechnic materials is prohibited.

Exception: Snap Caps and Party Poppers classified by the State Fire Marshal as pyrotechnic devices.

Section 5608 is amended by adding Sections 5608.2 and 5608.3 to read:

5608.2 Permit required. A permit is required to conduct an aerial display in accordance with California Code of Regulations, Title 19, Chapter 6. (See Chapter 1, Section 105.6.52.)

Exception: Snap Caps and Party Poppers classified by the State Fire Marshal as pyrotechnic devices.

5608.3 Financial responsibility. Before a permit is issued pursuant to Section 5608.2, the applicant shall file with the jurisdiction a corporate surety bond in the principal sum of \$1,000,000 or a public liability insurance policy for the same amount, for the purpose of the payment of all damages to persons or property which arise from, or are caused by, the conduct of any act authorized by the permit upon which any judicial judgment results. The fire code official is authorized to specify a greater or lesser amount when, in his or her opinion, conditions at the location of use indicate a greater or lesser amount is required. Government entities shall be exempt from this bond requirement.

Chapter 57. Flammable and Combustible Liquids.

Section 5704.2.9.6.1 is amended to read:

5704.2.9.6.1 Locations where above-ground tanks are prohibited. The storage of Class I and II liquids in above-ground tanks outside of buildings is prohibited in all zoning districts except districts zoned for commercial, industrial, or agricultural uses.

Exception: Protected above-ground tanks for the purpose of emergency power generator installations in areas zoned commercial, industrial, agricultural, central business district, rural or rural residential, and for facilities on an individual basis consistent with the intent of this provision. Tank size shall not exceed 500 gallons (1892.706 L) for Class I or II liquids, or 1,000 gallons (3785.412 L) for Class III liquids.

Section 5706.2.4.4 is amended to read:

5706.2.4.4 Locations where above-ground tanks are prohibited. Storage of Class I and II liquids in above-ground tanks is prohibited in all zoning districts except district zoned for commercial, industrial, or agricultural use.

Chapter 58. Flammable Gases and Flammable Cryogenic Fluids.

Section 5806.2 is amended to read:

5806.2 Limitation. The storage of flammable cryogenic fluids in stationary containers outside of buildings is prohibited in any area which is zoned for other than industrial use.

Exception: Liquid hydrogen fuel systems in compliance with section 5806.3 or 5806.4.

Chapter 61. Liquefied Petroleum Gases.

Section 6103.2.1.7 is amended in its entirety to read:

6103.2.1.7 Use for food preparation. Individual portable L-P containers used, stored, or handled inside a building classified as a Group A or Group B occupancy for the purposes of cooking, food display, or a similar use, shall be limited in size to one quart capacity and shall be of an approved type. The number of portable containers permitted will be at the discretion of the fire code official. LP-gas appliances used for food preparation shall be listed for such use in accordance with the International Fuel Gas Code, the International Mechanical Code, and NFPA 58.

Section 6104.2 is amended to read:

6104.2 Maximum capacity within established limits. The storage of liquefied petroleum gas is prohibited in any central business district and in all zoning districts except districts zoned for commercial, industrial, rural, or agricultural uses. The aggregate capacity of any one installation used for the storage of liquefied petroleum gas shall not exceed a water capacity of 2,000 gallons (7570 L).

ORDINANCE CONTINUES ON NEXT PAGE

Chapter 80. Referenced Standards

Chapter 80 is amended as follows:

The following referenced standard is added:

NFPA 850 (2010) Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations.

The following standard is added and includes the following amendment:

NFPA 13D (2013) Installation of Sprinkler Systems in One- and Two-family Dwellings and Manufactured Homes.

8.6.5.1 When fuel fired equipment is present, at least one quick response intermediate temperature sprinkler shall be installed above the equipment. *All sprinkler piping installed in attics rising above the insulation shall be limited to ferrous or copper piping.*

Appendix B. Fire-Flow Requirements for Buildings.

Section B105.2, exception 1, is amended to read:

Exception 1: A reduction in required fire-flow of 50 percent, as approved by the fire code official, when the building is provided with an approved automatic sprinkler system and installed in accordance with Section 903.3.1.1. The resulting fire-flow shall be not less than 1,500 gallons per minute (5678 L/min) for the prescribed duration as specified in Table B105.1.

Appendix C. Fire Hydrant Locations and Distribution.

Table C105.1 footnote f and g are added to read:

- f. A fire hydrant shall be provided within 250 feet of a fire trail access point off a public or private street.
- g. For infill projects within existing single-family residential developments, Section 507.5.1 applies.

ORDINANCE CONTINUES ON NEXT PAGE

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Appendix D. Fire Apparatus Access Roads

Section D102.1 is amended to read:

D102.1 Access and loading. Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an *approved* fire apparatus access road with an asphalt, concrete or other approved *all-weather driving surface* capable of supporting the imposed load of fire apparatus weighing at least 74,000 pounds (33,566 kg) in accordance with CalTrans Design Standard HS-20-44.

Exception: *Driveways* serving one or two single-family *dwellings* may be constructed of an alternate surface material, providing the imposed weight load design minimums are met and the grade does not exceed 10 percent.

Section D103.1 is deleted in its entirety.

Section D103.2 is deleted in its entirety and replaced by the following, to read:

D103.2 Grade. Fire department access roadways having a grade of between 16 percent and 20 percent shall be designed to have a finished surface of grooved concrete sufficient to hold a 44,000 pound (19 958 kg) traction load. The grooves in the concrete surface shall be ½ inch (13 mm) wide by ½ inch (13 mm) deep and 1 ½ inch (38 mm) on center and set at a 30 to 45 degree angle across the width of the roadway surface. No grade shall exceed 20 percent, nor shall the cross slope exceed 8%, unless authorized in writing by the fire code official.

Section D103.2.1 is added to read:

D103.2.1 Angles of approach and departure. The angles of approach and departure for any means of access shall not exceed 10 percent at 10 feet of the grade break.

Section D103.3 is deleted in its entirety and replaced by the following, to read:

D103.3 Turning radius. Based on a minimum unobstructed width of 20 feet, a fire apparatus access roadway shall be capable of providing a minimum standard turning radius of 25 feet (7620 mm) inside and 45 feet (13 716 mm) outside.

ORDINANCE CONTINUES ON NEXT PAGE

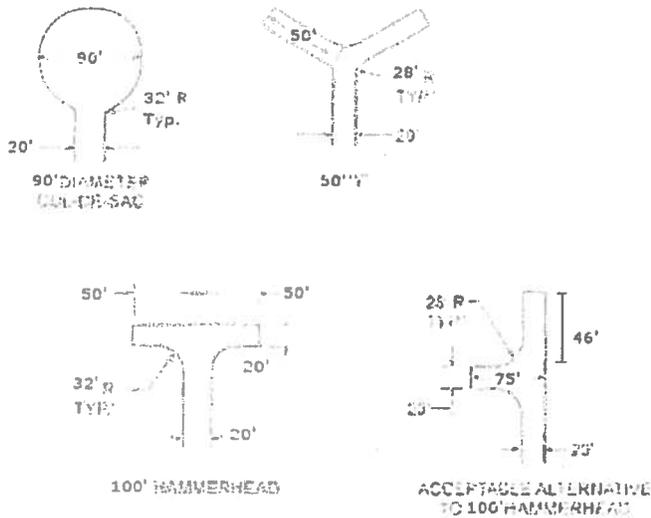
Table D103.4 is amended to read:

**Table D103.4
REQUIREMENTS FOR DEAD-END FIRE
APPARATUS ACCESS ROADS**

LENGTH (feet)	MINIMUM WIDTH (feet)	TURNAROUNDS REQUIRED
0 – 150	20 ^a	None required
151 – 750	20 ^a	100-foot Hammerhead, 50-foot "Y", 75-foot Shunt or 90-foot-diameter cul-de-sac in accordance with figure D103.1
Over 750		Special approval required ^b

- a. A driveway with a minimum width of 16 feet is acceptable for access to no more than two single-family dwellings.
- b. Any fire apparatus access roadway or driveway that is approved to be less than 20 feet wide and to exceed 750 feet in length shall have outsets or turnouts every 300 feet along the length of the road or driveway, or at locations approved by the fire code official. Each outset or turnout shall be of the following dimensions: an 8 foot wide turnout that extends at least 40 feet in length.

Figure D103.1 is amended to read:



**Figure D103.1
Dead-end Fire Apparatus Access Road Turnaround**

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Section D103.5 is amended by amending criteria 1 and adding criteria 10, to read:

1. The minimum clear width shall be 20 feet (6096 mm)
Exception: For access to one or two single-family *dwelling*s, 16 feet clear width is acceptable.
10. All gates shall be installed and located a minimum of 30 feet off the street.

Section D103.6.1 is amended to read:

D103.6.1 Roads less than 28 feet in width. Fire apparatus access roads less than 28 feet wide shall be posted on both sides as a *fire lane*.

Section D103.6.2 is amended to read:

D103.6.2 Roads 28 feet in width or greater, but less than 36 feet in width. Fire apparatus access roads 28 feet wide or greater, but less than 36 feet wide, shall be posted on one side of the road as a *fire lane*.

Section D106.1 is amended to delete the exception and read:

D106.1 Projects having more than 100 dwelling units. Multiple-family residential projects having more than 100 *dwelling units* shall be provided with two separate and *approved* fire apparatus access roads and shall meet the requirements of Section D104.3.

Section D106.2 is deleted in its entirety.

SECTION 3. REPEAL OF FIRE CODE.

Ordinance No. 2010-15, adopting the 2010 California Fire Code with amendments, is hereby repealed.

SECTION 4. REFERENCES TO PRIOR CODE

Unless superseded and expressly repealed by this ordinance, references in Fire District forms, documents, and regulations to the chapters and sections of the 2010 Fire Code of Contra Costa County, the Crockett-Carquinez Fire Protection District, and the Contra Costa County Fire Protection District shall be construed to refer to the corresponding chapters and sections of the 2013 Fire Code of Contra Costa County, the Crockett-Carquinez Fire Protection District, and the Contra Costa County Fire Protection District.

SECTION 5. VALIDITY.

The Contra Costa County Board of Supervisors declares that if any section, paragraph, sentence or word of this ordinance or of the 2013 California Fire Code as adopted and amended herein is declared for any reason to be invalid, it is the intent of the Contra Costa County Board of Supervisors that it would have passed all other portions or provisions of this ordinance independent of the elimination here from any portion or provision as may be declared invalid.

SECTION 6. MORE RESTRICTIVE REQUIREMENTS.

If requirements more restrictive than those in this fire code are adopted by the city of Antioch, Clayton, Concord, Lafayette, Martinez, Pittsburg, Pleasant Hill, San Pablo, or Walnut Creek, or the County of Contra Costa, those requirements will apply only within the jurisdiction adopting those requirements.

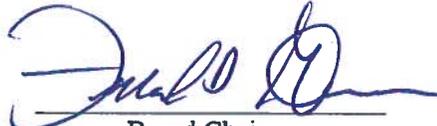
SECTION 7. EFFECTIVE DATE.

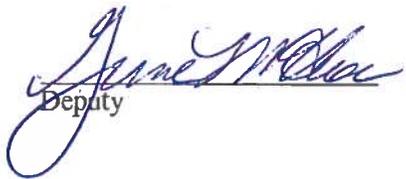
This ordinance becomes effective 30 days after passage, and within 15 days of passage shall be published once in the Contra Costa Times, a newspaper published in this County. This ordinance shall be published in a manner satisfying the requirements of Government Code section 25124, with the names of supervisors voting for and against it.

Passed on October 22 2013, by the following vote:

AYES: Groiz, Anderson, Piepho, Mitchell, Glover
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST: David Twa,
Clerk of the Board of Supervisors
and County Administrator


Board Chair

By: 
Deputy

[SEAL]

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ATTACHMENT "B"

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH AMENDING ANTIOCH MUNICIPAL CODE SECTION 6-3.202 DEALING WITH THRESHOLDS FOR COVERED PROJECTS UNDER THE CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING ORDINANCE

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

SECTION 1. Section 6-3.202 is hereby amended to read as follows:

6-3.202 Threshold for Covered Projects

- A. Covered Projects:** The following projects shall comply with this Article:
1. All new structures
 2. Additions and Alterations with total project costs equal to or greater than \$75,000
 3. Demolition of any structure or portion of a structure larger than 120 square feet

For the purposes of determining whether a project meets the foregoing thresholds, all phases of a project and all related projects taking place on a single or adjoining parcels, as determined by the WMP Compliance Official, shall be deemed a single project.

- B. Noncovered Projects:** Applicants for construction, demolition, and renovation projects within the City which are not Covered Projects ("Noncovered Projects") shall be encouraged to divert as much project-related construction and demolition debris as possible
- C. Building and Demolition Permits:** No building, site development or demolition permit shall be issued for a Covered Project unless and until the WMP Compliance Official has approved a WMP for the project. Compliance with the provisions of this Article shall be listed as a condition of approval on any building, site development or demolition permit issued for a Covered Project.
- D. Projects sponsored by the City:** All Construction, Demolition and Renovation projects sponsored by the City shall be considered Covered Projects for the purposes of this chapter. The Project sponsor shall submit a WPM to the official prior to beginning any activities and shall be subject to all applicable provisions of this chapter.

SECTION 2. This ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption and shall be published once within fifteen (15) days upon passage and adoption in the Contra Costa Times, a newspaper of general circulation printed and published in the City of Antioch.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was introduced at a regular meeting of the City Council of the City of Antioch, held on the 12th day of November, 2013, and passed and adopted at a regular meeting thereof, held on the ____ day of _____, 2013.

AYES:

NOES:

ABSENT:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AND ACTION AT THE MEETING OF NOVEMBER 12, 2013**

Prepared by: Teri House, CDBG Consultant *TH*

Reviewed by: Ryan Graham, Deputy Director of Community Development

Approved by: Tina Wehrmeister, Director of Community Development *TW*

Date: November 12, 2013

Subject: FY 2012-13 Review of CDBG-Funded Accomplishments

RECOMMENDATION

It is recommended that the City Council:

1. Receive and file accomplishment data presented in the FY 2012-13 Consolidated Annual Performance and Evaluation Report.
2. Receive public comment on the needs of lower income Antioch residents for public services, infrastructure, economic development, housing and other categories for use in developing the 2014-15 Action Plan and the 2015-19 Consolidated Plan.

BACKGROUND INFORMATION

The City of Antioch provides grants to non-profit and governmental agencies to provide social service programs, infrastructure improvements and economic development programs through the U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) Program. As a requirement of these funds, the City must prepare and submit to HUD a five-year planning document called a Consolidated Plan, as well as an annual Action Plan and Consolidated Annual Performance and Evaluation Report (CAPER) for each of the five years of the Consolidated Plan.

The Consolidated Plan (ConPlan) is a detailed planning document that provides a needs assessment, describes the City's non-housing community development needs, its housing needs and market conditions, sets out a five-year strategy identifying priorities and available resources and establishes a One-Year Action Plan that outlines intended uses of the resources. Extensive public outreach is conducted, and input received, in order to determine funding priorities for the five-year period. The current Consolidated Plan encompasses the years of 2010-14. The City is in the 4th year of this 5-year Consolidated Plan.

Annual Action Plans are subsidiary documents to the five-year Consolidated Plan and provide a summary of the federal CDBG and local funding available to fund actions, activities, and programs to address the priority needs and specific objectives identified in the Consolidated Plan. Action Plans for this current Consolidated Plan period are for fiscal years (FY) 2010-11, 2011-12, 2012-13, 2013-14, and 2014-15. The Action Plan tells the public what activities have been chosen that year to address the needs, as identified in the ConPlan, of Antioch's lower income residents and areas.

The CAPER details the accomplishments of actions that were proposed in the Action Plan, including the number of people who received services, federal and other dollars expended and other benchmarks, as well as progress in accomplishing the goals of the ConPlan.

This staff report brings the 2012-13 CAPER accomplishment information to Council and the public. It provides the opportunity to celebrate the many achievements in service provision by our outstanding nonprofit partners and city departments in addressing obstacles to meet the needs of underserved persons, foster and maintain affordable housing, reduce the number of households living under the poverty level, and enhance coordination between public and private housing and social service agencies.

Tonight the City also begins preparations to develop the 2014-15 Action Plan, and looks forward to the 2015-19 Consolidated Plan, which will be under development through September 2014. The staff report informs Council and the public about the effectiveness of current strategies to meet the objectives of the 2010-14 Consolidated Plan. This enables Council and the public to make informed decisions during the coming year as we explore emerging and current needs of Antioch's lower income residents and areas, and develop strategies for the next five year plan of 2015-19.

This is the first opportunity for the City to receive public comment on these issues. This meeting is part of an outreach strategy that will include a meeting of nonprofit service providers on their perception of the needs of our community, meetings with City staff providing services in the identified areas, meetings of the CDBG Sub Committee, a community meeting, a web and paper questionnaire for Antioch residents, a Study Session and public comment period with City Council, a Public Hearing on the draft plan, and a final Council Meeting and Public Hearing to adopt the 2015-19 Consolidated Plan.

Summary of FY 2012-13 Accomplishments

In 2012-13, the City received a Community Development Block Grant from HUD in the amount of \$659,487, and allocated all of this funding. In addition, Council authorized allocation of \$34,307 in residual funds from prior years, and \$70,000 from the CDBG Housing Revolving Loan Fund.

The Council Subcommittee, consisting of Council members Monica Wilson and Tony Tiscareno, recommended, and Council adopted a much more targeted approach in fund investment for the remainder of the Consolidated Plan. Code Enforcement in identified lower income areas, located north of Highway 4, became a major priority and Code Enforcement was funded at 20% of the grant. Street infrastructure, homeowner rehabilitation and rental housing rehabilitation would support Code Enforcement in these identified areas. The Senior Center, in the lower income area, was reinforced as a hub for a variety of senior services and these were funded accordingly; Economic Development activities were also located exclusively in the lower income areas. In fact, excluding CDBG Administration funding, 77% of grant funds were invested to concentrate assistance in these areas. HUD was very pleased with our approach, as research has found that targeting resources in this manner, over time, brings the greatest amount of positive change in communities.

Funds were allocated by Council to bring services and quality of life improvement in five (5) distinct categories - Senior Services, Youth Services, Housing, Infrastructure and Public Facilities, and Economic Development.

Almost all agencies funded in 2012-13 exceeded their goals, especially those providing public services for seniors and youth, fair housing and tenant/landlord services, housing and homeless public services, and economic development services. The goal was to provide services to 2,109 persons in these areas, and 2,607 persons were served.

In the category of Infrastructure, no persons have yet been served, as the agency now has to wait to amass two or three years of funding in order to bid a roadway project of sufficient size that it can obtain a cost-effective bid from contractors. The goal has been adjusted to 1,000 per year to reflect the reduced funding.

In the category of Housing goals, the Code Enforcement project exceeded its goal by 23% (100 goal, 123 achieved). Rental and Homeowner Housing Rehabilitation activities did not serve any persons during the year due to the time needed to transition from Antioch Development Agency funding to CDBG funding. CDBG funding requires time-consuming NEPA environmental reviews and comment periods, more extensive contract negotiations, and time to ramp up and market the program after a year of no funding due to the State of California seizure of all Redevelopment agency assets and funding.

Public Services

Seniors

With the limited Public Services funds available to recommend, (HUD restricts Public Services to a maximum of 15% of the grant), Council prioritized funding for a variety of service delivered at the Antioch Senior Center, located in a lower income area, as well as services to homebound frail and disabled seniors. Funding for seniors totaled \$55,000, comprising 55% of the Public Services allocation, and 7.2% of the overall funding allocation.

Services clustered around the Senior Center include funding for the Center operations and programs, Contra Costa Senior Legal Services, and Senior Outreach Services Care Management.

Antioch Senior Center (\$35,000) – Goal 1,000, served 1,075 seniors with hot meals Monday through Friday, as well as a wide variety of recreational, educations, and social services delivered on site.

Contra Costa Senior Legal Services (\$5,000) – Goal 75, served 101 seniors with free will and other legal services by appointment at the Senior Center.

Senior Outreach Services – Care Management (\$5,000) – Goal 40, served 76 seniors with practical advice, information and referrals, and care management at the Senior Center.

Services for homebound frail and disabled seniors, Antioch's most vulnerable residents, included funding for Senior Outreach Services Meals on Wheels, and Ombudsman Services for disabled adults and seniors in care facilities.

Senior Outreach Services Meals on Wheels (\$5,000) – Goal 100, served 209 seniors with nutritious hot meals.

Ombudsman Services (\$5,000) – Goal 350, served 357 dependent adults and elderly residing in long-term care facilities, ensuring they have safe environments with the

assistance of certified Ombudsmen to investigate abuse and ensure compliance of care facilities.

Youth

Council also wished to ensure that the children of lower income families and foster children have access to positive enrichment activities, as well as to provide critical safety net services to children, youth and developmentally disabled adults who have been sexually assaulted. Youth services totaled \$20,000 of the Public Services allocation (restricted by HUD to 15% of the grant), and 2.6% of the overall funding allocation.

Antioch Youth Recreation Scholarships (\$15,000) – Goal 120, served 137 youth from lower income families, and foster children, with aquatic, recreational, educational, dance, gymnastics, sports, camps, and other forms of scholarships.

Community Violence Solutions – Child Sexual Assault Intervention (\$5,000) – Goal 35, served 52 sexual assault victims aged 2-17 years, or developmentally disabled individuals of any age, who are involved in child sexual assault investigations by providing in-depth forensic interviews, counseling advocacy and case management.

Housing

Housing activities and housing related public services were funded at \$376,897 and comprise 49.3% of the allocated CDBG funds. All direct housing and infrastructure activities are centered on the lower income areas that were identified in the HUD Neighborhood Stabilization grant received several years ago. Direct housing activities include Code Enforcement (funded at 20% of the grant), Homeowner Housing Rehabilitation, and Rental Housing Rehabilitation.

Housing-related public services include Emergency Housing and Homeless Prevention services, Homeless Shelter services, Fair Housing services, and Tenant/Landlord Counseling, and these are provided to residents city-wide.

Direct Housing Activities

City Code Enforcement (\$131,897) – Goal 100, Served 123 Antioch households in identified lower income areas. Code enforcement and CDBG personnel first surveyed the identified areas, creating a written record of all visual observances of blight, accumulations of garbage and debris, tagging, overgrown weeds, abandoned and inoperative vehicles, deteriorated structures, and other violations of the Municipal Code. A plan was developed to arrest the decline of these areas, and the Code Enforcement staff began by addressing the worst of the violations as well as responding first to reports of illegal occupation of vacant and foreclosed properties.

Contra Costa Department of Conservation - Single Family Housing Rehabilitation (\$100,000) - Program to be launched in 2013-14. Formerly funded at a much higher amount by Redevelopment agency funds, this program will provide housing rehabilitation loans to lower income homeowners in the identified Code Enforcement lower income areas.

Housing Authority of CCC – Rental Housing Rehabilitation (\$100,000) -. Program to be launched in 2013-14. Another program formerly funded at a much higher amount by Redevelopment Agency funds, this program will rehabilitate multifamily housing in identified

Code Enforcement lower income areas, Units rent restricted for 20 years to retain affordable housing stock.

Housing Related Public Services

SHELTER Inc. - Emergency Housing and Homeless services (\$10,000) - Goal 180, Served 283 residents by providing one-time emergency financial assistance to help households remain in their housing or find new housing if necessary.

Contra Costa County Homeless Program – Adult Interim Housing program (\$5,000) - Goal 45, Served 61 Antioch homeless by providing shelter, food, for homeless persons who are found in encampments and squatting in abandoned and foreclosed properties in the identified areas.

Bay Legal/Echo Housing Partnership – Fair Housing (\$20,000) – Goal 60, served 42 Antioch residents with investigation of complaints of housing discrimination and provision of fair housing counseling services. As this was the first year with a new Fair Housing provider, the agency and City undertook increased outreach to inform the public of the new telephone number to call. Outreach included posting on the City's website, emailing information to all funded agencies, and mailing flyers to all 470 rental property owners in the City of Antioch. A total of 68% of all complaints were regarding disability and reasonable accommodation for disabled residents, while 16% of complaints were regarding race, 7% were regarding income source, 5% regarding familial status (children), and 4% were other issues.

Bay Legal/Echo Housing Partnership – Tenant/Landlord Counseling (\$10,000) – Goal 100, served 170 residents who are being asked to vacate foreclosed apartment buildings, those who are renting foreclosed houses legally or illegally, who have problems with the livability of their rented units, and those who find themselves in other difficult situations.

Infrastructure and Public Facilities

The sole infrastructure activity is the Roadway and Ramp project, funded at \$135,000, representing 17.5% of available CDBG funding. This project also supports the Code Enforcement objective of arresting the decline of identified areas through the rehabilitation of decaying roadway and installation of ADA compliant curb cuts and improved gutters to address flooding issues in some of these areas. Program will be executed every two to three years so that sufficient funds can be accumulated to perform work. Bids will be solicited in spring of 2014, for construction during FY 14-15.

Economic Development

Economic Development activities were funded at \$65,000 and comprised 8.5% of the CDBG funds allocated. Two programs were selected to offer greater diversity in economic development options for Antioch residents:

Opportunity Junction - Job Training and Placement - Goal 10, served 16 Antioch residents by providing a rigorous training program coupled with counseling, life skills, and job placement and follow-up to ensure success. The program's average placement is \$13/hour and it has a proven track record in the County.

Antioch Chamber - Next Level Small Business Training - Goal 14, Served 18 Antioch residents by providing 10 weeks of microenterprise training to help small Antioch businesses succeed. Services are delivered at the Antioch Chamber of Commerce through their Foundation.

Summary of 2010-14 Consolidated Plan Accomplishments

The 2010-14 ConPlan was developed with higher hopes and greater access to resources than those that shall end the plan. The economic downturn and its effect on the Antioch community and government were quite significant, and the loss of Redevelopment funds and Redevelopment Housing Set-Aside funds has a profound effect on affordable housing and homeless services for Antioch residents. Council made substantial downward adjustments in the ConPlan goals after the first two years of the plan, and the City now appears to be on track to meet most, if not all, of its goals for the five year period. Council also was forced to narrow its scope of funding to seniors and youth, and concentrate funding in the lower income areas north of Highway 4, in order to have the greatest possible impact on the community.

2014-15 Action Plan

As required by HUD, this meeting serves to receive public comment on the needs of lower income Antioch residents for public services, infrastructure, economic development, housing and other categories for use in developing the 2014-15 Action Plan, as well as the 2015-19 Consolidated Plan. The City expects to receive between \$665,000 - \$765,000 in federal CDBG funding for FY 2014-15, and expects to invest up to \$80,000 in residual funds and \$200,000 in Housing Revolving Loan Funds.

Last year, the City adopted a two year/three year funding cycle for every five-year Consolidated Plan. 2014-15 is the last year of the 2010-15 Consolidated Plan; therefore no new applications for funding will be considered and only presently funded services will be considered for renewal. Renewal funding is dependent upon the amount of CDBG funds received, accomplishment of the funded program, program monitoring results and other contractual obligations.

2015-19 Consolidated Plan

Resources - At the present time, the City expects to receive approximately \$3,250,000 in CDBG entitlement funding over the 2015-19 ConPlan period, and approximately \$250,000 in program income, primarily housing loan repayments, during that period, for a total of \$4,000,000, with an estimated maximum of \$5,000,000 and minimum of \$3,000,000, depending on Congressional budget allocations to HUD.

CDBG funds must be utilized to provide “decent housing and a suitable living environment and expanding economic opportunities principally for persons of lower income.”

The purpose of this first public comment period is to raise questions and begin a dialog with interested constituents that, within the next year, will result in a thoughtful and informed funding strategy for fiscal years 2015-19.

To spark such thinking, here are some of the questions Council and the public may wish to contemplate for future in-depth discussion:

- Affordable Housing – What kind of affordable housing does Antioch need? Housing for seniors? Disabled? Lower income families? Homeless persons? What can realistically be accomplished with the relatively small amount of funds available? What is the best use of funds for affordable housing – helping homeowners rehabilitate? Helping apartment complexes rehabilitate units if they keep them at affordable rates for lower income renters? Code enforcement of the existing housing stock? In what proportion should these needs be addressed?
- Economic Development – How will lower income residents of Antioch fare in the economic recovery to come? What jobs will they need, and what kind of training will be helpful? Where can they receive this training? What is the role of CDBG funds in Economic Development, and what amount of funding should be invested?
- Infrastructure and Public Facilities – What do lower income neighborhoods need most in order to improve the physical conditions there? Are there flooding, street, sewer and other issues that cannot be accommodated by General Funds in a reasonable amount of time, for which CDBG funds might be appropriate? Are there adequate park and recreation facilities for children in these areas? What about other public facilities? What about nonprofit organization facilities? After a number of year of declining revenue, downsizing, and delayed maintenance, what are the needs that nonprofit agencies serving Antioch residents for building repairs and improvements so that they may continue their missions? Should such repairs be a part of the plan for 2015-19? If so, at what amount?
- Public Services – Given that Public Services are limited to only 15% of the entire grant each year, how does the City best use these funds? What kinds of CDBG-eligible services do lower income Antioch residents need the most? What populations -seniors, youth, families with children, homeless people, disabled person and so on – should be served with these funds?
- Possible annexation of areas in north east Antioch – These areas are considered a disadvantaged urban community, which would be a new lower income area in which CDBG funds could be invested if desired. What are the needs of this area for housing rehabilitation, sewer, water, and other infrastructure if it is annexed?

Residents, staff, and Council members are encouraged to think about these issues and write down their questions and concerns and send them to the City Council CDBG Sub Committee by emailing CDBG@ci.antioch.ca.us or calling Teri House at 925-779-7037. Interested persons will be notified of future planning sessions and public meetings to help develop the 2015-19 Consolidated Plan.

ATTACHMENTS

The City of Antioch five year Consolidated Plans for FY 2010-15 and 2005-10, along with their associated Action Plans and Consolidated Annual Performance and Evaluation Reports, can be located on the City's website at: <http://ci.antioch.ca.us/CitySvcs/CDBG.htm>

**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF NOVEMBER 12, 2013**

Prepared by: Tina Wehrmeister, Community Development Director *TW*
Date: November 7, 2013
Subject: Ordinance Establishing Zoning Regulations for Computer Gaming and Internet Access Businesses

RECOMMENDATION

It is recommended that the City Council:

1. Motion to read the ordinances by title only.
2. Motion to introduce an ordinance establishing zoning regulations for computer gaming and internet access businesses. The Planning Commission recommended adoption of the proposed ordinance on October 16, 2013 by a 5-0 vote with one absence.
3. Motion to introduce an ordinance amending Title 5, Chapter 11 regarding refinements to the licensing requirements for computer gaming and internet access businesses.

BACKGROUND INFORMATION

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

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

In addition to the issues associated with calls for service and impacts to the Police Department, a law enforcement advisory was published by the State Department of Justice indicating that these types of business models may constitute illegal gambling (see Attachment "E"). The advisory stops short of making a definitive decision that sweepstakes style games are illegal

and the Department of Justice is currently in litigation regarding enforcement action on such businesses elsewhere in the State. Therefore, it is advisable for local jurisdictions to enact ordinances that would mitigate potential negative impacts associated with computer gaming and internet access businesses. The City Council already enacted a licensing ordinance (see Attachment "F" in red line format) which addresses operational issues. The proposed redline updates to the licensing ordinance are discussed below. The Planning Commission was not required to make a recommendation on the licensing ordinance since it is not a part of the zoning code.

PROPOSED ZONING ORDINANCE

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

- Section 9-5.203 defines a computer gaming and internet access business as an establishment that provides any computers or other electronic devices for access to the world wide web, internet, e-mail, video games, or computer software programs which operate alone or are networked (via LAN, WAN or otherwise) or which function as a client/server program, and which seeks compensation, in any form, from users. Public use or internet learning centers, such as libraries or nonprofit educational facilities, are exempt from this definition. The definition of public use or internet learning centers was adjusted to address Planning Commission comments regarding non-profit organizations that may provide free or low cost computer access as part of a bona-fide training or educational program.
- Section 9-5.3803, Table of Land Use Regulations, would be amended to list Computer Gaming and Internet Access Businesses and require a Use Permit in the Regional Commercial Zone (C-3). Computer Gaming and Internet Access Businesses are commercial in nature. However, due to potential impacts described in the previous staff reports included under Attachment "A", staff felt that Convenience Commercial (C-1) or Neighborhood Commercial zones (C-2) zones which are dispersed throughout the City and intended to serve residential neighborhoods would not be an appropriate location for these uses. A map of C-3 zone is attached (see Attachment "G").
- Section 9-5.3835(A) proposes additional locational criteria for Computer Gaming and Internet Access Businesses.
 - They must front an arterial street. This criterion is proposed because of the significant loitering issues associated with the two former businesses in town and as reported by other jurisdictions. By fronting on an arterial street, the business will be easily viewed by the general public and, most importantly, Police Department patrol vehicles. Limited police resources are such that patrol of fronting on an internal parking lot will be difficult and could result in unchecked loitering, which could have a detrimental impact on adjoining businesses.
 - A 500 foot buffer-zone is proposed to prevent an over-concentration of Computer Gaming and Internet Access Businesses or other establishments which typically generate high volumes of Police Department calls for services, such as liquor stores

and tobacco retailers and card rooms. A 500-foot buffer zone from sensitive uses, such as schools, parks, recreational centers where youth congregate, is also proposed. This buffer distance is consistent with the existing liquor establishment ordinance.

- A parking study is required with each Use Permit application. Computer Gaming and Internet Access Businesses are a new business model and it is not clear how they will impact existing parking lots. Staff received complaints about the previously licensed businesses using available parking spaces for a very long period of time, barring other stores' customers from finding convenient parking spots. Including a parking study with the use permit application would allow the Planning Commission to consider mitigating conditions such as timed parking stalls, designated parking, valet or shared parking, just to name a few.

LICENSING ORDINANCE AMENDMENTS

Amendments to the Computer Gaming and Internet Access Business licensing ordinance are also proposed (see red-lined Attachment "D"). The City Council adopted the current version of the ordinance in February 2012 in order to establish licensing regulations for the two then existing businesses which are now closed. The ordinance amendments include the following:

- Definition updates to be consistent with the zoning ordinance, as described above.
- Amendments to the Operational Standards and Regulations to be consistent with requirements placed on other businesses which may typically have a high volume of calls for service such as liquor establishments, smoke shops, and card rooms including required surveillance system, limitations on window coverings, mandatory security guards, alarm systems, and ability to modify hours of operation if warranted.

FINANCIAL IMPACT

None anticipated.

OPTIONS

1. Provide direction to staff regarding amendments to the proposed ordinances.
2. Decline to adopt either ordinance. Not adopting the zoning ordinance will leave the City without specific land use requirements governing Computer Gaming and Internet Access Businesses when the moratorium expires in January 2014. Not adopting the licensing amendments would leave the current ordinance in place and effective.

ATTACHMENTS

- A: Ordinance establishing zoning regulations for computer gaming and internet access businesses
- B: Ordinance amending Title 5, Chapter 11 regarding refinements to the licensing requirements for computer gaming and internet access businesses
- C: Ordinance 2061-C-S and January 22, 2013 City Council staff report which contains February 28, 2012 and April 10, 2012 staff reports as attachments

- D: Memorandum from the Antioch Police Department regarding calls for service at then existing Computer Gaming and Internet Access Businesses
- E: Department of Justice Advisory
- F: Red-lined Computer Gaming and Internet Access Licensing Ordinance (Antioch Municipal Code Title 5, Chapter 11)
- G: C-3 Zone location map

ATTACHMENT "A"

ORDINANCE NO.

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

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

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

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

C. The Planning Commission conducted a duly noticed public hearing on October 16, 2013 at which time a resolution was approved to initiate and recommend to the City Council that this ordinance be adopted to establish zoning regulation for computer gaming and internet access businesses. The City Council held a duly noticed public hearing on November 12, 2013 at which all interested persons were allowed to address the Council regarding adoption of this ordinance.

D. The City Council finds that public necessity requires the proposed zoning ordinance amendments to allow Computer Gaming and Internet Access Businesses only in the Commercial C-3 zoning district and to impose requirements regarding access, parking, over-concentration and distance from sensitive uses to avoid the detrimental impacts from the use described above; said amendments are not detrimental to properties within Antioch, and that the proposed zoning ordinance amendment is in conformance with the Antioch General Plan by limiting the location of such businesses to regional commercial zones to decrease the impact on neighborhoods and sensitive uses consistent with General Plan Policy 8.11.2c which provides direction to adopt requirements that reduce the potential for crime.

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

COMPUTER GAMING AND INTERNET ACCESS BUSINESS. An establishment that provides computers or other electronic devices for access to the world wide web, internet, e-mail, video games, or computer software programs which operate alone or are networked (via LAN, WAN or otherwise) or which function as a client/server program, and which seeks compensation, in any form, from users. **COMPUTER GAMING AND INTERNET ACCESS BUSINESS** is synonymous with a personal computer ("PC") café, internet café, cyber café, sweepstakes gaming facilities,

(B) A parking study shall be required and considered with a Use Permit application for a Computer Gaming and Internet Access Business. The study shall be contracted by the Community Development Department at the applicant's expense and shall include but not be limited to an analysis of potential impacts to available parking and impacts of extended duration parking.

(C) A separate license is required to operate a Computer Gaming and Internet Access Business under Title 5, Chapter 11 of the Municipal Code and shall be a condition of the Use Permit.

SECTION 6. CEQA.

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

SECTION 7. Publication; Effective Date.

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

SECTION 8. Severability.

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

* * * * *

I **HEREBY CERTIFY** that the foregoing ordinance was introduced at a regular meeting of the City Council of the City of Antioch held on the 12th day of November and passed and introduced at a regular meeting thereof, held on the _____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

A3

ATTACHMENT "B"

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH AMENDING DEFINITIONS AND OPERATIONAL STANDARDS AND REGULATIONS IN TITLE 5, CHAPTER 11 REGARDING COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

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

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

B. The City of Antioch, as well as neighboring cities, has experienced criminal activity associated with Computer Gaming and Internet Access Businesses, including incidents involving robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the Antioch Police Department has documented a significant increase in service related calls involving a variety of crimes in these businesses and within the neighborhoods adjacent to Computer Gaming and Internet Access Businesses when they were operational in the City and include the representational incidents below as findings as follows:

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

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

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

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

E. The current Computer Gaming and Internet Access Business licensing ordinance is in need of updating in order to make the definitions internally consistent with the zoning code and to ensure that the Operational Standards and Regulations are consistent with requirements placed on other businesses which may typically have a high volume of calls for service such as liquor establishments, smoke shops, and card rooms.

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

SECTION 2. Section 5-11.02 of the Antioch Municipal Code is hereby amended to read as follows:

§ 5-11.02 DEFINITIONS.

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

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

PUBLIC USE OR INTERNET LEARNING BUSINESS. An establishment that provides computer access which is operated by the city, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction and does not receive compensation in any form other than school tuition or a non-profit organization that provides computer access as part of a free or low cost bona-fide training or educational program.

SECTION 3. Section 5-11.60 of the Antioch Municipal Code is hereby rescinded and reenacted in its entirety to read as follows:

§ 5-11.60 OPERATIONAL STANDARDS AND REGULATIONS.

(A) *Prohibitions regarding minors.*

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

(2) Minors (under 18 years of age), unless legally emancipated, shall not be permitted to enter or remain in a computer gaming and internet access business during the hours of the juvenile protection curfew of 11:01 p.m. through 5:00 a.m., seven nights a week, pursuant to Article 2 of Chapter 10 of Title 5 of the city municipal code.

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

(B) *Hours of operation.* The computer gaming and internet access business shall not be open to customers, patrons, or any member of the public between the hours of 12:00 a.m. and 8:00 a.m. on Friday, Saturday, and Sunday or between the hours of 11:00 p.m. and 8:00 a.m. Monday through Thursday. The Chief of Police may restrict hours further if warranted to protect public health, safety and welfare.

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

(D) *No smoking or consumption of alcoholic beverages.* No person shall be permitted to smoke or consume alcoholic beverages on the inside of the premises. The sale of cigarettes and alcohol on the premises is prohibited. No intoxicated or disorderly person shall be allowed to remain on the premises.

(E) *Staffing.* Employees shall be at least 18 years of age. There shall be a minimum of two employees staffing the computer gaming and internet access business during all working hours with at least one manager or supervisor. The ratio of employees to computers and/or other electronic devices that access the internet shall be 2:40. During each employee's working hours, the employee shall wear a badge identifying the business and the employee's name. Security personnel indicated in division (I) of this section below shall not be included in this minimum staffing number.

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

(G) *Surveillance system.*

(1) Each computer gaming and internet access business operator shall install a digital camera/video surveillance system on the premises operational at all times. The system shall cover the entire interior of the premises and all entrances to and exits from the establishment. Tapes/disks shall be kept a minimum of 14 calendar days or longer if required by the Chief of Police. The owner shall permit a representative of the Police Department's office to inspect the tapes/disks during business hours.

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

(H) *Windows and window coverings.* Store fronts (front façade of the tenant space) shall be primarily glass with glass occupying at least 45% of the entire store front and 60% of the horizontal length of the store front (see also Antioch Citywide Design Guidelines). Glass customer doors are required. Window and door areas shall not be covered, tinted, or made opaque in any way, or obscured in any way by landscaping, floor displays, equipment, or the like.

(I) *Security guards.*

(1) Security guard(s) are required on the premises during all business hours.

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

(3) Security guards shall also patrol the exterior of the business and any parking lot areas.

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

(J) *No adult entertainment business or adult boutique.* Any access to adult entertainment oriented web sites, as defined in § 9-5.203 of this code, is prohibited unless specifically permitted under §§ 9-5.3808 or 9-5.3808.1 of this code.

(K) *No other amusement devices.* No pool tables or other amusement devices not directly related to the internet and similar computer devices shall be permitted in the business.

(L) *No tournaments.* No gaming tournaments for cash prizes deemed to be gambling under the provisions of state law shall be permitted.

(M) *Interior signs.* User rates and other fees must be conspicuously posted on the premises.

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

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

(P) *No private rooms.* Any individual computer use area within the business shall be visible from a public portion of the computer gaming and internet access business and shall not be obscured by any door, curtain, wall, two-way mirror, or other device which would prohibit a person from seeing the entire interior of the computer use area. Further, no one shall maintain any individual viewing area in any configuration unless the entire interior wherein the computer that is being used is visible to staff and customers. No doors are permitted on an individual viewing area. No partially or fully enclosed individual viewing areas or partially or fully concealed individual viewing areas shall be maintained.

(Q) *Alarm system.* An alarm system shall be installed that distinguishes between a burglary and a robbery. The system shall monitor 24 hours per day. All public entrance and exit doors to the business shall have electronic monitoring system that produce a sound when a person transverses the doorway. The Chief of Police may require the system to be electronically connected with the police department if activated.

(R) *Number of computers.* The number of computers or similar devices in a computer gaming and internet access business shall not exceed 30 square feet of floor area per computer of the floor area that is dedicated to the placement of computers for rent or charge.

SECTION 4. CEQA. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 15061 (b) (3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

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

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

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

* * * * *

I **HEREBY CERTIFY** that the foregoing Ordinance was introduced on 12th day of November, 2013 and adopted at a regular meeting of the City Council of the City of Antioch on _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "C"

ORDINANCE NO. 2061-C-S

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

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

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

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

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

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

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

D. While the City's codes do regulate mechanical or electronic games, the computer stations at Computer Gaming and Internet Access Businesses are used in a manner that may be considered different from coin-operated video game machines, and therefore have different impacts. There is generally a charge for use of the computer station, and many users may occupy a particular station for multiple consecutive hours, creating unknown impacts on the surrounding area and businesses, such as observed lines of individuals waiting to access these businesses. Some Computer Gaming and Internet Access Businesses may stage late-night gaming sessions, which may encourage violation of the City's curfew ordinance or create and promote other late-night noise and related impacts on the surrounding community. Recently there have been Computer Gaming and Internet Access Businesses that promote "sweepstakes gaming" which encourages game playing that may provide chances to be awarded prizes. The

extended use of such facilities by multiple persons waiting for a limited number of computer stations could contribute to increased detrimental effects on the commercial area where located and the surrounding residential area.

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

F. The City of Antioch, as well as neighboring cities, has experienced criminal activity associated with Computer Gaming and Internet Access Businesses, including incidents involving robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the Antioch Police Department has documented a significant increase in service related calls involving a variety of crimes in these businesses and within the neighborhoods adjacent to Computer Gaming and Internet Access Businesses and include the representational incidents below as findings as follows and as further described in attachments to the staff report:

1. On April 13, 2010, there was a call for service from T's Internet Café at 1836 A Street because of a fight over someone owing someone money and on July 23, 2010 a call for service regarding another fight.
2. At T's Internet Café at 1653 A Street on September 11, 2010, there was a call for service regarding possible assault, drug violations and carjacking. On November 18, 2010, a male robbed money from the business with a sawed-off shot gun and shot at one of the workers. On February 2, 2011, there was a call for service regarding drug selling. On July 21, 2011, there was a report of a car theft and then a fight broke out.
3. At the Internet Room at 2962 Delta Fair Boulevard, on January 28, 2012, there was a report of a stolen vehicle.
4. At T's Internet Café at 1908 A Street on August 20, 2011, someone was throwing things at the business and threatening to harm the employees.
5. While at Computer Gaming and Internet Access Businesses in Antioch, individuals have been arrested for robbery, narcotics violations, carjacking and other crimes, as well as on outstanding warrants. While some of these crimes may have occurred elsewhere, it does show a propensity for individuals who engage in criminal activity to patronize Computer Gaming and Internet Access Businesses.
6. At 2962 Delta Fair Boulevard, calls for service at that location and at neighboring businesses have increased from 109 to 259 over a twelve month period since the Internet Room started operating.
7. At 1836 A Street, before T's Internet Café opened there were 157 calls for service from that location and neighboring businesses over a 7-month period from February 1, 2009 through August 30, 2009. While T's Internet Café was operating at 1836 A Street, calls for service increased to 240 over a 7-month

period from February 1, 2010 through August 30, 2010. When T's Internet Café closed at that location, calls for service from that location and neighboring businesses went back down to 158 calls for service over the 7-month period from February 1, 2011 through August 30, 2011, almost identical to the rates before T's Internet Café opened.

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

G. Without the enactment of this Ordinance, multiple applicants could quickly receive entitlements which would allow additional Computer Gaming and Internet Access Businesses that pose a threat to the public health, safety, and welfare. The City Council hereby determines that the Municipal Code is in need of updating to protect the public against health, safety, and welfare dangers caused by Computer Gaming and Internet Access Businesses. In particular, although the City Council adopted Urgency Ordinance No. 2053 on February 28, 2012 and Ordinance No. 2054-C-S on March 13, 2012 adding Chapter 11 of Title 5 of the Antioch Municipal Code regarding licensing procedures and certain operational regulations, the current provisions do not fully take into account the impacts related to the location, concentration and manner of construction, establishment and operation of Computer Gaming and Internet Access Businesses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community that could be addressed with a zoning ordinance.

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

H. In order to prevent the frustration of these studies and the implementation of new regulations, the public interest, health, safety, and welfare require immediate enactment of this Ordinance. The absence of this Ordinance would impair the orderly and effective implementation of contemplated Municipal Code amendments, and any further authorization of

these uses within the City during the period of the interim zoning regulations may be in conflict with or may frustrate the contemplated updates and revisions of the Municipal Code.

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

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

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

L. City staff has provided a staff report indicating that additional time is needed to study these complicated issues and noticed a public hearing for January 22, 2013 for the City Council's consideration of an extension of the temporary moratorium.

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

- A. **Restricted Activities.** In accordance with the authority granted the City of Antioch under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, the moratorium adopted by the City Council on February 28, 2012 is extended for 10 months and 15 days from the date of this ordinance. No permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, business permit, building permit, conditional use permit, or zoning text amendment shall be approved or issued for the establishment or operation of a Computer Gaming and Internet Access Business in the City of Antioch. Additionally, Computer Gaming and Internet Access Business are hereby expressly prohibited in all areas and zoning districts of the City. The one existing Computer Gaming and Internet Access Businesses may continue to operate at its current location: Cot on the Web at 2333 Buchanan Road. No expansion of the number of computer terminals is allowed. Expansion of tenant floor space is permitted in order to allow compliance with the licensing procedures and regulations in Title 5, Chapter 11 of the Antioch Municipal Code.
- B. **Definitions.** In addition to the definitions contained in the City's Municipal Code, the following words and phrases shall, for the purposes of this Ordinance, be defined as follows, unless it is clearly apparent from the context that another

meaning is intended. Should any of the definitions be in conflict with the current provisions of the Municipal Code, the following definitions shall prevail:

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

2. "Public Use or Internet Learning Center" shall mean an establishment that provides computer access which is operated by the City of Antioch, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction or a non-profit organization which does not receive compensation in any form other than school tuition.

SECTION 4. CEQA. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

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

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

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

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

LS

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

* * * * *

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

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

NOES: None

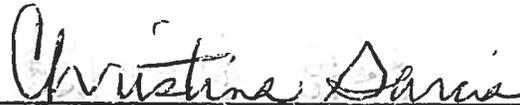
ABSENT: None

ABSTAIN: None



Wade Harper, Mayor of the City of Antioch

ATTEST:


for _____
Arne Simonsen, City Clerk of the City of Antioch

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

Prepared by: Tina Wehrmeister, Community Development Director *TW*
Reviewed by: Jim Jakel, City Manager
Lynn Tracy Nerland, City Attorney
Date: January 10, 2013
Subject: Extension of an Interim Urgency Zoning Ordinance Prohibiting the Issuance of Permits, Licenses or Approvals for Construction, Establishment or Operation of any Computer Gaming and Internet Access Business

RECOMMENDATION

It is recommended that the City Council adopt the attached interim urgency zoning ordinance extending the prohibition of the issuance of permits, licenses or approvals for construction, establishment or operation of any computer gaming and internet access business within the City of Antioch on an interim basis pending consideration of amendments to Title 9 of the Antioch Municipal Code for a period of one year and declaring the urgency thereof (four-fifths (4/5th) vote required).

BACKGROUND / DISCUSSION

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

Pursuant to Government Code Section 65858 this moratorium may be extended for one additional year, provided that the current and immediate threat to the public safety, health and welfare still exists, and the City follows the public notice and hearing procedures for extension of the moratorium.

Although the City Council adopted Urgency Ordinance No. 2053 on February 28, 2012 and Ordinance No. 2054-C-S on March 13, 2012 adding Chapter 11 of Title 5 of the Antioch Municipal Code (Attachment "B") regarding licensing procedures and certain operational regulations for Computer Gaming and Internet Access Businesses, the current provisions do not fully take into account the impacts related to the location, concentration and manner of construction, establishment and operation of these uses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community that could be addressed with a zoning ordinance.

CT
1-22-13

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

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

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

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

FISCAL IMPACT

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

OPTIONS

The Council may choose not to adopt the urgency ordinance extending the moratorium. This will leave the City without a zoning ordinance specifically addressing Computer Gaming and Internet Access Businesses.

ATTACHMENTS

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

ORDINANCE NO.

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

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

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

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

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

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

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

D. While the City's codes do regulate mechanical or electronic games, the computer stations at Computer Gaming and Internet Access Businesses are used in a manner that may be considered different from coin-operated video game machines, and therefore have different impacts. There is generally a charge for use of the computer station, and many users may occupy a particular station for multiple consecutive hours, creating unknown impacts on the surrounding area and businesses, such as observed lines of individuals waiting to access these businesses. Some Computer Gaming and Internet Access Businesses may stage late-night gaming sessions, which may encourage violation of the City's curfew ordinance or create and promote other late-night noise and related impacts on the surrounding community. Recently there have been Computer Gaming and Internet Access Businesses that promote "sweepstakes gaming" which encourages game playing that may provide chances to be awarded prizes. The

extended use of such facilities by multiple persons waiting for a limited number of computer stations could contribute to increased detrimental effects on the commercial area where located and the surrounding residential area.

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

F. The City of Antioch, as well as neighboring cities, has experienced criminal activity associated with Computer Gaming and Internet Access Businesses, including incidents involving robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the Antioch Police Department has documented a significant increase in service related calls involving a variety of crimes in these businesses and within the neighborhoods adjacent to Computer Gaming and Internet Access Businesses and include the representational incidents below as findings as follows and as further described in attachments to the staff report:

1. On April 13, 2010, there was a call for service from T's Internet Café at 1836 A Street because of a fight over someone owing someone money and on July 23, 2010 a call for service regarding another fight.
2. At T's Internet Café at 1653 A Street on September 11, 2010, there was a call for service regarding possible assault, drug violations and carjacking. On November 18, 2010, a male robbed money from the business with a sawed-off shot gun and shot at one of the workers. On February 2, 2011, there was a call for service regarding drug selling. On July 21, 2011, there was a report of a car theft and then a fight broke out.
3. At the Internet Room at 2962 Delta Fair Boulevard, on January 28, 2012, there was a report of a stolen vehicle.
4. At T's Internet Café at 1908 A Street on August 20, 2011, someone was throwing things at the business and threatening to harm the employees.
5. While at Computer Gaming and Internet Access Businesses in Antioch, individuals have been arrested for robbery, narcotics violations, carjacking and other crimes, as well as on outstanding warrants. While some of these crimes may have occurred elsewhere, it does show a propensity for individuals who engage in criminal activity to patronize Computer Gaming and Internet Access Businesses.
6. At 2962 Delta Fair Boulevard, calls for service at that location and at neighboring businesses have increased from 109 to 259 over a twelve month period since the Internet Room started operating.
7. At 1836 A Street, before T's Internet Café opened there were 157 calls for service from that location and neighboring businesses over a 7-month period from February 1, 2009 through August 30, 2009. While T's Internet Café was operating at 1836 A Street, calls for service increased to 240 over a 7-month

period from February 1, 2010 through August 30, 2010. When T's Internet Café closed at that location, calls for service from that location and neighboring businesses went back down to 158 calls for service over the 7-month period from February 1, 2011 through August 30, 2011, almost identical to the rates before T's Internet Café opened.

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

G. Without the enactment of this Ordinance, multiple applicants could quickly receive entitlements which would allow additional Computer Gaming and Internet Access Businesses that pose a threat to the public health, safety, and welfare. The City Council hereby determines that the Municipal Code is in need of updating to protect the public against health, safety, and welfare dangers caused by Computer Gaming and Internet Access Businesses. In particular, although the City Council adopted Urgency Ordinance No. 2053 on February 28, 2012 and Ordinance No. 2054-C-S on March 13, 2012 adding Chapter 11 of Title 5 of the Antioch Municipal Code regarding licensing procedures and certain operational regulations, the current provisions do not fully take into account the impacts related to the location, concentration and manner of construction, establishment and operation of Computer Gaming and Internet Access Businesses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community that could be addressed with a zoning ordinance.

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

H. In order to prevent the frustration of these studies and the implementation of new regulations, the public interest, health, safety, and welfare require immediate enactment of this Ordinance. The absence of this Ordinance would impair the orderly and effective implementation of contemplated Municipal Code amendments, and any further authorization of

these uses within the City during the period of the interim zoning regulations may be in conflict with or may frustrate the contemplated updates and revisions of the Municipal Code.

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

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

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

L. City staff has provided a staff report indicating that additional time is needed to study these complicated issues and noticed a public hearing for January 22, 2013 for the City Council's consideration of an extension of the temporary moratorium.

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

A. **Restricted Activities.** In accordance with the authority granted the City of Antioch under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, the moratorium adopted by the City Council on February 28, 2012 is extended for 10 months and 15 days from the date of this ordinance. No permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, business permit, building permit, conditional use permit, or zoning text amendment shall be approved or issued for the establishment or operation of a Computer Gaming and Internet Access Business in the City of Antioch. Additionally, Computer Gaming and Internet Access Business are hereby expressly prohibited in all areas and zoning districts of the City. The two existing Computer Gaming and Internet Access Businesses may continue to operate at their current locations: Internet Room at 2962 Delta Fair Boulevard and Cot on the Web at 2333 Buchanan Road. No expansion of the number of computer terminals is allowed. Expansion of tenant floor space is permitted in order to allow compliance with the licensing procedures and regulations in Title 5, Chapter 11 of the Antioch Municipal Code.

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

meaning is intended. Should any of the definitions be in conflict with the current provisions of the Municipal Code, the following definitions shall prevail:

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

2. "Public Use or Internet Learning Center" shall mean an establishment that provides computer access which is operated by the City of Antioch, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction or a non-profit organization which does not receive compensation in any form other than school tuition.

SECTION 4. CEQA. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

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

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

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

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

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

* * * * *

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

AYES:

NOES:

ABSENT:

ABSTAIN:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "A"

STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE MEETING OF APRIL 10, 2012

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

Date: April 5, 2012

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

RECOMMENDATION

It is recommended that the City Council adopt the attached urgency ordinance extending a temporary moratorium on the issuance of permits, licenses, or approvals for construction, establishment or operation of Computer Gaming and Internet Access Businesses within the City of Antioch on an interim basis pending consideration of amendments to Title 9 of the Antioch Municipal Code for a period of 10 months and 15 days and declaring the urgency to do so (four-fifths vote).

BACKGROUND / DISCUSSION

On February 28, 2012 the City Council adopted an urgency ordinance establishing a temporary moratorium on the issuance of permits, licenses, or approvals for construction, establishment or operation of Computer Gaming and Internet Access Businesses. The staff report for that City Council meeting is included as Attachment "A" and provides more details regarding the issue and the urgent need for a temporary moratorium to address public safety, health and welfare issues raised by these Computer Gaming and Internet Access Businesses (as defined in the ordinance).

Pursuant to Government Code Section 65858 this moratorium is effective for 45 days and can be extended for up to a total of 2 years, provided that the current and immediate threat to the public safety, health and welfare still exists, and the City follows the public notice and hearing procedures for extension of the moratorium.

Although the City Council adopted Urgency Ordinance No. 2053 on February 28, 2012 and Ordinance No. 2054-C-S on March 13, 2012 adding Chapter 11 of Title 5 of the Antioch Municipal Code (Attachment "B") regarding licensing procedures and certain operational regulations for Computer Gaming and Internet Access Businesses, the current provisions do not fully take into account the impacts related to the location, concentration and manner of construction, establishment and operation of these uses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community that could be addressed with a zoning ordinance.

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

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

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

FISCAL IMPACT

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

OPTIONS

The Council may choose not to adopt the urgency ordinance extending the moratorium. This will leave the City without a zoning ordinance specifically addressing Computer Gaming and Internet Access Businesses.

ATTACHMENTS

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

ORDINANCE NO. _____

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

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

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

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

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

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

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

D. While the City's codes do regulate mechanical or electronic games, the computer stations at Computer Gaming and Internet Access Businesses are used in a manner that may be considered different from coin-operated video game machines, and therefore have different impacts. There is generally a charge for use of the computer station, and many users may occupy a particular station for multiple consecutive hours, creating unknown impacts on the surrounding area and businesses, such as observed

lines of individuals waiting to access these businesses. Some Computer Gaming and Internet Access Businesses may stage late-night gaming sessions, which may encourage violation of the City's curfew ordinance or create and promote other late-night noise and related impacts on the surrounding community. Recently there have been Computer Gaming and Internet Access Businesses that promote "sweepstakes gaming" which encourages game playing that may provide chances to be awarded prizes. The extended use of such facilities by multiple persons waiting for a limited number of computer stations could contribute to increased detrimental effects on the commercial area where located and the surrounding residential area.

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

F. The City of Antioch, as well as neighboring cities, has experienced criminal activity associated with Computer Gaming and Internet Access Businesses, including incidents involving robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the Antioch Police Department has documented a significant increase in service related calls involving a variety of crimes in these businesses and within the neighborhoods adjacent to Computer Gaming and Internet Access Businesses and include the representational incidents below as findings as follows and as further described in attachments to the staff report:

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

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

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

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

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

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

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

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

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

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

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

- A. **Restricted Activities.** In accordance with the authority granted the City of Antioch under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, the moratorium adopted by the City Council on February 28, 2012 is extended for 10 months and 15 days from the date of this ordinance. No permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, business permit, building permit, conditional use permit, or zoning text amendment shall be approved or issued for the establishment or operation of a Computer Gaming and Internet Access Business in the City of Antioch. Additionally, Computer Gaming and Internet Access Business are hereby expressly prohibited in all areas and zoning districts of the City. The two existing Computer Gaming and Internet Access Businesses may continue to operate at their current locations: Internet Room at 2962 Delta Fair Boulevard and Cot on the Web at 2333 Buchanan Road. No expansion of the number of computer terminals is allowed. Expansion of tenant floor space is permitted in order

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

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

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

2. "Public Use or Internet Learning Center" shall mean an establishment that provides computer access which is operated by the City of Antioch, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction or a non-profit organization which does not receive compensation in any form other than school tuition.

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

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

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

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

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

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

* * * * *

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

AYES:

NOES:

ABSENT:

ABSTAIN:

James D. Davis, Mayor of the City of Antioch

ATTEST:

Denise Skaggs, City Clerk of the City of Antioch

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ATTACHMENT "A"

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

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

RECOMMENDATION

It is recommended that the City Council:

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

BACKGROUND INFORMATION

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

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

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

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

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

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

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

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

Determination that Use was a Mechanical or Electrical Game

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

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

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

Urgency Ordinance

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

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

Interim Ordinances/Moratoriums

An interim zoning ordinance is often called a moratorium and takes effect immediately to prohibit a use. Pursuant to Government Code Section 65858, the City may establish a moratorium prohibiting any use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council, Planning Commission or the Planning Department is considering in order to protect and preserve the public safety, health and welfare. A moratorium lasts only 45 days, but may be extended for up to a total of two (2) years, provided that the current and immediate threat to the public safety, health and welfare still exists, and the City follows the public notice and hearing procedures for extension of the moratorium. Interim ordinances require a 4/5 vote of the City Council.

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

DISCUSSION

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

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

"Public Use or Internet Learning Center" shall mean an establishment that provides computer access which is operated by the City of Antioch, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction or a non-profit organization which does not receive compensation in any form other than school tuition.

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

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

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

Urgency Findings

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

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

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

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

Proposed Regulations

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

FISCAL IMPACT

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

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

OPTIONS

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

ATTACHMENTS

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

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

ATTACHMENT "A"

ORDINANCE NO.

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

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

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

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

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

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

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

D. While the City's codes do regulate mechanical or electronic games, the computer stations at Computer Gaming and Internet Access Businesses are used in a manner that may be considered different from coin-operated video game machines, and therefore have different impacts. There is generally a charge for use of the computer station, and many users may occupy a particular station for multiple consecutive hours,

creating unknown impacts on the surrounding area and businesses, such as observed lines of individuals waiting to access these businesses. Some Computer Gaming and Internet Access Businesses may stage late-night gaming sessions, which may encourage violation of the City's curfew ordinance or create and promote other late-night noise and related impacts on the surrounding community. Recently there have been Computer Gaming and Internet Access Businesses that promote "sweepstakes gaming" which encourages game playing that may provide chances to be awarded prizes. The extended use of such facilities by multiple persons waiting for a limited number of computer stations could contribute to increased detrimental effects on the commercial area where located and the surrounding residential area.

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

F. The City of Antioch, as well as neighboring cities, have experienced criminal activity associated with Computer Gaming and Internet Access Businesses, including incidents involving robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the Antioch Police Department has documented a significant increase in service related calls involving a variety of crimes in these businesses and within the neighborhoods adjacent to Computer Gaming and Internet Access Businesses and include the representational incidents below as findings as follows:

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

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

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

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

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

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

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

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

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

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

- A. **Restricted Activities.** For a period of forty-five (45) days following the enactment of this Ordinance, no person shall be issued a permit, license or land use entitlement for the construction, placement, or operation of new Computer Gaming and Internet Access Businesses within the City. The City Manager or his or her designee shall review any application for a permit, license or land use entitlement to determine applicability of the provisions of this Ordinance. City Staff, City boards and City commissions are directed to refrain from issuing any application for any permits, licenses or land use entitlement, including, but not limited to, use permits, variances, building permits, licenses and certificates of occupancy, necessary for construction, placement, or operation of a Computer Gaming and Internet Access Business. These prohibitions shall remain in effect during the forty-five (45) days following enactment of this Ordinance. The two existing Computer Gaming and Internet Access Businesses may continue to operate at their current locations: Internet Room at 2962 Delta Fair Boulevard and Cot on the Web at 2333 Buchanan Road.
- B. **Definitions.** In addition to the definitions contained in the City's Municipal Code, the following words and phrases shall, for the purposes of this Ordinance, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with the current provisions of the Municipal Code, the following definitions shall prevail:
1. "Computer Gaming and Internet Access Business" shall mean an establishment that provides more than four (4) computers or other electronic devices for access to the world wide web, internet, e-mail, video games or computer software programs which operate alone or are networked (via LAN, WAN or otherwise) or which function as a client/server program, and which seeks compensation, in any form, from

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

2. "Public Use or Internet Learning Center" shall mean an establishment that provides computer access which is operated by the City of Antioch, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction or a non-profit organization which does not receive compensation in any form other than school tuition.

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

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

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

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

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

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

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

* * * * *

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

AYES:

NOES:

ABSENT:

ABSTAIN:

James D. Davis, Mayor of the City of Antioch

ATTEST:

Denise Skaggs, City Clerk of the City of Antioch

ATTACHMENT "B"

ORDINANCE NO.

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

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

SECTION 1. The City Council finds as follows:

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

B. The City of Antioch, as well as neighboring cities, have experienced criminal activity associated with Computer Gaming and Internet Access Businesses, including incidents involving robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the Antioch Police Department has documented a significant increase in service related calls involving a variety of crimes in these businesses and within the neighborhoods adjacent to Computer Gaming and Internet Access Businesses and include the representational incidents below as findings as follows:

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

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

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

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

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

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

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

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

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

"Chapter 11"

COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

Sections:

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

§ 5-11.01 Purpose.

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

§ 5-11.02 Definitions.

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

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

B. "Public Use or Internet Learning Business" shall mean an establishment that provides computer access which is operated by the City of Antioch, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction or a non-profit organization which does not receive compensation in any form other than school tuition.

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

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

§ 5-11.11 Term of license.

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

§ 5-11.12 Renewal of license.

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

§ 5-11.20 License application and issuance.

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

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

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

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

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

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

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

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

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

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

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

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

1. The required fees have been paid;
2. The application and all information contained therein conform in all respects to the provisions of this chapter;
3. The applicant has not knowingly made a material misrepresentation of fact in the application;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 5-11.30 Transfer of license.

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

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

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

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

§ 5-11.50 License revocation.

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

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

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

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

§ 5-11.60 Operational standards and regulations.

A. Prohibitions regarding Minors.

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

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

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

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

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

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

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

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

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

G. Surveillance System.

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

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

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

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

I. Security Guards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 5-11.70 Abatement of nuisance.

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

§ 5-11.90 Penalty.

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

§ 5-11.90 License fees.

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

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

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

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

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

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

* * * * *

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

AYES:

NOES:

ABSENT:

ABSTAIN:

James D. Davis, Mayor of the City of Antioch

ATTEST:

Denise Skaggs, City Clerk of the City of Antioch

ATTACHMENT "C"

ORDINANCE NO.

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

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

SECTION 1. The City Council finds as follows:

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

B. The City of Antioch, as well as neighboring cities, have experienced criminal activity associated with Computer Gaming and Internet Access Businesses, including incidents involving robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the Antioch Police Department has documented a significant increase in service related calls involving a variety of crimes in these businesses and within the neighborhoods adjacent to Computer Gaming and Internet Access Businesses and include the representational incidents below as findings as follows:

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

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

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

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

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

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

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

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

"Chapter 11"

COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

Sections:

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

§ 5-11.01 Purpose.

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

§ 5-11.02 Definitions.

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

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

B. "Public Use or Internet Learning Business" shall mean an establishment that provides computer access which is operated by the City of Antioch, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction or a non-profit organization which does not receive compensation in any form other than school tuition.

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

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

§ 5-11.11 Term of license.

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

§ 5-11.12 Renewal of license.

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

§ 5-11.20 License application and issuance.

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

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

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

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

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

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

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

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

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

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

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

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

1. The required fees have been paid;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 5-11.30 Transfer of license.

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

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

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

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

§ 5-11.50 License revocation.

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

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

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

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

§ 5-11.60 Operational standards and regulations.

A. Prohibitions regarding Minors.

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

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

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

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

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

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

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

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

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

G. Surveillance System.

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

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

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

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

I. Security Guards.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 5-11.70 Abatement of nuisance.

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

§ 5-11.90 Penalty.

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

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

§ 5-11.90 License fees.

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

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

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

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

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

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

* * * * *

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

AYES:

NOES:

ABSENT:

ABSTAIN:

James D. Davis, Mayor of the City of Antioch

ATTEST:

Denise Skaggs, City Clerk of the City of Antioch

ATTACHMENT "D"

RESOLUTION NO. 2012/**

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

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

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

WHEREAS, the City of Antioch, as well as neighboring cities, have experienced criminal activity associated with Computer Gaming and Internet Access Businesses, including incidents involving robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism and property damage and loitering; and

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

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

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

RESOLUTION NO. 2012/**

February 28, 2012

Page 2

* * * * *

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

AYES:

NOES:

ABSENT:

DENISE SKAGGS, City Clerk

Cle6

ATTACHMENT "E"

CITY OF ANTIOCH BUSINESS LICENSE APPLICATION



DUE BY:
BUSINESS NO: 005779
CLASS CODE:

INSTRUCTIONS

Hold License Cert for Pick up
give to [redacted]

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

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

Sign Here

 Signature _____ Date 2-14-2011

C67

**CITY OF ANTIOCH
BUSINESS LICENSE RENEWAL**



DUE BY
BUSINESS NO. 3001773
CLASS CODE 1

INSTRUCTIONS			
1. MAILING NAME & ADDRESS <u>115 Antioch Blvd</u> <u>Antioch, CA 94531</u>		2. BUSINESS NAME <u>1st Internet Cafe</u>	
3. BUSINESS ADDRESS <u>11531 A St</u>		4. BUSINESS CITY/ST/ZIP <u>Antioch CA 94501</u>	
5. PHONE <u>925-522-0801</u>	6. EMERGENCY PHONE NO. <u>925-522-0801</u>	7. FAX	8. E-MAIL ADDRESS <u>1stinternet@comcast.net</u>
9. BUSINESS DESCRIPTION <u>Internet Cafe</u>		10. BUSINESS TYPE <u>Computer</u>	
11. FED ID	12. STATE ID	13. SELLER'S PERMIT#	14. HOME OCCUPATION
15. OWNER #1 (PENS, No. Proprietor or Partnership, CORP, TRUST)	16. CERTIFICATION NO.	17. NUMBER OF EMPLOYEES	
18. OWNER #1 NAME <u>Yves Chagnac</u>	19. OWNER #1 ADDRESS (NO PO BOXES) STATE REQUIREMENT		
20. OWNER #1 CITY/ST/ZIP <u>Antioch CA 94531</u>	21. OWNER #1 HOME PHONE <u>925-522-0801</u>		
22. OWNER #1 BUSINESS PHONE	23. OWNER #1 SSN		
24. OWNER #1 TITLE	25. OWNER #1 DOB		
26. CONTACT NAME <u>Yves Chagnac</u>	27. CONTACT PHONE <u>925-522-0801</u>		
28. LICENSE TYPE (C, O, C, O, C, O, V, I, S, T, R)	29. INTERNET ADDRESS		
30. GROSS RECEIPTS	31. NUMBER OF CARD TABLES	32. NUMBER OF VEHICLES	
33. LICENSE FEE	34. RENTALS	35. APPLICATION FEE	
36. TOTAL AMOUNT DUE (combine lines 31, 32, 33)		37. DATE BUSINESS TERMINATED (IF OUT OF BUSINESS)	
OFFICE USE ONLY			
Print Name	Print Date	Print Name	Print Date
Print City	Print State	Print City	Print State
Signature: <u>Yves Chagnac</u>		Date: <u>11/11</u>	
I, the undersigned, being authorized to make this Application, hereby declares to the best of my knowledge and belief that the facts stated in this Application are true and complete. Application made pursuant to the Antioch Municipal Code.			

068



**CITY OF ANTIOCH
BUSINESS LICENSE
DELINQUENCY NOTICE**

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

INSTRUCTIONS

3rd Notice

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

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

1. MAILING NAME & ADDRESS T'S INTERNET CAFE [REDACTED] ANTIOCH, CA 94531-6357 [Barcode]		2. BUSINESS NAME T'S INTERNET CAFE	
5. PHONE (925)522-0801		6a. EMERGENCY PHONE 925-[REDACTED]	6b. FAX
7. BUSINESS DESCRIPTION INTERNET SALES		6c. E-MAIL ADDRESS:	
8. FED ID#	9. STATE ID#	10. SELLER'S PERMIT #	11. HOME OCCUPATION #
12. OWNER TYPE (Sole Proprietorship, Partnership, CORP, Trust) [REDACTED]		13. CERTIFICATION NO.	14. NUMBER OF EMPLOYEES
15. OWNER #1 NAME Valeria Cooper Simmons		16. OWNER #2 NAME	
17. OWNER #1 ADDRESS (NO PO BOXES, STATE REQUIREMENT) [REDACTED]		18. OWNER #2 ADDRESS (NO POBOXES, STATE REQUIREMENT)	
19. OWNER #1 CITY, ST, ZIP Antioch CA 94531		20. OWNER #2 CITY, ST, ZIP	
21. OWNER #1 HOME PHONE Kevin Amalia		22. OWNER #2 HOME PHONE	
23. OWNER #1 SSN [REDACTED]	24. OWNER #1 DL [REDACTED]	25. OWNER #2 SSN	26. OWNER #2 DL
27. CONTACT NAME Valeria Cooper Simmons		28. CONTACT PHONE	
29. LICENSE TYPE (Office use only)	29A INTERNET ADDRESS		
30A. GROSS RECEIPTS	30B. NUMBER OF CARD TABLES 2	30C. NUMBER OF VEHICLES [REDACTED]	
31. LICENSE FEE [REDACTED]	32. PENALTY [REDACTED]	33. APPLICATION FEE [REDACTED]	
34. TOTAL AMOUNT DUE (combine lines 33, 34 & 35) [REDACTED]		35. DATE BUSINESS TERMINATED (IF OUT OF BUSINESS)	
OFFICIAL USE ONLY			
Effective Date: 05/01/2010	Expir. Date: 04/30/2011	Planning Dept.	Bldg Dept:
Purchase Date: JUN 23 2010	Receipt No: 348181	Zoning:	Health Dept:

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

Sign Here

Valeria Cooper Simmons
Signature

6-21-10
Date

CL69

**CITY OF ANTIOCH
BUSINESS LICENSE APPLICATION**



DUE BY
BUSINESS N 3006114
CLASS CODE 114

INSTRUCTIONS

1. MAILING NAME & ADDRESS <u>Cotton the web</u> <u>2533A Buchanan</u> <u>Antioch CA 94509</u>		2. BUSINESS NAME <u>Cotton the web</u>	
3. BUSINESS ADDRESS <u>2533A Buchanan</u>		4. BUSINESS CITY/ST/ZIP <u>Antioch CA 94509</u>	
5. PHONE <u>925 401 8852</u>	6. ALT PHONE <u>925 [REDACTED]</u>	8. CELLPHONE <u>925 [REDACTED]</u>	9. FAX NUMBER
6. EMAIL ADDRESS <u>Aevent@members.cable1net.com</u>		7. BUSINESS DESCRIPTION <u>fax copy/print internet</u>	
8. FED ID#	9. STATE ID	10. SELLER'S PERMIT	11. HOME OCCUPATION
12. OWNER #1 TYPE (Sole Proprietorship, Partnership, CORP, Trust)		13. CERTIFICATION NO	14. NUMBER OF EMPLOYEES
15. OWNER #1 NAME <u>Pauline Simmons LLC</u>		16. OWNER #2 NAME	
17. OWNER #1 ADDRESS (NO PO BOXES - STATE REQUIREMENT)		18. OWNER #2 ADDRESS (NO PO BOXES - STATE REQUIREMENT)	
19. OWNER #1 CITY/ST/ZIP <u>Antioch CA 94501</u>		20. OWNER #2 CITY/ST/ZIP	
21. OWNER #1 HOMEPHONE <u>925 [REDACTED]</u>		22. OWNER #2 HOMEPHONE	
23. OWNER #1 SSN	24. OWNER #1 D.O.B.	25. OWNER #2 SSN	26. OWNER #2 D.O.B.
27. CONTACT NAME <u>Pauline Simmons</u>		28. CONTACT PHONE	
29. LICENSE TYPE (Office Use only)	29A. INTERNET ADDRESS		
30A. GROSS RECEIPTS	30B. NUMBER OF CARD TABLES	30C. NUMBER OF VEHICLES	30D. STICKER FEE (\$5/VEHICLE)
31. LICENSE FEE	32. PENALTY	33. APPLICATION FEE	
34. TOTAL AMOUNT DUE (combine lines 31, 32, 33)		35. DATE BUSINESS TERMINATED (IF OUT OF BUSINESS)	
OFFICE USE ONLY Effective Date: _____ Expiration Date: _____ Purchase Date: <u>SEP 29 2011</u> License No: <u>450689</u>		Planning Dept: _____ Zoning: _____ Health Dept: _____	

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

Sign Here Pauline Simmons
Signature _____ Date _____

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ATTACHMENT "F"

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

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

Sample types of Calls	DISPO CLASS	Before Internet Café		Internet Café		%Change
		2/16/10 - 2/15/11	Totals	2/16/11 - 2/15/12		
Super Wine						
MSDS		9		14		55.56%
AUTT		0		2		200.00%
SUSC		7		21		300.00%

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

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ADDRESS	BUSINESS	Before Internet Café		Internet Café	%Change	5.5 months After Internet Café	
		9/1/09-8/31/10	1666			9/1/10-8/31/11	279
A ST	Totals	166	1666	279	68.07%	72	27
1611	Cruisers	61	72	7	18.03%	6	6
1615	Fireside Thrift	10	7	57	-30.00%	22	22
1623	Auto Zone	46	6	6	23.91%	0	0
1625	The Beauty Source	9	15	15	-33.33%	3	3
1631	Delta Barber	2	1	1	650.00%	0	0
1633		0	3	3	nc	0	0
1635	Russell's Cheesecake	0	5	5	400.00%	2	2
1639		1	4	4	-80.95%	0	0
1641	World Fashion	21	4	4	100.00%	2	2
1645	Los Caporalles	2	4	4	nc	4	4
1653	Internet Café	0	12	12	100.00%	5	5
1657	Launderland	6	2	2	100.00%	0	0
1661		0	24	24	nc	0	0
1663	Dollar Store	8	24	24	200.00%	1	1

ADDRESS	BUSINESS	Before Internet Café		Internet Café	%Change
		8/20/10-12/31/10	2010		
A ST	Totals	3	3	38	1166.67%
1900		1	1	4	300.00%
1908	Internet Café	0	0	0	nc
1912	APEX	2	2	0	-100.00%

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

074

ATTACHMENT "G"

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

PRINTED: 2/16/2011

EVENT#	RCV_TIME	CLASS	DISPO	CASE#	SYNOPSIS
11068917	7/26/11 0:46	MSIN	MSIN		NEW INTERNET CAFE - NAME AND LOCATION NOTED FOR ADDITION TO CAD.
11097719	10/16/11 20:29	911U	911U		NVC/VOIP LINE
11109110	11/21/11 12:46	MEDPD	FIDA		FIRE ENRT FOR A MALE LAYING ON THE GROUND, BARELY CONSCIOUS
11109512	11/22/11 18:18	27SUB	WRNO	11010014	OV NEW CASE FOR WARRANT LEFLOTA 11062114
11116985	12/17/11 0:40	FINF	FINF		MALE FELL OUTSIDE IS BLEEDING FROM SIDE OF HIS FACE
12001418	1/5/12 15:37		CANC		
12002550	1/9/12 2:00	96	WRNO	12000286	
12007174	1/24/12 2:06		VCOO		
12007425	1/24/12 22:00	415V	DISC		VERB WITH SUBJ IFO LOC
12008291	1/27/12 19:49	415UG	MSDS		GROUP IFO REFUSING TO LEAVE.. RP IS OTS SECURITY
12008631	1/28/12 22:11	10851	CIVI		2007 GRY DODGE MAGNUM [REDACTED] (LOC VIA DMV) RP SAID HE JUST MET SOME GUY AND HE ALLOWED HIM TO DRIVE HIS VEH TO THIS LOC SO RP COULD USE THE RESTROOM BEF THEY WENT OVER THE HILL TO "DO SOME BUSN" WHEN RP CAME OUT, UNK MALE THAT HE JUST MET WAS GONE WITH RPS VEH.....
12008717	1/29/12 8:39	10851	CIVI		OCC SOMETIME DURING THE NIGHT 07 GRY DODGE MAGNUM LIC [REDACTED]
12009234	1/30/12 22:56	1059	XPAT		
12009256	1/31/12 1:30	96	VCOO	12001054	
12011363	2/6/12 22:29	VCOO	VCOO		
12011680	2/8/12 0:51		ATMC		

TOTAL # EVENTS 16

TOTAL # CASES 3

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

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C75

CALLS FOR SERVICE

1908 A ST

8/20/11 - 12/31/11

PRINTED:2/16/2012

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

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

TOTAL # EVENTS 34

TOTAL # CASES 11

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

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077

CALLS FOR SERVICE

1653 A ST

9/1/10 - 8/31/11

PRINTED:2/16/2012

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

<u>EVENT#</u>	<u>RCV TIME</u>	<u>CLASS</u>	<u>DISPO</u>	<u>CASE#</u>	<u>SYNOPSIS</u>
11016438	2/21/11 20:07	415F	MSDS		VERY LOUD VERBAL 2 HFS #1 WEARING PINK SHIRT GRY SWEATPANTS...
11016818	2/23/11 0:47	1059	XPAT		
11017471	2/25/11 1:47	95	NARC	11001604	
11020498	3/5/11 23:26	96	SUSC		
11023162	3/13/11 23:21	95	VCOO		
11024113	3/16/11 22.42	94	MSDS		
11025168	3/20/11 3:18	215	CARJ	11002337	10 AGO OCC NEAR AT 20TH/C RP JUST WALKED HERE TO CALL JAMIE UNK LAST NAME AND HER FRIEND HIT RP WITH A PIPE AND BBQ AN THEN TOOK RPS SIL FORD F350 KING CAB, UNK LIC REGISTERD TO [REDACTED] (RP NOT SURE OF SPELLING) MEDICAL REFUSED ALSO TOOK CELL [REDACTED]
11026661	3/25/11 1:59	FIRE	FDIC		VEH ON FIRE CUSTOMER INSIDE THE BUSN - NO ONE IN THE VEH / UNK WHAT HAPPENED.. XFERRED TO FIRE - ENR
11029305	4/1/11 23:32	94	SUPP		
11029757	4/3/11 2 34	95	VCOO		
11029765	4/3/11 3:00	95	VCOO		
11034055	4/16/11 2:20	95	VCOO		
11036122	4/21/11 21:46	96	SRVC		
11036157	4/21/11 23.31	96	PARK		
11036883	4/24/11 0:54	415	MALM		2 SUBJS CHASING EACH OTHER IN THE PARKING LOT, 1 IN A BLK NISS AND 1 IN A GREEN HONDA, PR ADV THE GREEN HONDA HIT A WHI CAD!
11038848	4/29/11 23:58		PARK		
11038890	4/30/11 1:59	94	SUSC		
11041791	5/8/11 1:28		WRAN	11003794	
11043128	5/12/11 1:11	95	VCOO		
11043224	5/12/11 10:02	94	WRNO	11003932	
11043239	5/12/11 10:53	94	SUSC		
11043876	5/13/11 23 23	95	VCOO		
11044017	5/14/11 10:32	94	SUSC		
11045926	5/20/11 3:02	1059	NARC	11004182	
11048426	5/27/11 14.11	94	SUSC		
11049360	5/30/11 9:38	SUSV	SUSC		MALE DRIVING THRU THE PL SEVERAL TIMES IN A BLK DURANGO...LS PARKED TRO OF RITE AIDE DRIVER WM C4
11050187	6/1/11 22:40	96	PARK		

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

TOTAL # EVENTS 67

TOTAL # CASES 14

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

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C80

CALLS FOR SERVICE

1836 A ST

2/1/10 - 8/30/10

PRINTED:2/16/2011

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

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

TOTAL # EVENTS 27

TOTAL # CASES 7

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

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C82

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

PRINTED:2/16/2012

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

TOTAL # EVENTS 6

TOTAL # CASES 1

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

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C83

**ATTACHMENT "H"
SWEEPSTAKES GAMES RULES:**

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

ATTACHMENT "I"

9-5.3816 MECHANICAL OR ELECTRONIC GAMES.

These are subject to the following regulations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT "J"



January 5, 2012

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

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

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

Dear Mr. Beaubien and Ms. Cooper-Simmons:

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

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

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

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

Sincerely,

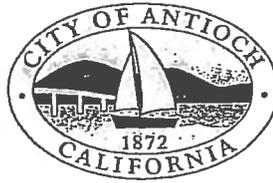
A handwritten signature in cursive script that reads "Tina Wehrmeister".

Tina Wehrmeister
Community Development Director

Community Development Department

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

057



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

January 10, 2012

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

Patricia Simons
3127 Sunflower Drive
Antioch, CA 94531

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

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

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

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

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

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

Sincerely,

Tina Wehrmeister
Community Development Director

cc: June Patricia Smoot
Jeffery & Carolyn McClung

Community Development Department

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

CSS



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

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

January 18, 2012

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

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

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

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "T. Wehrmeister".

Tina Wehrmeister
Community Development Director

cc: Chiu Family LLC

0509



GagenMcCoy

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

Of Counsel
 Linn K. Coombs

February 6, 2012

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

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

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

Please Reply To:
 Danville



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

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

Dear Chair Rouse, Board members, and City Clerk:

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

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

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

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

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

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

1. Applicability of §9-5.3816

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

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

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

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

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

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

2. City Requirement for a Use Permit

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

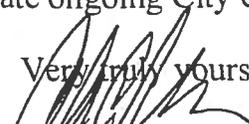
"That the granting of such [Use Permit] will not be detrimental to the public health or welfare ..."

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

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

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

Very truly yours,



Allan C. Moore

cc: Tina Wehrmeister
Director of Community Development Department

Lynn Tracy Nerland
City Attorney

James Hayes

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

1035



90-2267-1211

2/6/2012

PAY Fifty & No/100 Dollars

50.00

TO THE
ORDER
OF
City of Antioch

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

AUTHORIZED SIGNATURE

⑈ 103546⑈ ⑆ 121122676⑆ 153453447705⑈

093

1/23/11

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

Any questions

Patricia Simmons

925-209-8332

3127 Sunflower
Antioch CA 94531

Aeventtoremember@ComCast.Net

CITY OF ANTIOCH
925-779-7035

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

 ORIGINAL

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

TENDERED: 50.00 CASH
APPLIED: 50.00-

CHANGE: ----- 0.00

RECEIVED

JAN 24 2012

CITY OF ANTIOCH
CITY CLERK

094

1-12-12

To: The city of Antioch

I Am Appealing letter Received 1-5-12
By Tina Wehmeister stating my sales of
Internet Time/Phone Cards ARE Electronic
Games. T's internet cafe Does NOT sell
Any kind of Game At All. I Do NOT
feel A Electronic Game permit is needed
for T's internet cafe

Thank
you

Patricia Simmons

T's internet cafe

925-209-8332

RECEIVED

JAN 12 2012

CITY OF ANTIOCH
CITY CLERK

CITY OF ANTIOCH
925-779-7055

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

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

TENDERED: 60.00 CASH
APPLIED: 50.00-

CHANGE: 10.00

C95

ATTACHMENT "B"

ORDINANCE NO. 2054-C-S

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

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

SECTION 1. The City Council finds as follows:

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

1. **B.** The City of Antioch, as well as neighboring cities, have experienced criminal activity associated with Computer Gaming and Internet Access Businesses, including incidents involving robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the Antioch Police Department has documented a significant increase in service related calls involving a variety of crimes in these businesses and within the neighborhoods adjacent to Computer Gaming and Internet Access Businesses and include the representational incidents below as findings as follows and as further described in attachments to the staff report: On April 13, 2010, there was a call for service from T's Internet Café at 1836 A Street because of a fight over someone owing someone money and on July 23, 2010 a call for service regarding another fight.
2. At T's Internet Café at 1653 A Street on September 11, 2010, there was a call for service regarding possible assault, drug violations and carjacking. On November 18, 2010, a male robbed money from the business with a sawed-off shot gun and shot at one of the workers. On February 2, 2011, there was a call for service regarding drug selling. On July 21, 2011, there was a report of a car theft and then a fight broke out.
3. At the Internet Room at 2962 Delta Fair Boulevard, on January 28, 2012, there was a report of a stolen vehicle.
4. At T's Internet Café at 1908 A Street on August 20, 2011, someone was throwing things at the business and threatening to harm the employees.
5. While at Computer Gaming and Internet Access Businesses in Antioch, individuals have been arrested for robbery, narcotics violations, carjacking

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

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

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

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

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

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

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

"Chapter 11

COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

Sections:

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

§ 5-11.01 Purpose.

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

§ 5-11.02 Definitions.

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

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

B. "Public Use or Internet Learning Business" shall mean an establishment that provides computer access which is operated by the City of Antioch, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction or a non-profit organization which does not receive compensation in any form other than school tuition.

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

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

§ 5-11.11 Term of license.

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

§ 5-11.12 Renewal of license.

A Computer Gaming and Internet Access Business license, issued pursuant to the provisions of this chapter, that has not been suspended or revoked, may be renewed, upon payment of the renewal application fee, for a period not to exceed one year upon written application to the community development director made at least sixty (60) days prior to the expiration date of the current valid license. This application for renewal of a license shall contain all of the information required by Section § 5-11.20 of this chapter and shall be processed in accordance with the provisions of this chapter.

§ 5-11.20 License application and issuance.

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

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

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

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

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

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

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

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

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

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

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

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

1. The required fees have been paid;
2. The application and all information contained therein conform in all respects to the provisions of this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 5-11.30 Transfer of license.

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

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

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

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

§ 5-11.50 License revocation.

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

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

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

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

§ 5-11.60 Operational standards and regulations.

A. Prohibitions regarding Minors.

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

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

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

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

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

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

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

E. Staffing. Employees shall be at least 18 years of age. There shall be a minimum of two (2) employees staffing the Computer Gaming and Internet Access Business during all working hours with at least one manager or supervisor. The ratio of employees to computers and/or other electronic devices that access the internet shall be 2:40. During each employee's working hours, the employee shall wear a badge identifying the business and the employee's name. Security personnel indicated in Section below shall not be included in this minimum staffing number.

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

G. Surveillance System.

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

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

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

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

I. Security Guards.

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

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

3. The Chief of Police may require security guards to also patrol the exterior of the business and any parking lot areas.

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

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

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

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

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

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

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

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

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

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

§ 5-11.70 Abatement of nuisance.

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

§ 5-11.90 Penalty.

It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person violating, permitting or causing the violation of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as set forth in

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

§ 5-11.90 License fees.

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

SECTION 3. Compliance for Existing Business; Time. It is the desire and intent of the City Council that any and all existing and legal Computer Gaming and Internet Access Businesses come into compliance with the terms of this Ordinance as rapidly as possible and that all applications, review and decisions be processed on an expedited basis. Within fourteen (14) calendar days of the effective date of this ordinance, every existing Computer Gaming and Internet Access Business shall file a statement with the Community Development Director evidencing its compliance with all provisions of this chapter and providing all information as provided in § 5-11.20. The review and determination of the Community Development Director shall be provided within fourteen (14) days of the filing of the application. In the event that the license requires the installation of improvements at the business (e.g., lighting, surveillance, etc) all such improvements shall be installed per a schedule agreed by the Community Development Director; however, not to exceed twenty-one (21) days following the determination of the Community Development Director on the license application.

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

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

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

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

* * * * *

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

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

NOES: Council Member Kalinowski

ABSENT: Mayor Davis

ABSTAIN: None

/s/ WADE HARPER

Mayor Pro Tem of the City of Antioch

ATTEST:

/s/ DENISE SKAGGS

Denise Skaggs, City Clerk of the City of Antioch

ATTACHMENT "B"

ORDINANCE NO. 2054-C-S

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

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

SECTION 1. The City Council finds as follows:

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

1. B. The City of Antioch, as well as neighboring cities, have experienced criminal activity associated with Computer Gaming and Internet Access Businesses, including incidents involving robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the Antioch Police Department has documented a significant increase in service related calls involving a variety of crimes in these businesses and within the neighborhoods adjacent to Computer Gaming and Internet Access Businesses and include the representational incidents below as findings as follows and as further described in attachments to the staff report: On April 13, 2010, there was a call for service from T's Internet Café at 1836 A Street because of a fight over someone owing someone money and on July 23, 2010 a call for service regarding another fight.
2. At T's Internet Café at 1653 A Street on September 11, 2010, there was a call for service regarding possible assault, drug violations and carjacking. On November 18, 2010, a male robbed money from the business with a sawed-off shot gun and shot at one of the workers. On February 2, 2011, there was a call for service regarding drug selling. On July 21, 2011, there was a report of a car theft and then a fight broke out.
3. At the Internet Room at 2962 Delta Fair Boulevard, on January 28, 2012, there was a report of a stolen vehicle.
4. At T's Internet Café at 1908 A Street on August 20, 2011, someone was throwing things at the business and threatening to harm the employees.
5. While at Computer Gaming and Internet Access Businesses in Antioch, individuals have been arrested for robbery, narcotics violations, carjacking

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

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

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

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

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

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

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

"Chapter 11"

COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

Sections:

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

§ 5-11.01 Purpose.

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

§ 5-11.02 Definitions.

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

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

B. "Public Use or Internet Learning Business" shall mean an establishment that provides computer access which is operated by the City of Antioch, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction or a non-profit organization which does not receive compensation in any form other than school tuition.

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

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

§ 5-11.11 Term of license.

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

§ 5-11.12 Renewal of license.

A Computer Gaming and Internet Access Business license, issued pursuant to the provisions of this chapter, that has not been suspended or revoked, may be renewed, upon payment of the renewal application fee, for a period not to exceed one year upon written application to the community development director made at least sixty (60) days prior to the expiration date of the current valid license. This application for renewal of a license shall contain all of the information required by Section § 5-11.20 of this chapter and shall be processed in accordance with the provisions of this chapter.

§ 5-11.20 License application and issuance.

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

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

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

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

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

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

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

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

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

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

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

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

1. The required fees have been paid;
2. The application and all information contained therein conform in all respects to the provisions of this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 5-11.30 Transfer of license.

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

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

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

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

§ 5-11.50 License revocation.

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

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

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

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

§ 5-11.60 Operational standards and regulations.

A. Prohibitions regarding Minors.

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

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

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

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

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

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

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

E. Staffing. Employees shall be at least 18 years of age. There shall be a minimum of two (2) employees staffing the Computer Gaming and Internet Access Business during all working hours with at least one manager or supervisor. The ratio of employees to computers and/or other electronic devices that access the internet shall be 2:40. During each employee's working hours, the employee shall wear a badge identifying the business and the employee's name. Security personnel indicated in Section below shall not be included in this minimum staffing number.

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

G. Surveillance System.

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

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

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

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

I. Security Guards.

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

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

3. The Chief of Police may require security guards to also patrol the exterior of the business and any parking lot areas.

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

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

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

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

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

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

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

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

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

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

§ 5-11.70 Abatement of nuisance.

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

§ 5-11.90 Penalty.

It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person violating, permitting or causing the violation of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as set forth in

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

§ 5-11.90 License fees.

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

SECTION 3. Compliance for Existing Business; Time. It is the desire and intent of the City Council that any and all existing and legal Computer Gaming and Internet Access Businesses come into compliance with the terms of this Ordinance as rapidly as possible and that all applications, review and decisions be processed on an expedited basis. Within fourteen (14) calendar days of the effective date of this ordinance, every existing Computer Gaming and Internet Access Business shall file a statement with the Community Development Director evidencing its compliance with all provisions of this chapter and providing all information as provided in § 5-11.20. The review and determination of the Community Development Director shall be provided within fourteen (14) days of the filing of the application. In the event that the license requires the installation of improvements at the business (e.g., lighting, surveillance, etc) all such improvements shall be installed per a schedule agreed by the Community Development Director; however, not to exceed twenty-one (21) days following the determination of the Community Development Director on the license application.

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

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

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

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

* * * * *

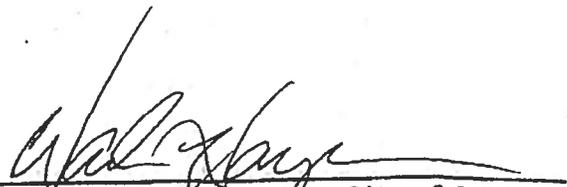
I HEREBY CERTIFY that the foregoing Ordinance was introduced on 28th day of February, 2012 and adopted at a regular meeting of the City Council of the City of Antioch on the 13th day of March, 2012, by the following vote:

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

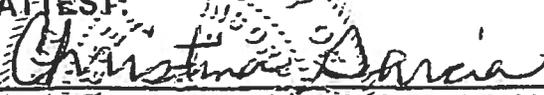
NOES: Council Member Kalinowski

ABSENT: Mayor Davis

ABSTAIN: None



Mayor Pro Tem of the City of Antioch

ATTEST:


for Denise Skaggs, City Clerk of the City of Antioch



ATTACHMENT "C"

ANTIOCH POLICE DEPARTMENT INTER-OFFICE MEMORANDUM

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

BACKGROUND INFORMATION

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

INTERNET ROOM

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

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

COT ON THE WEB

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

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

FINDING

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

ATTACHMENT "D"



BUREAU OF GAMBLING CONTROL

KAMALA D. HARRIS
Attorney General

WAYNE J. QUINT JR.
Bureau Chief

NUMBER 11

LAW ENFORCEMENT ADVISORY

DECEMBER 5, 2012

Internet Cafés

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

Method of Operation:

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

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

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Existing Law:

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

Assistance:

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

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

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

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

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

Date: January 22, 2013

Subject: **Agenda Item 3: Supplemental Report:** Extension of an Interim Urgency Zoning Ordinance Prohibiting the Issuance of Permits, Licenses or Approvals for Construction, Establishment or Operation of any Computer Gaming and Internet Access Business

RECOMMENDATION

It is recommended that the City Council:

1. Make a motion to read the ordinance by title only; and
2. Make a motion to adopt the attached revised interim urgency zoning ordinance extending the prohibition of the issuance of permits, licenses or approvals for construction, establishment or operation of any computer gaming and internet access business within the City of Antioch on an interim basis pending consideration of amendments to Title 9 of the Antioch Municipal Code for a period of one year and declaring the urgency thereof (four-fifths (4/5th) vote required).

BACKGROUND / DISCUSSION

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

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

ATTACHMENTS

Proposed revised interim urgency zoning ordinance extending the prohibition of the issuance of permits, licenses or approvals for construction, establishment or operation of any computer gaming and internet access business within the City of Antioch.

ORDINANCE NO.

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

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

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

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

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

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

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

D. While the City's codes do regulate mechanical or electronic games, the computer stations at Computer Gaming and Internet Access Businesses are used in a manner that may be considered different from coin-operated video game machines, and therefore have different impacts. There is generally a charge for use of the computer station, and many users may occupy a particular station for multiple consecutive hours, creating unknown impacts on the surrounding area and businesses, such as observed lines of individuals waiting to access these businesses. Some Computer Gaming and Internet Access Businesses may stage late-night gaming sessions, which may encourage violation of the City's curfew ordinance or create and promote other late-night noise and related impacts on the surrounding community. Recently there have been Computer Gaming and Internet Access Businesses that promote "sweepstakes gaming" which encourages game playing that may provide chances to be awarded prizes. The

extended use of such facilities by multiple persons waiting for a limited number of computer stations could contribute to increased detrimental effects on the commercial area where located and the surrounding residential area.

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

F. The City of Antioch, as well as neighboring cities, has experienced criminal activity associated with Computer Gaming and Internet Access Businesses, including incidents involving robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism and property damage and loitering. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at these Computer Gaming and Internet Access Businesses. For example, the Antioch Police Department has documented a significant increase in service related calls involving a variety of crimes in these businesses and within the neighborhoods adjacent to Computer Gaming and Internet Access Businesses and include the representational incidents below as findings as follows and as further described in attachments to the staff report:

1. On April 13, 2010, there was a call for service from T's Internet Café at 1836 A Street because of a fight over someone owing someone money and on July 23, 2010 a call for service regarding another fight.
2. At T's Internet Café at 1653 A Street on September 11, 2010, there was a call for service regarding possible assault, drug violations and carjacking. On November 18, 2010, a male robbed money from the business with a sawed-off shot gun and shot at one of the workers. On February 2, 2011, there was a call for service regarding drug selling. On July 21, 2011, there was a report of a car theft and then a fight broke out.
3. At the Internet Room at 2962 Delta Fair Boulevard, on January 28, 2012, there was a report of a stolen vehicle.
4. At T's Internet Café at 1908 A Street on August 20, 2011, someone was throwing things at the business and threatening to harm the employees.
5. While at Computer Gaming and Internet Access Businesses in Antioch, individuals have been arrested for robbery, narcotics violations, carjacking and other crimes, as well as on outstanding warrants. While some of these crimes may have occurred elsewhere, it does show a propensity for individuals who engage in criminal activity to patronize Computer Gaming and Internet Access Businesses.
6. At 2962 Delta Fair Boulevard, calls for service at that location and at neighboring businesses have increased from 109 to 259 over a twelve month period since the Internet Room started operating.
7. At 1836 A Street, before T's Internet Café opened there were 157 calls for service from that location and neighboring businesses over a 7-month period from February 1, 2009 through August 30, 2009. While T's Internet Café was operating at 1836 A Street, calls for service increased to 240 over a 7-month

period from February 1, 2010 through August 30, 2010. When T's Internet Café closed at that location, calls for service from that location and neighboring businesses went back down to 158 calls for service over the 7-month period from February 1, 2011 through August 30, 2011, almost identical to the rates before T's Internet Café opened.

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

G. Without the enactment of this Ordinance, multiple applicants could quickly receive entitlements which would allow additional Computer Gaming and Internet Access Businesses that pose a threat to the public health, safety, and welfare. The City Council hereby determines that the Municipal Code is in need of updating to protect the public against health, safety, and welfare dangers caused by Computer Gaming and Internet Access Businesses. In particular, although the City Council adopted Urgency Ordinance No. 2053 on February 28, 2012 and Ordinance No. 2054-C-S on March 13, 2012 adding Chapter 11 of Title 5 of the Antioch Municipal Code regarding licensing procedures and certain operational regulations, the current provisions do not fully take into account the impacts related to the location, concentration and manner of construction, establishment and operation of Computer Gaming and Internet Access Businesses, and the related public health, safety, and welfare concerns, including but not limited to the impacts they may have on parking, surrounding uses, and the community that could be addressed with a zoning ordinance.

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

H. In order to prevent the frustration of these studies and the implementation of new regulations, the public interest, health, safety, and welfare require immediate enactment of this Ordinance. The absence of this Ordinance would impair the orderly and effective implementation of contemplated Municipal Code amendments, and any further authorization of

these uses within the City during the period of the interim zoning regulations may be in conflict with or may frustrate the contemplated updates and revisions of the Municipal Code.

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

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

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

L. City staff has provided a staff report indicating that additional time is needed to study these complicated issues and noticed a public hearing for January 22, 2013 for the City Council's consideration of an extension of the temporary moratorium.

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

- A. **Restricted Activities.** In accordance with the authority granted the City of Antioch under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, the moratorium adopted by the City Council on February 28, 2012 is extended for 10 months and 15 days from the date of this ordinance. No permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, business permit, building permit, conditional use permit, or zoning text amendment shall be approved or issued for the establishment or operation of a Computer Gaming and Internet Access Business in the City of Antioch. Additionally, Computer Gaming and Internet Access Business are hereby expressly prohibited in all areas and zoning districts of the City. The ~~two~~ one existing Computer Gaming and Internet Access Businesses may continue to operate at ~~their~~ its current locations: ~~Internet Room at 2962 Delta Fair Boulevard and Cot on the Web at 2333 Buchanan Road.~~ No expansion of the number of computer terminals is allowed. Expansion of tenant floor space is permitted in order to allow compliance with the licensing procedures and regulations in Title 5, Chapter 11 of the Antioch Municipal Code.
- B. **Definitions.** In addition to the definitions contained in the City's Municipal Code, the following words and phrases shall, for the purposes of this Ordinance, be defined as follows, unless it is clearly apparent from the context that another

meaning is intended. Should any of the definitions be in conflict with the current provisions of the Municipal Code, the following definitions shall prevail:

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

2. "Public Use or Internet Learning Center" shall mean an establishment that provides computer access which is operated by the City of Antioch, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction or a non-profit organization which does not receive compensation in any form other than school tuition.

SECTION 4. CEQA. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

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

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

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

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

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

* * * * *

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

AYES:

NOES:

ABSENT:

ABSTAIN:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "D"

ANTIOCH POLICE DEPARTMENT INTER-OFFICE MEMORANDUM

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

BACKGROUND INFORMATION

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

INTERNET ROOM

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

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

COT ON THE WEB

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

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

FINDING

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



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

ATTACHMENT "F"

CHAPTER 11: COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

Section

<u>5-11.01</u>	Purpose
<u>5-11.02</u>	Definitions
<u>5-11.10</u>	Computer gaming and internet access business – License required
<u>5-11.11</u>	Term of license
<u>5-11.12</u>	Renewal of license
<u>5-11.20</u>	License application and issuance
<u>5-11.30</u>	Transfer of license
<u>5-11.40</u>	Alterations to computer gaming and internet access business
<u>5-11.50</u>	License revocation
<u>5-11.60</u>	Operational standards and regulations
<u>5-11.70</u>	Abatement of nuisance
<u>5-11.80</u>	Penalty
<u>5-11.90</u>	License fees

§ 5-11.01 PURPOSE.

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

§ 5-11.02 DEFINITIONS.

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

COMPUTER GAMING AND INTERNET ACCESS BUSINESS. An establishment that provides ~~more than four~~ computers or other electronic devices for access to the world wide web, internet, e-mail, video games, or computer software programs which operate alone or are networked (via LAN, WAN or otherwise) or which function as a client/server program, and which seeks compensation, in any form, from users. **COMPUTER GAMING AND INTERNET ACCESS BUSINESS** is synonymous with a personal computer ("PC") café, internet café, cyber café, sweepstakes gaming facilities, business center, internet sales business and internet center, but does not include a public use or internet learning center as defined herein.

PUBLIC USE OR INTERNET LEARNING BUSINESS. An establishment that provides computer access which is operated by the city, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction ~~and does not receive compensation in any form other than school tuition~~ or a non-profit organization ~~that provides computer access as part of a free or low cost bona-fide training or educational program, which does not receive compensation in any form other than school tuition.~~

§ 5-11.10 COMPUTER GAMING AND INTERNET ACCESS BUSINESSES – LICENSE REQUIRED.

It is unlawful for any person to engage in, conduct or carry on, in or upon any premises or real property located within the city, the activities of a computer gaming and internet access business, unless such person has been granted a valid license pursuant to the provisions of this chapter. A separate license shall be required for each location within the city where a computer gaming and internet access business is to be established. Public use or internet learning business shall be exempt from the license requirements herein.

§ 5-11.11 TERM OF LICENSE.

The term of a computer gaming and internet access business license, unless sooner suspended or revoked, shall be one year.

§ 5-11.12 RENEWAL OF LICENSE.

A computer gaming and internet access business license, issued pursuant to the provisions of this chapter, that has not been suspended or revoked, may be renewed, upon payment of the renewal application fee, for a period not to exceed one year upon written application to the community development director made at least 60 days prior to the expiration date of the current valid license. This application for renewal of a license shall contain all of the information required by Section § 5-11.20 of this chapter and shall be processed in accordance with the provisions of this chapter.

§ 5-11.20 LICENSE APPLICATION AND ISSUANCE.

(A) Any person desiring to obtain a license or to renew an existing license to operate a computer gaming and internet access business shall file a written application with the Community Development Director. The application shall be signed under the penalty of perjury. Prior to submitting the application, a nonrefundable fee, in an amount established by resolution of the City Council, shall be paid to the city to defray the cost of the investigation and issuance required by this chapter. The license issuance or renewal fee required under this chapter shall be in addition to any other license or fee required under this code.

(B) Neither the filing of an application for a license or renewal thereof nor payment of an application or renewal fee shall authorize the operation of a computer gaming and internet access business until such license has been granted or renewed.

(C) Each applicant for a computer gaming and internet access business license or renewal thereof shall furnish the following information:

- (1) The present or proposed address where the business is to be conducted;
- (2) The full and true name under which the business will be conducted;
- (3) The full and true name and any other names used by the applicant and owner of the business, if the owner is not the applicant;
- (4) The applicant and owner's present residential and business addresses and telephone numbers;
- (5) Each residential and business address of the applicant and the owner for the five-year period immediately preceding the date of filing the application and the inclusive dates of each address;
- (6) The California driver's license or identification number of the applicant and owner;
- (7) A precise description of the activities and/or services to be provided;
- (8) A detailed site and floor plan of the proposed business, depicting the building and unit proposed and including interior dimensions and off- street parking spaces required by the city's zoning code;

(9) A detailed description of the food and beverage service, if any, that will be offered to patrons;

(10) The dates and hours during which the computer gaming and internet access business is desired to be conducted and a list of the fees to be charged patrons;

(11) The name(s) of the person(s) responsible for the operation, management, and supervision of the computer gaming and internet access business;

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

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

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

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

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

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

(1) The required fees have been paid;

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

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

(4) The proposed computer gaming and internet access business would comply with this chapter and all other applicable city, county, and state laws, including but not limited to health, zoning, fire, and safety requirements and standards, and that, as proposed, the computer gaming and internet access business would not generate criminal activities, present unnecessary criminal opportunities, or cause violations of curfews by minors due to failure to comply with federal or state law or the municipal code, including but not limited to operational standards set forth below;

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

(6) The computer gaming and internet access business site and floor plan have been reviewed by the city's Planning and Building Departments and the Police Department and Fire District, which have approved the same as well as all fire and panic safety equipment required to be installed; all requirements of the Americans with Disabilities Act have been satisfied; and that the maximum occupancy has been established, will be posted, and will not likely be exceeded based on the floor plan; and,

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

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

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

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

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

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

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

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

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

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

§ 5-11.30 TRANSFER OF LICENSE.

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

§ 5-11.40 ALTERATIONS TO COMPUTER GAMING AND INTERNET ACCESS BUSINESSES.

(A) A holder of a valid computer gaming and internet access business license shall notify the Community Development Director, in writing, of any proposed change in the business location, floor plan, or business name at least 30 days prior to such change.

(B) Nothing in this section shall excuse the owner of a computer gaming and internet access business from obtaining all other approvals necessary to change a location, floor plan, or business name, including but not limited to building permits.

§ 5-11.50 LICENSE REVOCATION.

(A) If the city finds that any person holding an computer gaming and internet access business license has violated or allowed the violation of any of the provisions of this chapter or has conducted business in a manner that could have been grounds for license denial, the license may be revoked following notice and a hearing.

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

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

§ 5-11.60 OPERATIONAL STANDARDS AND REGULATIONS.

(A) *Prohibitions regarding minors.*

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

(2) Minors (under 18 years of age), unless legally emancipated, shall not be permitted to enter or remain in a computer gaming and internet access business during the hours of the

juvenile protection curfew of 11:01 p.m. through 5:00 a.m., seven nights a week, pursuant to Article 2 of Chapter 10 of Title 5 of the city municipal code.

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

(B) *Hours of operation.* The computer gaming and internet access business shall not be open to customers, patrons, or any member of the public between the hours of 12:00 a.m. and 8:00 a.m. on Friday, Saturday, and Sunday or between the hours of 11:00 p.m. and 8:00 a.m. Monday through Thursday. The Chief of Police may restrict hours further if warranted to protect public safety and welfare.

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

(D) *No smoking or consumption of alcoholic beverages.* No person shall be permitted to smoke or consume alcoholic beverages on the inside of the premises. The sale of cigarettes and alcohol on the premises is prohibited. No intoxicated or disorderly person shall be allowed to remain on the premises.

(E) *Staffing.* Employees shall be at least 18 years of age. There shall be a minimum of two employees staffing the computer gaming and internet access business during all working hours with at least one manager or supervisor. The ratio of employees to computers and/or other electronic devices that access the internet shall be 2:40. During each employee's working hours, the employee shall wear a badge identifying the business and the employee's name. Security personnel indicated in division (I) of this section below shall not be included in this minimum staffing number.

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

(G) *Surveillance system.*

(1) ~~The Chief of Police may require a~~Each computer gaming and internet access business operator ~~to shall~~ install a digital camera/video surveillance system on the premises operational in the event there are or have been repeated calls for police services relating to the premises, including but not limited to assaults, public intoxication, vandalism, gang activity, weapons offenses, disturbances of the peace, and juvenile crimes including truancy.

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

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

(H) *Windows and window coverings.* Store fronts (front façade of the tenant space) shall be primarily glass with glass occupying at least 45% of the entire store front and 60% of the horizontal length of the store front (see also Antioch Citywide Design Guidelines). Glass customer doors are required. Window and door areas shall not be covered, tinted, or made opaque in any way, or obscured in any way by landscaping, floor displays, equipment, or the like, ~~excepting during daylight hours when partial blinds or other equivalent window coverings may be used as long as the interior remains visible from the public right of way.~~

(I) *Security guards.*

(1) ~~The Chief of Police may require a specific computer gaming and internet access business operator to provide a s~~Security guard(s) are required on the premises during all business hours. ~~in the event there are repeated calls for police services relating to the~~

~~premises, including but not limited to assaults, gang activity, weapons offenses, disturbances of the peace, and juvenile crimes including truancy.~~

(2) ~~The Chief of Police may require a~~ Security guards ~~to shall~~ be uniformed and be employed by a private patrol operator that is currently licensed with the California Department of Consumer Affairs. The name of the patrol operator with state license number and the guard registration numbers shall be provided to the Community Development Department. Any changes to the patrol operator shall be approved by the Police Chief at least two working days prior to patrol operator taking over security at the business.

(3) ~~The Chief of Police may require a~~ Security guards shall to also patrol the exterior of the business and any parking lot areas.

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

(J) *No adult entertainment business or adult boutique.* Any access to adult entertainment oriented web sites, as defined in § 9-5.203 of this code, is prohibited unless specifically permitted under §§ 9-5.3808 or 9-5.3808.1 of this code.

(K) *No other amusement devices.* No pool tables or other amusement devices not directly related to the internet and similar computer devices shall be permitted in the business.

(L) *No tournaments.* No gaming tournaments for cash prizes deemed to be gambling under the provisions of state law shall be permitted.

(M) *Interior signs.* User rates and other fees must be conspicuously posted on the premises.

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

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

(P) *No private rooms.* Any individual computer use area within the business shall be visible from a public portion of the computer gaming and internet access business and shall not be obscured by any door, curtain, wall, two-way mirror, or other device which would prohibit a person from seeing the entire interior of the computer use area. Further, no one shall maintain any individual viewing area in any configuration unless the entire interior wherein the computer that is being used is visible to staff and customers. No doors are permitted on an individual viewing area. No partially or fully enclosed individual viewing areas or partially or fully concealed individual viewing areas shall be maintained.

(Q) *Alarm system.* ~~The Chief of Police may require a specific computer gaming and internet access business operator to install a~~ An alarm system shall be installed that distinguishes between a burglary and a robbery. The system shall monitor 24 hours per day. All public entrance and exit doors to the business shall have electronic monitoring system that produce a sound when a person transverses the doorway. ~~If required by T~~ the Chief of Police may require, the system shall to be electronically connected with the police department if activated.

(R) *Number of computers.* The number of computers or similar devices in a computer gaming and internet access business shall not exceed 30 square feet of floor area per computer of the floor area that is dedicated to the placement of computers for rent or charge.

§ 5-11.70 ABATEMENT OF NUISANCE.

Any computer gaming and internet access business operated, conducted, or maintained contrary to the provisions of this chapter shall be and hereby is declared to be unlawful and a public nuisance, and the city may, in addition to or in lieu of any other remedy, commence an action or proceeding for the abatement, removal, or enjoinder thereof, and may take such

other steps and may apply to such court or courts as may have jurisdiction to grant such relief to abate or remove such establishment and restrain and enjoin any person from operating, conducting, or maintaining a computer gaming and internet access business contrary to the provisions of this chapter.

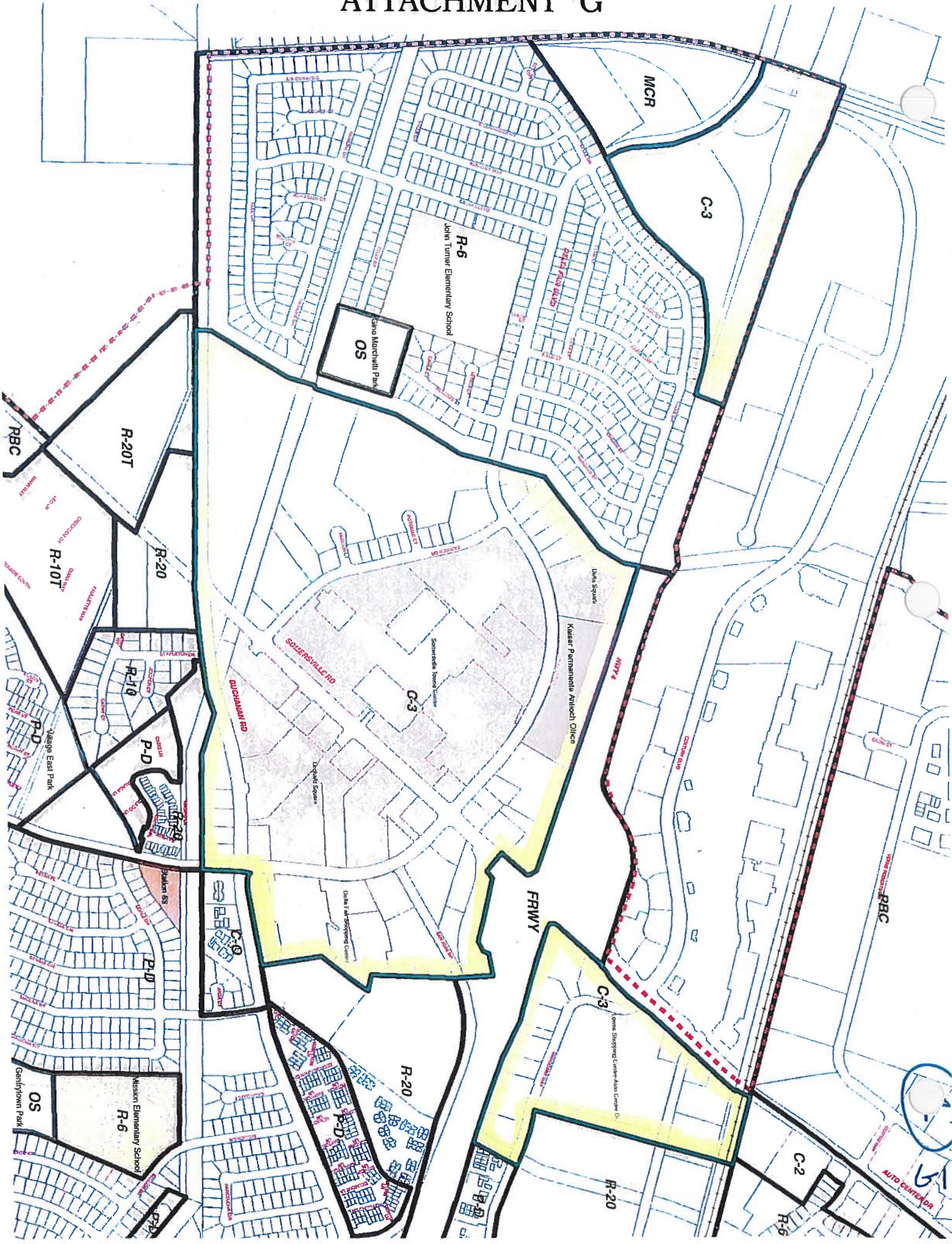
§ 5-11.80 PENALTY.

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

§ 5-11.90 LICENSE FEES.

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

ATTACHMENT "G"





P-D

P-D

PBC

OS

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OS

C-3

Bridgwood Plaza

FRWY

FRWY 160

PBC

Almondridge Park

R-6

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(8) 1/2

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FAX COVER SHEET

TO:	Lynn Tracy Nerland, City Attorney	(925) 779-7003
FROM:	Thomas A. Willis	Date: November 12, 2013 Pages: 20 (with cover page)
RE:	Kelly's Cardroom (Our File No.: 2632-1)	

2.02

11-12-13

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November 12, 2013

VIA EMAIL AND MAIL

Mayor Wade Harper &
Members of the City Council of Antioch
P.O. Box 5007
Antioch, CA 94531-5007

Re: *Kelly's Cardroom, Antioch*
City Council Hearing, November 12, 2013

Dear Chair and Commissioners:

I write to oppose a City gambling license for Anthony Keslinke and Kelly's Cardroom, and to provide information that the applicant failed to provide. Ordinarily, I would have submitted this letter several days before the hearing, but the staff report and agenda were posted only late last week and before a holiday.

At a minimum, we urge the City to take no action on the application at this time. Although the Police Report ultimately does not take a position on the application, any fair reading of the report makes clear the application is premature and should not be approved at this time: after all, the Police Department's top two options are to (1) deny the application, or (2) wait to consider it after the State acts. The Police Report makes clear there are simply too many unanswered questions to approve the application now: there has been no in-depth investigation yet of Mr. Keslinke, any of his key employees, or others that may be financially interested in the project; there is no way to assess at this time whether the card room operations will be ancillary, as required by law; and it is unclear whether the State will issue a license to Mr. Keslinke at all, making the City application entirely premature. In sum, there is no need for the City to act now since it will have to review this issue once again anyway if or when the State acts.

Mayor Wade Harper
Members of the City Council of Antioch
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SUMMARY

I. The license would violate State law.

The issuance of a City license would violate State law, which prohibits the issuance of a city license except to a person already licensed by the State. (Bus. and Prof. Code, §19964, §19805(ad).) Mr. Keslinke does not have a state license. He has not even applied for one.

The applicant's statements that the Commission wanted the City to issue a City license before the State issued a license are not accurate. At the October 25, 2012, California Gambling Control Commission hearing, the City Manager told the Commission that a new City license would require *amending* the City card room ordinance. On that basis, the Commission informally expressed an interest in seeing if the City would amend its ordinance before deciding if the state license was revoked.

The Commission did not request that the City first issue a city gambling license to Mr. Keslinke before Mr. Keslinke applied for a state license or had a state background investigation. The state investigation involves not only a criminal records check, but a personal and financial investigation which bears on Mr. Keslinke's suitability as a cardroom owner.

As the Staff Report states: "Although the Police Department ran a criminal records check on Mr. Keslinke that did not raise any issues, the Department must rely on the California Gambling Control Commission and Attorney General's Office to undertake a more thorough investigation of activities and associates."

Moreover, the Commission Order entered into with Mr. Cianfichi required that the purchaser's state license application be submitted to the Commission with the new purchase agreement. (Order at p. 4 ¶f.) By not submitting a state license application for more than year after he entered into a purchase agreement with Mr. Cianfichi, Mr. Keslinke has done the opposite of what the Commission Order requires.

II. The problem of management and key employees.

Mr. Keslinke has attempted to finesse his active involvement and presence at the business by stating that regardless of whether he is present, the card room will be managed by state licensed key employees that have gone through a thorough background investigation. He expands at some length on the state's vetting process for key employees and states that he will have the key employees file their license applications later.

The key employees are especially important in this case because a card room is a 24 hour business, Mr. Keslinke is not going to be present on a regular basis, and even if he was, Mr. Keslinke has no gambling management experience.

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Members of the City Council of Antioch
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Mr. Keslinke says he will follow the state key employee license rules to a "tee." But state law allows for interim key employee licenses before the employee is vetted, something Mr. Keslinke's consultant with 23 years experience surely knows having run the Attorney General's license unit.

Under Commission regulation §12354, an individual holding a work permit – meaning that he or she has had a fingerprint check – can work as an interim key employee provided that the person submits a key employee license application within 10 days after they start work as a key employee.

Thus, Mr. Keslinke could obtain work permits for his employees, appoint several work permit employees to act as key employees before any of them even apply to be a key employee, have a key employee background investigation or are fully licensed as key employees by the State.

This means the card room could begin operations and operate for a year or more without a single key employee that has been fully vetted by the state license process, let alone a fully licensed key employee on site at all times.

Mr. Keslinke also has not disclosed anything about the third party banking company that banks the games like Blackjack and Pai Gow, and operates like the "house" in a casino obtaining the house percentage or edge in the games. Currently, the City Ordinance does not regulate that business.

III. Granting a license would violate Antioch Municipal Code because the bar and restaurant at Kelly's is not the "major" business at the location.

Under the City's ordinance the non-gambling business has to be the major business at the location by "size and volume." This is meant to limit gambling. Given the purpose of the ordinance, "size and volume" must relate to business factors: the level of patronage, number of employees and revenues of the respective businesses. Mr. Keslinke has failed to submit any information regarding these factors.

Mr. Keslinke instead argues he meets this requirement based on square footage. But using square footage to determine "size and volume" creates absurd results, as anyone can tack more square feet on to the bar or restaurant, or even a storeroom, to evade the purpose of the ordinance. Nor does equalizing the kitchen and card room hours, or requiring hot food relate to "size and volume" of the business.

The applicant has not been forthcoming with information that would enable the City to make a finding in support of his compliance with this provision. He has distanced himself from the very exact employment estimates for the card room he gave the Planning Commission that showed the card room would employ twice as many persons as the other

Mayor Wade Harper
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operations. He claims not to know how many employees it takes to operate a six-table card room despite hiring a consultant with 23 years experience.

He also has not supplied any economic data for the business operations. Every business person does a projection of revenues and expenses before investing. Mr. Keslinke has not supplied any information to the Council regarding expected revenues for the card room, or even historical numbers. But publicly available information shows that the card room will be the major business.

The burden of proof is on Mr. Keslinke to show that the cardroom will not be the major business. He has not meet that burden or even supplied relevant information. Granting the license now would violate the Ordinance.

IV. License Conditions.

The Staff report includes a number of recommended conditions. The City should not shy away from the security conditions. Mr. Keslinke cannot analogize to other jurisdictions for security concerns or practices because those cities do not have the current crime problems and police staffing issues that Antioch now has.

The City should not move forward on the application until the State has issued a license. If or when the State does act, the City should also include further conditions regarding key employees and operations, detailed below.

ANALYSIS

I. Issuing a City license before the State acts would violate State law.

The Gambling Control Act prohibits a city from issuing "a license to deal, operate, carry on, conduct, maintain or expose for play any controlled game to an applicant or holder of a local license unless the applicant or local licensee is an owner licensee as defined in this chapter." (Bus. & Prof. Code, § 19964.) An "owner licensee" means an owner of a gambling enterprise who holds a state gambling license." (*Id.*, § 19805 (ad).)

Therefore, the City cannot issue a gambling license unless the applicant already has a state gambling license, which Mr. Keslinke does not have. This ensures that the State background investigation will precede local action. Circumventing the statute by delaying the effect of the City license is not permitted. The license cannot be issued regardless of the effective date. Neither Mr. Keslinke's letters nor the Staff report address this issue.

In addition, Mr. Keslinke's representations regarding the Commission's actions are false. At its October 25, 2012 meeting, the Commission scheduled two agenda items. The first item was to approve Blarney's request to withdraw its state gambling license application and purchase of Kelly's, which was approved.

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The second agenda item was to decide whether the Kelly's state license was by operation of law cancelled. The Attorney General's office argued that the state license was already revoked because the proposed purchaser had not submitted a timely license application under the enforcement Order signed by Mr. Cianfichi, the purchase and sale agreement and license application for "the proposed purchaser" of Kelly's were to be submitted to the state by May 26, 2012. The official minutes of the Commission meeting show that no action or vote was taken regarding the effect of the withdrawal of the only timely submitted purchase agreement and license application which was from Blarney's. (Commission agenda and minutes attached).

As the Commission's letter dated August 30, 2013 states, the Commission has yet to decide if by operation of law and the 2011 Order for Kelly's, the State gambling license even continues to exist. The letter states: "The stay remains in effect because the Commission has not yet determined whether or not the condition precedent to revocation by operation of the Order has been met." Once that state license lapses, it cannot be revived because state law prohibits the issuance of new state licenses until 2020. (Bus. and Prof. Code § 19963.)

Regardless of how the Commission ultimately interprets the Order, State law prohibits the City from issuing a city gambling license to Mr. Keslinke until Mr. Keslinke is issued a state gambling license, following a state background investigation.

Yet, before the Antioch Planning Commission, Mr. Keslinke circulated a flyer saying the California Gambling Control Commission supported his use permit and he told the Planning Commission that the Gambling Control Commission had "voted 5-0" to support his re-opening Kelly's. (Staff Report, at page 236). Both statements were false. There was no vote.

Where the State has yet to decide if the state license is still even available, the City has every reason to defer action.

Mr. Keslink claims that what the Commission wanted was to see if the City would first issue Mr. Keslinke a local gambling license.

... the commission voted to keep the license intact, to give me additional time to work with the city on a new Use Permit and License for Kelly's. The transcript from the commission's October 25, 2012 meeting addresses its desire to have me hold off on a formal application until the City of Antioch can weigh in on licensure.

(Keslinke letter October 25,
2013, at p. 2)

Each statement is false.

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"... the commission voted to keep the license intact"

As shown by the Gambling Control Commission meeting minutes, transcript and Commission letter dated August 30, 2013, the Commission never voted to keep the state license intact. The Gambling Control Commission reserved the issue of whether the license is cancelled under the Order.

"to give me additional time to work with the city on a new Use Permit and License for Kelly's."

The Gambling Control Commission decided not to act on the state license status because they thought the local ordinance in its present form did not allow for a new license for Kelly's. The Commission did not reference the use permit or state that the City had to issue its license first.

At the October 25, 2012 Gambling Commission hearing, the City Manager told the Commission that Kelly's local license had been lost and that the City would have to amend its ordinances to permit a new city license.

Mr. Jakel: (... it) would require that the new Council, or however it's comprise, modify or issue a new ordinance to do it."

Commissioner Hammond: So you have to write a new ordinance?

Mr. Jakel: Right.

...

Commissioner Conklin: .. it really is in the hands of the City. If they have their Council and they're not interested in revising the ordinance, it's done, done. ...

Chairperson Shimazu: So we agree we're going to take no action.....

(Transcript at 23-24 and 48)

Because Mr. Jakel said an Ordinance amendment was needed to permit a new license for Kelly's, the Gambling Control Commission deferred consideration of the status of Kelly's state license.

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“The transcript from the commission’s October 25, 2012 meeting addresses its desire to have me hold off on a formal application until the City of Antioch can weigh in on licensure.”

The Commission’s 2011 Order for Kelly’s requires the state license application be submitted to it with the purchase agreement. There never has been a requirement that Mr. Keslinke delay his state license application. Indeed, anyone serious about getting a state license and without concerns about the background investigation would apply promptly because the state application takes time to process and by law the state license has to be issued the City can issue a license.

II. The problem of Management and Key Employees.

Mr. Keslinke has attempted to assure the Council that even if he is not present at all times or even most days, the card room will be managed by state licensed key employees that have gone through a thorough background investigation.

As noted above, the key employees are especially important in this case because a card room is a 24 hour business, Mr. Keslinke is not going to be present on a regular basis, and even if he was, he has no gambling management experience. This is not a case where someone who has been an owner or general manager at another gambling establishment is buying the business. As of now, the City has no idea who will be actively managing the gambling operation during business hours.

Mr. Keslinke only states that the State has an extensive vetting process for key employees and promises only to follow the law to a “tee.” But Mr. Keslinke has failed to disclose that state law allows for temporary key employee licenses, something his consultant with 23 years experience surely knows having run the license unit.

Under Commission Regulation §12354, an individual holding a work permit – meaning that he or she has had a fingerprint check – can work as an interim key employee provided that the person submits a key employee license application within 10 days after they start work as a key employee.

Thus, Mr. Keslinke could obtain work permits for his employees, appoint several work permit employees to act as key employees before any of them even apply to be a key employee or have a key employee background investigation and are fully licensed as key employees by the State.

The card room could begin operations and operate for a year or more without a single key employee that has gone all the way through the state license process, let alone a fully licensed key employee on site at all times.

Mayor Wade Harper
Members of the City Council of Antioch
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III. The use permit would violate City Code

- A. City Code requires that the existing business be the major business at the location by "size and volume". The proposed card room is not.**

The City of Antioch Municipal Code provides:

§ 5-4.05 LICENSE; ISSUANCE TO ESTABLISHED
BUSINESSES ONLY.

In addition to the other requirements contained in this chapter, no license shall be issued for a card room other than in an established place of business of sufficient size and volume that the already established business is the major business of the place rather than the business of operating such card room.

This Ordinance expresses the community's view that gambling in Antioch will be very limited. The card room cannot be the major business at the location, nor exceed the size and volume of the already established dominant business.

- B. The City does not have the requisite information to determine that this application complies with the Ordinance.**

The Ordinance requires that the City compare an "already established" business to the card room. The Staff Report identifies this issue for the Council, but does not provide any conclusion regarding whether the application is in compliance with the Ordinance. In fact, there is no information submitted by Mr. Keslinke or in the Staff Report regarding the existing business operations and how they compare to the card room operation. The Staff Report also notes the contradictions between what Mr. Keslinke told the Planning Commission and what he is now telling the Police Department.

Mr. Keslinke estimated the number of employees for each part of the business for the Planning Commission. He now tells the Police Department he cannot undertake such an estimate. He also told the Police Department that there is an operating bar and restaurant at the location, but has not supplied any revenue or employment numbers for the existing business. So the City does not have any information to evaluate the "size and volume" of the "already established business." Therefore, the City cannot determine if the application complies with the City Code.

The Ordinance requires that the card room be the secondary business by two separate measures "size and volume." Mr. Keslinke proposes to meet his burden to show that the application complies with the City Code by using square footage. His argument is that so long as the square footage of the card room is less than 50% of the building, then the ordinance is satisfied. That is a meaningless interpretation of "size and volume."

Mayor Wade Harper
Members of the City Council of Antioch
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The Ordinance is not concerned with the use of square footage: it is concerned with the business of gambling. The issue is not how many square feet a gambling table occupies, but how many persons it draws, how much economic activity it creates, and how many unwanted secondary effects are associated with the activity.

Square footage also is easily subject to manipulation. If you add a large storeroom to the bar or restaurant area, you can claim that they have more square footage than the card room. The extra space has no relationship to the economics of the business or sales. That is not what the Ordinance means nor does it satisfy the Ordinance's purpose to limit gambling.

Because the purpose of the Ordinance is to limit gambling – to make it an ancillary business – we have to look at a trade or economic meaning of “size and volume.”

The only sensible interpretation is that “size” in the Ordinance refers to the scale of the business – its employees and patrons etc. Here, Mr. Keslinke admitted to the Planning Commission that the card room will have more than twice as many card room employees (34) as restaurant and bar employees (15). As shown below even that estimate of card room employees is too low.

Moreover, in business, volume refers to sales and the revenues from goods and services yet the Staff Report ignores “volume” entirely.

The record is missing any information to show that the restaurant and bar does or will generate more sales than the card room. Accordingly, the City Council does not have anything approaching sufficient information on which to determine compliance with the Ordinance.

While Mr. Keslinke gave the Planning Commission exact employee counts, in his letter to the Police, Mr. Keslinke claims now to be unable to project either the number of restaurant employees or card room employees even though:

- Card room employment is related to the number of tables and the positions required by state regulations;
- Mr. Keslinke has provided the City with detailed customer demographics for the card room (Letter October 25, 2013 at 4), but is now unable to provide detailed employee information;
- Mr. Keslinke gave the Planning Commission exact numbers for restaurant and card room workers showing that the card room will employ twice as many persons as the other operations (even that was low); and

Mayor Wade Harper
 Members of the City Council of Antioch
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- Business people always have economic projections for revenues and costs before they invest their money, including projected labor costs which are one of the largest costs of operation. Mr. Keslinke's failure to provide sale or labor projections is not credible.

Mr. Keslinke says: "If Kelly's is re-issued its license, we will be in a better place to more accurately plan for the number of employees..." (Id. at 7-8.) In other words, he wants the license before providing the relevant information. But that is not how the process works.

Finally, I made this same argument – with actual employment numbers – in a letter to the Planning Commission. Rather than dispute the detailed numbers, Mr. Keslinke has simply ignored the issue.

C. Gambling will be the dominant business by employees and patrons.

While the restaurant may seat 40-50 persons, the number of gambling positions is 50% to 100% more.

A card table seats 10 persons. In some casino games, persons standing can also wager on the hands of the seated players.

Patrons

- 48 Poker Tables. 4 tables x 10 patrons, plus 8 persons (2 per table) waiting on busy shifts (Fridays and weekends).
- 24 Other Card Games. 2 tables x 14 patrons each.
- 72 Total

Some card rooms, like Casino 580 in Livermore, don't even offer poker anymore. They operate high volume games that accommodate more players per table, like Baccarat, Blackjack and Pai Gow, exclusively, and with greater potential effects on the community. If Kelly's operates exclusively card games other than poker, the patronage will increase substantially. Six tables of casino card games could have peak demand of 84 – 110 simultaneous patrons.

Obviously, the patronage of the card room is higher than the bar and restaurant.

The staffing of the card room is also far larger than that required to serve meals. Staffing of not less than 17 - 22 persons is required per shift for 6 gambling tables.

- 7 Dealers. 6 for 6 tables plus 1 for Labor Code meal and rest breaks.
- 1 Key Employee supervising gambling operations

Mayor Wade Harper
 Members of the City Council of Antioch
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- 1 Cage cashier
- 1 Floor/Board person to run chips, seat and move poker players, check ids
- 2 Security / Valet
- 3-4 Third Party Contracted Proposition players for non poker games
- 2 House employees who act as proposition players in poker games
- 1 Food and Cocktail server for players at gambling tables
- 1 General Manager. (May be present less than every shift.)
- 1 Office staff. (May be present less than every shift.)
- 1 Janitor/Maintenance Employee. gambling area and gambling equipment

Mr. Keslinke estimated 34 gambling employees for the Planning Commission, but that is less than half of what is needed. There are 3 shifts per day, 21 per week. Since an employee can only work 5 shifts per week (and actually less due to vacations and leave), you need 4.1 x 17 employees, or 70+ card room employees, perhaps more. Some shifts may require less, but that is compensated for by the fact that you also have to have extra employees to cover vacations and sick leaves.

Mr. Keslinke's estimates for parking for the Planning Commission also may not have included employees from contracted third parties for janitorial and security. He also will contract with third parties that bank the non-poker games. The bankers who play against all the other players and bank games like blackjack would be employed by a separate company because the house cannot bank its own games under the Penal Code. But all these third parties have to be present on every shift and included for person and parking counts.

D. Gambling will be the dominant business by sales.

The restaurant and bar sales cannot generate sufficient volume to satisfy the ordinance.

For example, if the existing restaurant sells 120 meals a day with average checks of \$10 that would be gross sales of \$1,200 per day. That means \$438,000 in gross annual revenue for the existing restaurant. Similarly, if the bar serves 75 bar and restaurant customers per day at an average sale of 2 drinks totaling, \$12, daily sales are \$900 and annual gross bar sales are just over \$328,000.

Card rooms generate gross profits per table by charging the players a flat fee per hand. The City of Emeryville publicly reports its card room revenue, with annual gaming

Mayor Wade Harper
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revenues of \$657,143 per table.¹ At six tables, Kelly's would have expected gross gaming revenue of nearly \$4 million annually, as much as five to six times the volume of the restaurant and bar business.

Judged by any reasonable measure of "size and volume," allowing a gambling establishment would be a plain violation of section 5-4.05 of the City of Antioch Municipal Code.

E. The City cannot regulate hours of operation or hot meals to determine "size and volume."

Forced by the applicant's failure to provide relevant information, the Staff Report states that the only "means to regulate the ancillary nature of the card room in relation to the restaurant" is to look at square footage and the kind of restaurant service." Neither can be satisfactory.

The City is not supposed to "regulate" in order to insure that the bar and restaurant is the primary business. How do you do that once the card room is open ... ask the owner to turn away card room customers to keep his volume down?

In fact, "size and volume" is a threshold issue. The City Ordinance says that the gambling license cannot issue unless the other business is the major business, and that the determination of whether to issue the license must be based on size and volume. So this issue is not one of "regulation," but rather whether the gambling license can issue at all.

Requiring hot meals 24 hours a day also does not relate to the size by patronage or employee, or volume by sales. Equalizing the hours of operation between the restaurant and card room does not make the restaurant the major business.

IV. License Conditions.

When or if the City does consider a gambling license, the City should include further conditions regarding key employees and operations, detailed below.

1. Key Employees. For the first 12 months of operation, Mr. Keslinke must have at least one key employee present at the card room at all times when it is open who has been fully vetted by the State and licensed as a key employee, without interim license status.

¹ [Http://www.ci.emeryville.ca.us/index.aspx?nid=376](http://www.ci.emeryville.ca.us/index.aspx?nid=376) (tax revenue) (35 tables in use even though 40 tables are licensed).

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2. Third Party Bankers and any person receiving payments directly or indirectly related to revenues or profits. Any agreements with third party bankers or their employees or owners (also known as proposition player services) and any agreements with any person receiving payments directly or indirectly related to revenues or profits must be pre-approved by the City Council (including any amendments) and such persons must meet the standards for owner licensing under §5-4.04(B) of the Antioch Municipal Code. These third parties have a significant impact as they are “banking” the table games.
3. Violations. Mr. Keslinke and any key employees must self-report to the Police Chief any violation of the conditions on this license or use permit within 5 business days.
4. State Action. Mr. Keslinke and any key employees must report to the Police Chief within 5 business days any notices, advisories, notices of violation, warning letters, accusations, gaming activity approvals or denials, or any other action directed to them by the Attorney General, California Gambling Control Commission or any other state agency. This includes the results of and a copy of any background investigation or license action or decision. Mr. Keslinke and the key employees also must provide the Police Chief with a copy of any report filed with state agencies relating to violations of state laws or regulations.
5. Financial Statements. Within five days of submitting financial reports or statements to the Attorney General or Gambling Control Commission Mr. Keslinke shall provide copies to the Police Chief.
6. Police Report. The Police Department shall provide the City Council a written report each year identifying any actions or reports made or taken pursuant to the foregoing conditions, and shall report the same at a public meeting of the City Council.
7. Notice to the Council. The Police Department shall promptly notify the City Council at a public meeting if the Police have reason to suspect that any statement made by the applicant to the City in connection with the use permit or this license application was false or misleading, or the licensee is not operating in compliance with any applicable laws or license conditions.
8. Parking. If Mr. Keslinke terminates the parking lease with the City, he must submit a new use permit application to the Planning Commission with a revised parking plan.
9. Relocation. The cardroom license is specific to the location at 408 O Street Antioch, CA. The licensee must obtain approval of the Council to relocate to another location, and the Council shall treat such an application as an application

Mayor Wade Harper
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for a new license under §5-4.03, §5-4.04, and §5-4.05 of the Antioch Municipal Code.

10. Casino games. The City Ordinance has been written to preserve the historic character of small card rooms. Antioch card rooms have operated primarily poker games. They have not been gambling Casinos exclusively or primarily for fast Casino player-dealer games of chance where each player plays against the house or banker (called in state law, the player-dealer), like Blackjack, Pai Gow, Baccarat, Ultimate Texas Hold Em and Three Card Poker. Antioch card rooms also have not operated electronic Casino games.

The applicant says he does not want to operate substantially differently than what has historically been done at Kelly's. And the City has an interest in making sure this card room does not operate like a Vegas style casino as has recently happened in Livermore.

Consistent with the character of Antioch card rooms, Casino table games should not be a majority of the games operated. The license conditions should include that the licensee can operate only *card games using tangible cards* in which each player receives their own hand. No more than two card room tables may be used for any player-dealer Casino games.

Finally, City Code requires that the application not contain any falsehoods, and that there is no information deliberately omitted. Here, the application was not verified under penalty of perjury. The application consists of Mr. Keslinke's unverified letters and statements to the Police and City. As explained above, throughout there are a number of instances where Mr. Keslinke has omitted or misrepresented relevant information.

Sincerely,



Thomas A. Willis

TW:mn
Attachment

cc: Jim Jakel, City Manager
Lynn Tracy Nerland, City Attorney

(00209194-4)

ATTACHMENT



STATE OF CALIFORNIA
GAMBLING CONTROL COMMISSION

Edmund G. Brown, Jr., Governor
STEPHANIE SHIMAZU, CHAIRPERSON
 TIFFANYE CONKLIN
 LAUREN HAMMOND
 RICHARD SCHUETZ

Notice and Agenda of Commission Meeting

California Gambling Control Commission

Hearing Room 100

2398 Gateway Oaks Drive

Sacramento, CA 95833

www.cgcc.ca.gov

10:00 a.m. Thursday October 25, 2012

Notice: The order of business reflected in the Notice and Agenda is subject to change by the Commission at the meeting

OPEN SESSION

1. Call to Order and Pledge of Allegiance.
2. Roll Call of Commissioners.
3. Approval of Commission Meeting Minutes for September 27, 2012
4. Hollywood Park Casino:
 - A. Request for Approval of Settlement Agreement Regarding Lease Termination in Lieu of Unlawful Detainer Between Hollywood Park Casino Company, Inc. and Century Gaming Management, Inc. (Business and Professions Code sections 19924(c) and 19901);
 Hollywood Park Casino: Century Gaming Management, Inc.
 Leo Chu, Shareholder
 Ivy Chu, Shareholder
 - B. Consideration and Possible Action Regarding Asset Purchase Agreement, Lease Agreement and Trademark License Agreement between Hollywood Park Casino Company, Inc. and LAX Property, LLC (Business and Professions Code sections 19924(c), 19950, 19952, 19952.2, 19953, and 19901);
 Hollywood Park Casino: LAX Property, LLC
 Eric Swallow, Sole Member
5. Kelly's:
 - A. Request for Approval to Withdraw Application for State Gambling License (Pursuant to Business and Professions Code section 19969 and CCR, Title 4, section 12047);
 Kelly's: Blamey, LLC
 Richard Shinde, Member
 Tracy Kennedy, Member
 James Mullins, Member
 Kerry Mullins, Member

- B. Consideration of Revocation of State Gambling License Pursuant to Decision and Order Issued September 22, 2011, in OAH Case No. 2010050095 (Business and Professions Code sections 19824, 19825, 19830 and CCR, Title 4, section 12554):
Kelly's: Albert Cianfichi, Sole Proprietor
6. Application for Approval of Initial State Gambling License (Pursuant to Business and Professions Code section 19851 and CCR, Title 4, section 12342):
Merced Poker Room: Tongtous Yang, Sole Proprietor
7. Applications for Approval of Renewal of State Gambling Licenses (Pursuant to Business and Professions Code section 19876 and CCR, Title 4, section 12345):
A. Cordova Restaurant and Casino: Cai-Pac Rancho Cordova, LLC
John Park, Sole Member
B. Oceana Cardroom: Mark Adam, Sole Proprietor
8. Request for Approval to Remove Condition(s) from Key Employee License (Pursuant to Business and Professions Code section 19824(b)):
John Mugnani
9. Applications for Approval of Renewal of Third Party Provider of Proposition Services/Gambling Business Licenses (Pursuant to Business and Professions Code section 19884 and CCR, Title 4, sections 12218.8 and 12238):
A. Certified Players, Inc.: Philip H. LeBlanc and Patricia Ann LeBlanc Revocable Living Trust, Shareholder
Patricia LeBlanc, President, Secretary, Treasurer, Second Trustee and Beneficiary
Philip LeBlanc, First Trustee and Beneficiary
Michael LeBlanc, Shareholder
B. California Gaming Consultants: Dog Named Blue, Inc.
The Rick Baldaramos Trust, Shareholder
Richard Baldaramos, Trustor, Trustee and Beneficiary
C. Network Management Group, Inc.: John Park, President, Secretary, Treasurer, Director and Shareholder
10. Applications for Approval of Conversion of Third-Party Providers of Proposition Player Services (Gambling Business Supervisor/Player Registrations to Licenses (Pursuant to Business and Professions Code section 19884 and CCR, Title 4, sections 12218 and 12233):
A. Banc, LLC:
Player: Samuel Yang
B. Certified Players, Inc.:
Players: Eisenhower De Guzman Raymond Leoni
C. PT Gaming, LLC:
Players: Mary Chooun Nam Doan
Kristine Laird Mitchell Phantibandith
Learn Zembrano
Supervisor: Dan Lim
D. Qualified Player Services, LLC:
Player: William Lee

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**MINUTES OF OCTOBER 25, 2012
COMMISSION MEETING**

OPEN SESSION

1. Call to Order and Pledge of Allegiance.

Chairperson Stephanie Shimazu called the meeting to order at 10:00 a.m., and asked everyone to stand for the Pledge of Allegiance.

2. Roll Call of Commissioners.

Roll Call of Commissioners was taken, with Chairperson Stephanie Shimazu and Commissioners Tiffany Conklin, Lauren Hammond and Richard Schuetz present.

3. Approval of Commission Meeting Minutes for:
September 27, 2012

Action:

Upon motion of Commissioner Hammond, seconded by Commissioner Conklin and unanimously carried in a vote by roll call with Chairperson Shimazu and Commissioners Conklin, Hammond and Schuetz voting yes, the Commission approved the meeting minutes for the September 27, 2012 Commission Meeting.

By concurrence of the Commissioners, Item 16.L., Pechanga Resort and Casino - Timothy Fegel was moved from the Consent Calendar to Open Session to follow Item 12. Also, the following items were continued to a future Commission meeting: Item 10.B. Certified Players - Raymond Leoni; Item 16.G. Chumash Casino Resort - Raheem Sultan; Item 16.K. Paiute Palace Casino - William MacDonald; and Item 16.P. Sho-Ka-Wah Casino - John O'Neill.

4. Hollywood Park Casino:

A. Request for Approval of Settlement Agreement Regarding Lease Termination in Lieu of Unlawful Detainer Between Hollywood Park Casino Company, Inc. and Century Gaming Management, Inc. (Business and Professions Code sections 19824(c) and 19901):

Hollywood Park Casino:

Century Gaming Management, Inc.
Leo Chu, Shareholder
Ivy Chu, Shareholder

Commission Meeting Minutes of October 25, 2012

Comments Received From:

Keith Sharp
Harlan Goodson

Action:

Upon motion of Commissioner Schuetz, seconded by Commissioner Conklin and unanimously carried in a vote by roll call with Chairperson Shimazu and Commissioners Conklin, Hammond and Schuetz voting yes, the Commission approved the Settlement Agreement which enables Century Gaming Management Inc. to terminate the sublease agreement with Hollywood Park Casino Company, Inc. (HPCC) and thereby reverts all cardroom assets and personal property back to HPCC within 120 days.

B. Consideration and Possible Action Regarding Asset Purchase Agreement, Lease Agreement and Trademark License Agreement between Hollywood Park Casino Company, Inc. and LAX Property, LLC (Business and Professions Code sections 19824(c), 19850, 19852, 19852.2, 19853, and 19901):

Hollywood Park Casino:	LAX Property, LLC
	Eric Swallow, Sole Member

Action:

No action was taken by the Commissioners.

5. Kelly's:

A. Request for Approval to Withdraw Application for State Gambling License (Pursuant to Business and Professions Code section 19869 and CCR, Title 4, section 12047):

Kelly's:	Blamey, LLC
	Richard Shindle, Member
	Tracey Kennedy, Member
	James Mullins, Member
	Kerry Mullins, Member

Comments Received From:

Bob Lytle
Tony Keslinke
Jennifer Henderson, IGLS
Joe Jacob (via telephone)

Public Comment:

Richard Shindle

Action:

Upon motion of Commissioner Schuetz, seconded by Commissioner Conklin and unanimously carried in a vote by roll call with Chairperson Shimazu and Commissioners Conklin, Hammond and Schuetz voting yes, the Commission approved the request to withdraw the state gambling license applications for Blamey, LLC, Richard Shindle, Tracey Kennedy, James Mullins and Kerry Mullins, without prejudice.

Commission Meeting Minutes of October 25, 2012

B. Consideration of Revocation of State Gambling License Pursuant to Decision and Order Issued September 22, 2011, in OAH Case No. 2010050095 (Business and Professions Code sections 19824, 19825, 19930 and CCR, Title 4, section 12554):

Kelly's:

Albert Cianfichi, Sole Proprietor

Comments Received From:

Tony Keslinke

Jennifer Henderson, IGLS

Action:

No action was taken by the Commissioners.

6. Application for Approval of Initial State Gambling License (Pursuant to Business and Professions Code section 19851 and CCR, Title 4, section 12342):

Merced Poker Room:

Tongtoua Yang, Sole Proprietor

Action:

Upon motion of Commissioner Conklin, seconded by Commissioner Schuetz and unanimously carried in a vote by roll call with Chairperson Shimazu and Commissioners Conklin, Hammond and Schuetz voting yes, the Commission approved the initial state gambling license for Tongtoua Yang through October 31, 2014 with the removal of the temporary conditions noted below:

1. *The temporary initial license takes effect on the date that the Commission approves the request and expires October 31, 2012. If more time is needed to complete the background process, then the temporary state gambling license can be extended for an appropriate amount of time after consultation with the Bureau.*
2. *Issuance of a temporary license does not obligate the Commission to grant a permanent license. Issuance of a temporary license does not create a vested right in the holder to either extension of the temporary license or to a regular license.*
3. *Issuance of this temporary license does not in any way change the legal requirement that the applicant bears the burden of establishing that he/she is suitable pursuant to Business and Professions (B&P) Code section 19856(a) for a regular license.*
4. *Issuance of this temporary license does not change the license qualification requirements of the Gambling Control Act, including but not limited to B&P Code sections 19856, 19857, 19858, and 19859.*
5. *The applicant has pending applications for regular state gambling licenses. A regular license may or may not be issued, depending upon the results of the complete background investigation and upon the conduct of the applicant and its employees during the term of the temporary license.*