

ORDINANCE #2013-02

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF AMERICAN CANYON PROHIBITING THE ISSUANCE OF PERMITS,
LICENSES OR APPROVALS FOR CONSTRUCTION, ESTABLISHMENT
AND OPERATION OF COMPUTER GAMING AND INTERNET ACCESS
BUSINESSES ON AN INTERIM BASIS**

WHEREAS, in the City of American Canyon, one "internet café" offering promotional sweepstakes has opened, and the City has received inquiries from other potential business operators; and

WHEREAS, internet cafes which sell internet time or phone cards in conjunction with a promotional sweepstakes may be illegal in California as determined by the State Attorney General. More specifically, computers that offer sweepstakes generally described above may be illegal "slot machines" or devices prohibited by Penal Code section 330b, subdiv. (d); See also, People ex rel. v. Pacific Gaming technologies (2000) 82 Cal. App.4th 699.C; and

WHEREAS, it is expected that there may be future Internet Cafes that offer sweepstakes or similar facilities that may want to operate in the City and may have the potential to further compromise the public health, safety and welfare of the community; and

WHEREAS, Government Code Section 65858 provides for the adoption of an urgency interim ordinance prohibiting any use that may conflict with a contemplated planning or zoning proposal provided that there is a finding made that there is a current and immediate threat to the public health, safety, and welfare; and

WHEREAS, the City Council of the City of American Canyon seeks to block internet cafes and similar uses from proliferating while the Community Development Department is studying the issue; and

WHEREAS, the establishment of internet cafes or similar facilities in the City of American Canyon presents a current and immediate threat to the public health, safety, and welfare in that such facilities could result in problems related to hours of operation, late night loitering, and parking, and also subvert the zoning amendment process by allowing land uses contrary to planned policies.

NOW, THEREFORE, the City Council of the City of American Canyon, ordains as follows:

SECTION 1: Moratorium. In order to protect the public health, safety and welfare and pursuant to the provisions of Government Code section 65858, a 45-day moratorium is hereby placed on the following:

a. The establishment, expansion, or relocation of Internet Cafes or businesses offering related or similar services, and the issuance of a land use permit or entitlement or permit of any kind allowing the establishment, expansion, or relocation of Internet Cafes or business offering related services.

b. For the Purposes of this Ordinance, "Internet Cafe" shall mean any room, store, building, or other place in which the business of 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. Internet cafe is synonymous with a personal computer ("PC") cafe, Computer Gaming and Internet Access Business, cyber cafe, 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 is engaged in, carried on, or conducted.

c. "Public Use or Internet Learning Center" shall mean an establishment that provides computer access which is operated by the City of American Canyon, 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 any compensation in any form on that school tuition.

SECTION 2. CEQA. The Ordinance is not a project within the meaning of Section 15378 of the State CEQA 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 CEQA the exemption contained in Guideline Section 16061 (b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 3. 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 a 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 or portion hereof, irrespective of the fact that any one or more sections or portions be declared invalid or unconstitutional.

SECTION 4. 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 4/5ths vote of the American Canyon City Council, and shall thereafter be of no further force or effect unless after notice pursuant to Government Code Sec. 65090 and public hearing, the American Canyon City Council extends this Ordinance, and the interim zoning regulations adopted thereby, pursuant to Government Code Sec. 65858.

SECTION 5. REPORT. Ten days prior to the expiration of this Ordinance, or any extension thereof, the City 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 6. 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, all as specified herein.

SECTION 7. PUBLICATION. The City Clerk shall certify to the adoption of this Ordinance and cause the same (or a summary thereof) to be published in accordance with State Law.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of American Canyon on the 19th day of February, 2013, by the following vote:

MAYOR GARCIA:
VICE MAYOR JOSEPH:
COUNCIL MEMBER B. BENNETT:
COUNCIL MEMBER J. BENNETT:
COUNCIL MEMBER LEARY:

yes
yes
yes
yes
yes

Leon Garcia
Leon Garcia, Mayor

ATTEST:
Rebekah Bar
Rebekah Bar, MMC, City Clerk

APPROVED AS TO FORM:
William D. Ross
William D. Ross, City Attorney