

EXECUTIVE & FINANCE COMMITTEE MEETING
November 2, 2011

Council President Holzheimer Gail called an Executive & Finance Committee Meeting for Wednesday, November 2, 2011 at 7 PM following the Sustainability Committee, in the Euclid Municipal Center Council Chamber.

AGENDA

Ord. (376-11) An ordinance enacting Chapter 705 of the Euclid Codified Ordinances, Entitled, "Sweepstakes Terminal Cafés." (Sponsored by Councilperson Gilliam by request of Mayor Cervenik)

Ord. (377-11) An ordinance amending Section 1359.03, Entitled, "Permitted Uses", Section 1359.04, Entitled, "Definitions of Specific Uses" and Section 1389.03, Entitled, "Schedule of Required Space" of Part Thirteen of the Planning And Zoning Code of the Codified Ordinances of the City of Euclid to provide for the inclusion of Sweepstakes Terminal Cafes. (Sponsored by Councilperson Gilliam by request of Mayor Cervenik)

Members Present: Gilliam, Scarniench, Jones, Minarik, O'Neill, Wojtila, Langman, Van Ho, Holzheimer Gail.

Others Present: Law Director Frey, CS&ED Director Pietravoia, Commissioner Beno, Clerk of Council Cahill.

President Holzheimer Gail – We are here tonight to discuss internet cafes and we have two pieces of legislation on the agenda. Ord. (377-11) was heard by the Planning & Zoning Commission and sent back to Council and we sent it here to be part of the discussion with both pieces. I will turn it over to Law Director Frey.

Director Frey – We'd ask that you consider (376-11) as the first item tonight and in fact we have provided through the Council Clerk, (376a-11). Director Pietravoia and I made our best effort when we introduced (376-11) to City Council to include all of the items in it that we thought needed to be there. Zoning Commissioner Beno was on vacation at that time, he has returned and we were able to go through this with painstaking detail this week so we have before you (376a-11) which we hope to discuss and you will accept those changes and move, once you've deliberated, if you so desire move it to Council for inclusion on the agenda this coming Monday.

The purpose of the two pieces are simply the licensing piece in (376-11) and it would set the requirements for two different types of sweepstake internet café, one where it is the primary use and also then recognizing a different category or secondary use and Commissioner Beno I'm certain will talk about the distinctions to be made. Sets out the annual per facility license fee and the per machine fee and the license that would be obtained through the city with review by fire, by police, by the building department and ultimately with those reports a determination made by the Safety Director, in our case, the Mayor, as to the granting of the license.

(377-11) is the zoning piece that would include internet cafes, or sweepstake terminal cafes as a permitted use in our commercial districts U4 & U5 districts and then would set forth some requirements in our parking chapter for the number of spaces that would be required. We know that there's been a fair amount of interest in these. There's been a significant development of internet cafes in the communities abutting the City of Euclid. Our moratorium is in place until the end of December. It is our intention to try to get this moved through this fall so that before that moratorium expired we would have effective legislation. We know that the State of Ohio is looking at sweepstake terminal cafes, or internet cafes or whatever term to describe them. We expect at some point in time although there's been no real movement on it yet, but at some point in time the State may want to take over the regulation of these devices as part of their overall licensing and regulation of the casinos, of charitable gaming events, of terminals at race tracks and the lottery. This may all get folded at some point into that and we would have some portions of our licensing left in tact would be my expectation and we would have the zoning components left in tact. We think it is important if we're going to get some legislation out there that we do it now. We want to have the licensing piece acted on prior to the acting on the zoning piece, although the Council President has indicated the zoning piece as been approved by the Planning & Zoning Commission, still needs Council's affirmation. We would like on our agenda if both of these are sent back to full council, we would like to put (376) or (376a) on the agenda ahead of (377) so that we have that licensing piece in place before we actually allow them as a zoned business. That's it for me, I don't know if Director Pietravoia or Commissioner Beno has additional opening comments.

Councilwoman Scarniench – Mr. Beno when you were putting this list together with all the different cities, did you not look at the cities that are right around us that are already doing internet cafes?

Commissioner Beno – I did not assemble the table that I handed out. That was assembled by the County Planning Commission. It is primarily Cuyahoga County but there are some outside of Cuyahoga County as well.

Councilwoman Jones – Mr. Beno, I have a question about (376a-11) in Section 705.08, Procedures for Obtaining License. It has a statement that says, all applications for license under this chapter shall be in writing on a form approved by and filed with the Safety Director and accompanied by five set of required plans. Do you mean five copies or are these five different plans?

Commissioner Beno – The term set would refer to both a floor plan and a site plan. It would be five of both however they produce them.

Councilwoman Jones – Five copies of each?

Commissioner Beno – Five copies of each, yes. The reason for five is that basically this ordinance requires the Safety Director to route the drawings to four different offices and then would have one to retain in his office as the file copy. It is going out to be reviewed by four different people. Five is the appropriate number to have.

Councilwoman Jones – I understand the multiple copies, just reading this I didn't take it as meaning five sets of copies.

Director Frey – This is language that is typically found in our building code. I would anticipate that the applicant would be aware and if they are not, we can explain what it is exactly that they will have to submit in multiple copies.

Councilman Langman – Mr. Beno or the rest of the administration staff, how did we come up with the actual fees that are listed under Section 705.14?

Director Frey – We looked at fees that were charged in that table Commissioner Beno had provided to City Council for relative fees. We know there are communities such as Cleveland that are significantly higher than us. We know there are some communities that are lower. We recognize without having any experience in managing this type of business that our fee structure has to represent our investment or our involvement in the business. In theory we cannot charge a fee that is in excess of what our actual cost will be. As we go forward if it is council's desire to enact this legislation and we find that our fees are inadequate for the resources we have to deploy, then we would have the ability to come back to city council and amend that fee structure to represent close to our actual costs. That's what we can recover in fees is our actual cost. We think this represents a fair representation of what it is we will have to do in the review process and the enforcement process going forward.

Councilman Langman – To follow up with that Law Director Frey, so the licensing fee is really for plan reviews and investigation on the licensee, etc?

Director Frey – There's background checks on all the applicants. There's going to be verification of their business or trade entity and the employees of that. There will clearly be some law enforcement survey and activities. There's Building Commissioner review of the plans; there's zoning compliance review, fire prevention has to make that review as well. That's the five sets of plans we talked about. A lot of folks are going to have to look at those operations. Then there's the ongoing administrative component to that, an annual renewal and so forth.

Councilman Langman- Obviously we don't have any experience with it, will that be half as much for an establishment that is already in the food business, restaurant business? Or are we just saying we'll just start by cutting the fee in half?

Director Frey – We thought about that and we maybe different than most of the other communities that have a significantly higher annual fee for the business and many of them have a much higher per device fee than we do. We wanted to encourage or allow for existing businesses to get into this avenue and we thought it be best to do so is to reduce their entry obstacle if you will to get into it by reducing it to \$500. I think that's a pretty exceptionally low fee.

Councilman Langman – My final question, I know the Acting Chief is not here but do we have any data from the surrounding communities or on this list about law enforcement issues surrounding these establishments?

Director Frey – Capt. Brickman had opined when this legislation was introduced that his conversations with the communities surrounding us that they have not had issues with law enforcement. Director Pietravoia has found some out of state examples where there have been issues with robberies of facilities. We don't have in our immediate area we don't have any experience that suggests that these are going to be a problem. If they are, that's where we would be very quickly coming back to City Council saying we need to amend our fee structure.

Our fee structure is based on having no history of police enforcement activity at the establishments in the communities nearby.

Councilman Langman – I'm definitely in favor of moving forward, especially again kudos to Mr. Beno, he came up with this idea and we talked about it at the Home and Garden Show about allowing established businesses the opportunity to do this. I think that can be a nice help for those businesses. Mr. Beno, excellent idea.

Councilman O'Neill – To Director Frey, just some clarification. As I read through page six on (376a-11), 705.11, Prohibited Conduct Conditions and Sweepstakes Terminal Cafes. I just want to be clear, I'm looking at (d), it says, not allowed, permit the possession or use of any unlawful drug, narcotic or controlled substance. Are we allowing the sale and consumption of alcohol in the cafes? Can regular bars open up a café?

Director Frey – We don't have a prohibition, however the Ohio Department of Liquor Control and we've said so in here, any licensee has to operate within the guidelines of all of their Revised Code and the City Code. I don't know whether a licensee can sell alcoholic beverages. That's a liquor control issue that they are going to have to make sure they are compliant with. To my knowledge I believe they cannot. They'll have to have some kind of separate facility if you will. That may change so what we're saying instead of having to rewrite our ordinances, you're responsible licensee to comply with all of the relevant sections of the Revised Code as well as our local ordinance.

Councilman O'Neill – Not having that ordinance in front of me or law from the State of Ohio, being that the State has not acted on this at all and we are formulating our own ordinance, it seems to me they maybe allowed to have those cafes at a open container establishment.

Director Frey – I have a packet on my desk from the Department of Liquor Control where they're trying to initiate commencing a criminal prosecution at a liquor establishment that had terminals much like this. My sense from that is you cannot have the gambling devices and liquor sales in the same premise.

President Holzheimer Gail – In the chart we were provided there is a column that says allowance for alcoholic beverages and it says no other than in North Carolina which says yes. I'm wondering Director Frey if those other communities, it sounds like affirmatively put something in their ordinance that there would not be. The request would be could you get a determination from the liquor control board prior to us acting on this?

Director Frey – We can try and find out from liquor control. There is a little bit of tension between liquor control and the enforcement of, under the liquor license, any perceived gambling at liquor establishments. There's been a real tension over the last number of years on this issue. I'm not sure I'll be able to give you a clear answer. I will make my best effort to get a determination from them.

Councilman Gilliam – Director Frey, Councilman Langman had asked a couple of questions regarding the actual registration fees of \$1,000 and \$500 for accessory use. My only concern is while we're trying to be the least restrictive which is a good thing in terms of business, are we possibly putting ourselves in a position for a lot of these other particular entities in other municipalities to try to move into Euclid which means that we could have an extreme overflow or an influx of businesses trying to come in. That's my concern, \$1,000 and \$500 seem very low in comparable cities. I'm not trying to go to the entrance fee of \$5,000 for new businesses or even \$2500 for accessories, but my concern is we might be in a situation where individuals, entities, companies, may all try to come to Euclid because we're very close to some of these other demographic areas where they are thriving and we have a lot of open retail space and landlords if they're allowed to put those in, they could possibly put in 1-2 based on how we proceed with the zoning. My concern is, was there any consideration that \$1,000 or \$500 was just too low? Or was it just that this was the most accommodating considering we had no prior experience in this particular field?

Director Frey – To answer in part and perhaps Mr. Beno or Director Pietravoia will have some additional comments on that, but to state what I stated earlier, we can't charge more than we can reasonably justify as a fee. The fact that other communities have charged considerably higher fees is an issue that they have

to address if challenged. I want to be careful as to what we list as a fee and our ability to support our actual cost in arriving at reasonably close to that number.

Secondly we talked about the fact that we don't have distance restrictions and I know that maybe a concern on part of some members of city council. The marketplace has got to come into bear there. If two operators want to line up right next to each other, much like the drugstores do, there's either enough business to support the two of them or there is not and one of them will soon go away. I think that's what will happen with these, whether these are supplanted by the race tracks or the casino in downtown Cleveland, may or may not be the case. I don't know, I don't have certainly that kind of experience. But I think these operators are savvy enough to know if they're going to make their investment in equipment, they're going to do some market study to determine that they have adequate business. If operators find Euclid to be a better location than Cleveland because our fees are considerably lower than Cleveland's maybe Cleveland has got to look at what their fee structure is and whether it is realistic. My guess is that there's enough investment in these operations and they want to remain close enough to their public that they'll spread themselves out. We think the market should drive that, not us.

Councilman Gilliham – When you use the word challenges, do you mean legal challenges from particular operators?

Director Frey – No I'm suggesting that the cost is pretty substantial to get into the business I think. The cost of the equipment and so forth and the software licenses are probably substantial in addition to the rent and any renovations that are needed.

President Holzheimer Gail – Do we have any idea what our neighboring communities, South Euclid, Richmond Hts., Wickliffe?

Director Frey – I have Richmond Hts. legislation here and that number was higher than ours I'm pretty certain. Yes, \$5,000 is the annual fee and \$500 per device per year is the Richmond Hts. fee. I don't know the other communities.

Councilwoman Minarik – Following up on Councilman O'Neill's question, a restaurant that serves alcohol, if the terminals are in a different section of the restaurant, from what I'm hearing, as long as they leave that area and wander into the restaurant/bar area they can drink, is that how it works?

Director Frey – I will try and find out, I'm not sure. I'm not sure of how restrictive that is. I believe in Eastlake there is a facility that has both a bar/restaurant next to the internet gaming facility.

Councilwoman Minarik – A separate structure?

Director Frey – It is the same structure. I don't know how separate separate is. We anticipate there would have to be some separation, some identified there's an age restriction, the purchase of alcoholic beverages would not occur in this particular area, maybe it is a different part of the facility walled and door separately, I don't know, we'll try to find out that information.

Commissioner Beno – The ordinance we're proposing does not have the city involved in any enforcement in that area. In other words, what we're saying is, if you have an accessory use license, what we're requiring is a partitioned wall, basically for age purposes, not to regulate drinks or food or anything else. Basically an age separation for the customers and defining the area where minors are not permitted. If an establishment has both adults and minors only the adults are allowed to use the gambling facilities. It is not about the drink in terms of our regulation. State of Ohio may feel differently but then it is up to them to enforce that.

Councilman O'Neill – Another question I had regarding the alcohol consumption. Can you also find out when you're doing that research if alcohol can be purchased closed container and then brought into the facility, not necessarily sold, but can they bring it in and consume it purchased offsite?

Director Frey – I'll try and find out.

Councilman O'Neill – Now is the time to ask the questions and get everything clarified.

Councilman Van Ho – This is to whomever wants to answer. We did not change and put a 500 ft. buffer in between these places and schools or churches, is that correct?

Director Frey – We did not, correct.

Councilman Van Ho – I'll have to vote against this because I don't see that we should have this close, I'm not worried about the crime or anything else Commissioner Beno, I am more worried about the influence of kids walking by and I think 500 ft. is the buffer for a bar, it out to be a buffer for gambling establishment from a church and from a school. I've read through most of this, it seems well organized but I can't vote for it if we can't keep it way from schools and churches. That's all I have.

Director Pietravoia – It really is a local policy issue to make that decision. We tried as we look at the other communities to make a judgment what we thought Euclid and our city council would be comfortable with. We hear you loud and clear but as a whole we need to decide if we feel that distance requirement is needed or not.

Councilman Van Ho – I don't see that this requirement would be harmful to the industry because we're not saying you can't put it in the north side of town or the south side, east or west. I'm just saying I don't want it within 500 ft. of a church or within 500 ft. of a school which leaves a whole lot of places around this town to put these things. I just don't see that our children should be having to walk by there, I may even go in and try one of these places, but I don't think we should be setting it up that our kids are walking by gambling institutions. I don't think that most churches would be in favor of gambling and therefore why are we putting in theory right next door to a church. I don't see that this is too restrictive. All I'm saying is out of six square miles you can't put one in 500 ft. of a church or school. I understand and I don't have the votes to stop it but I will vote no on everything related to this.

Councilman Langman – Director Frey, to go back, everybody knows that these internet cafes are really designed to gamble, so why hasn't the State stepped in or the Courts stepped in whether this is permissible or not?

Director Frey – There have been some court rulings that have described these as games of skill and hence not gambling under Ohio law. There have been various other attempts to have them defined outside of the area of gambling. I think the reality is they would have virtually no patrons if there wasn't some gambling component to it.

Councilman Langman – You mean to tell me no one would go in there and use their fax capabilities or internet capabilities, this is shocking.

Director Frey – We all anticipated and part of the reason why I was certainly in favor of the moratorium to be put in place was to give the State of Ohio the opportunity to make a decision that would be uniform throughout the State. So far they have chosen not to do so. As this Council is well aware, you have every community that touches us with internet gaming facilities in them. Here we sit and I sense from city council that is has been in our determination that until or unless the State of Ohio is going to make a pronouncement of statewide impact that we ought not be the hold out that says we're not going to allow it in our community and that's clearly council's call at this point.

Councilman Langman – Again, to be clear for the folks that are watching at home. There's no cash pay out for whatever you gain through participating, is that correct?

Director Frey – I don't think that's correct. I think there is some cash pay out at these facilities.

Councilman Langman – So how does that really differ from the casino that is being built downtown?

Director Frey – Probably not any different than the casino that is going to be built.

Councilman Langman – I'm sure the State will come back soon and put their own stamp on all of this. Thank you.

Councilman Gilliam – Director Frey, once again Mr. Langman and I think on the same thing. Legally the State hasn't deemed this as being a gambling venture, correct?

Director Frey – That's correct. There has been a couple of court decisions that have held that these are games of skills and not games of chance. I frankly think that's a silly distinction but it is a distinction that has been attempted to avoid the Ohio's prohibition on gambling.

Councilman Gilliam – Based upon the letter of the law at this point in time, it was stated before in this meeting that we can go back as council members and change to any inaction that the State, excuse me, action that the State imposes upon these particular fields. I'm in support of this. I don't feel at this point in time we don't need to have the 500 ft. because it is not gambling. I know a lot of older convenient

stores gamble in the sense of having all those scratch offs and tickets. I don't think that it really corrupts society to that extent.

I think this is decent legislation. I still hedge against \$1,000 and \$500 for accessory and \$30 per device, but I'm not going to let my personal feelings enter in the way if Council feels this is appropriate. I'm comfortable with this legislation. I think it is long time done. I know there's many residents who leave our city and go up Chardon Rd. in buses and cars, people in my neighborhood. There is a husband and wife couple who live on Chardon Rd. who own one in Cleveland and they wanted to buy in Euclid. I think we need to catch up. My only concern was \$1,000 and \$500 because I didn't know whether or not we would be allowing a huge inclusion of other municipalities trying to expand Euclid that's causing unintended consequences where we have too many oversaturated by the particular casinos. Those are my comments, thank you.

Councilman O'Neill – Just a comment on Councilman Van Ho's statement. I respect the councilman's reasons for having a 500 ft. buffer, but in observation on my part is that churches have bingo, schools have night at the races, they have all kinds of gambling, booster clubs, which some parents of the kids are there but it is gambling no less. I don't see how this can have a negative impact. I don't gamble myself, I was for the one year moratorium only because we needed, hopefully the State was going to come up with a definitive answer as to how to regulate them which they haven't so. I think the City of Euclid has probably lost enough money so it is time to, I believe, get behind this legislation and just keep an eye on it. If we need to tweak it, make some amendments to it regarding fees if it requires more attention and more manpower, we'll make the adjustment. I'm ready to move ahead with it and let these folks open up and create some jobs and some tax base for the city. Thank you.

Councilman Wojtila – For the communities that do have the monthly per device, do you think they actually bill them monthly and they submit payment monthly? Or is it rolled into a semi-annual or annual basis?

Director Frey – My sense is they probably pay that in a single payment but we can try to find out. I would think administratively that would be a pain.

Councilman Wojtila – In regard to Ord. (376a-11), this being a whole new section, we do have defined terms in the first, under definitions, 705.03. One thing that I always like is if it is a defined term in that section, as it is used throughout the rest of that Chapter, that defined term be capitalized just like it is in the definition section. When I was reading 705.08, which talks about the procedure for obtaining a license it was first owner and owners, then it started talking about 25% or more. That doesn't really make sense unless you go back to the Definitions and see the definition of an owner is a person that has 25% stake in that business. It is really more of a style thing than anything but I always prefer that defined terms like we have in A-L of 705.03 be used as they are used throughout the rest of the chapter that they be capitalized as well.

I have one other comment. We didn't mention this or maybe we did and I was busy reading and didn't hear it. Other communities around us, not all of them have an annual fee or a monthly per device fee. Do we know that in Lake County if there is some communities that just don't regulate or license this type of operation?

Director Frey – We know that Richmond Heights has both the annual facility and an annual per device license. I don't know because this doesn't appear to have covered Willowick. I don't know if I've seen one of these in Wickliffe, there maybe. Willowick we know has a couple. Eastlake does.

Councilman Wojtila – If you could look into, I'd be interested. We're looking at our fees being lower than those on the table but there maybe some communities that just don't license it so we'd be higher than them.

President Holzheimer Gail – I noticed the date on that table was from January. It would be interesting to see if there has been an updated list. I share the concern that if it is too low will we get, and I understand market forces will dictate. I understand that we need to be able to justify the fee. But compared to some of these other fees, we are considerably lower.

Councilwoman Scarniench – That is exactly what I was going to say, I think the fees are too low. I would like to amend it, if I can do that, 705.14, license fees A, I would like to amend the \$1,000 per year to \$2,000 per year. In B, change the \$500 to \$1,000 a year. With all the work that goes into this, our Building Commissioners, everybody that has to be involved with this, to me just \$1,000 doesn't make any sense. I would assume the way this is written is they're paying this whole thing up front when they're paying the license fee, they're paying everything up front, at least I think that would be correct.

Director Frey – One other option we're talking about here is to change the per device fee, as opposed to changing the initial entry fee for the facility itself. Again, we have to be able to justify our investment of time and resources in arriving at those fees if we're challenged. Unless other communities are investing an awful lot more time, I'm not sure how they get to that calculus. It is up to city council we will follow your lead on that and I'll make the effort to have the information on the neighboring communities on our council meeting. If you're going to amend this tonight then I guess you will and we'll report nonetheless at the council meeting if this is sent there, as to what those fees are in the surrounding communities and if any of the communities allow them but don't have fees at all.

Councilwoman Scarniench – I'll take the amendment back and we'll wait until Monday. If you could have that information for us for Monday that would be great. Richmond Hts. is charging \$5,000; what is it? You've got the Building Commissioner, they have to come to Planning & Zoning, whatever they're doing \$1,000 is gone like this, really quick. If you can get that information, I'll just hold off until Monday to make the amendments.

President Holzheimer Gail – Just a couple of typo corrections. On page 2, 705.04 talks about a computerized sweepstakes device license. Is that different from the café? Does that talk about one specific terminal? The first line doesn't read properly in my opinion, no person shall for purpose of, use any computerized sweepstakes. I'm not quite sure, there is either a word missing or the comma needs to come out. I guess my question is, computerized sweepstake device, is that talking about something other than the terminals? Are there other types of machines or equipment that would be considered computerized sweepstake devices?

Director Frey – We have a definition of computerized sweepstakes device in our definition section. You're suggesting we didn't carry that through on one of the sections?

President Holzheimer Gail – After that it just talks about the terminal café and terminal areas. The license is required for the café or the area and the per device fee is something separate?

Director Frey – Yes, your understanding of that is correct. There is an annual fee for the facility and an annual fee for the device. There would be depending on the number of devices, there would be a multiplication of that per device fee as part of that overall annual cost. We were trying to recognize the accessory use is the terminal café, sweepstakes café area versus the facility where it is the exclusive use or nearly so.

President Holzheimer Gail – I guess then that first line needs to be cleaned up grammatically. I can give you my marked up copy, there were a couple of differences where we have periods and semi-colons and things like that.

Director Frey – Thank you in all of our many runs through this, some of this we miss, thank you.

Councilwoman Minarik – To Director Pietravoia and Mr. Beno, how did you come up with the \$1,000? The reason I ask that is if we can only charge what's fair, I'm thinking we can leave the \$1,000 as it is if you justified why you came up with that amount and it can always be changed in a year after we see how much more manpower maybe required to look after these cafes. How did you come up with \$1,000?

Director Pietravoia - I think you just summarized very succinctly what our approach was. We basically tried to determine how much time and effort will be involved and by how many people that will be involved in the licensing process. We thought initially \$1,000 was a reasonable estimate of all the folks combined and how much effort would be involved. We don't do a lot of these but we do have some similar fees in our code and they're always estimates initially, they're never perfect estimates. I agree if we find it is taking an exorbitant amount of time, a lot more than we anticipated, then we would be coming back to Council and asking to increase the fees.

Councilwoman Minarik – That's what I would think because we've done that with housing. When the man hours increase, we increase the fees to cover the cost.

Director Pietravoia – Correct. Also earlier when we were talking about, we will look at what the other communities are doing but when we were talking about whether it is an increase in the annual fee or per device, I guess just kind of a common sense type of approach was that if there are more devices in the facility that means it is generally a larger facility and they may have more work involved in reviewing the plans and the effort to get the license approved. That's where we thought it might be fairer, if there wants to be consideration in increase the fees then maybe its either an increase per device or a some communities actually charge a fee monthly as Councilman Wojtila pointed out rather than annually.

Right now we have \$30 per device annually, which again is a modest fee compared to what some of the other communities are charging.

Director Frey – If I could just jump back on 705.04, I think what we were attempting to say is, no person shall use any computerized sweepstakes device in the City without first obtaining a license. That's what we were. The use of the sweepstake internet device without a license is prohibited.

President Holzheimer Gail – By the operator.

Director Frey – Yes.

President Holzheimer Gail – Not an individual person coming into the establishment.

Director Frey – The device is to have the license on it. So no one should use that device that is not licensed. I doubt we're going to drag the person off as opposed to the operator, but the point is you're not to use it without it being licensed.

Councilman Van Ho – Could one of the administration figure out if money exchanges hands because I have not been in one of these and it sounded like the Law Director hasn't been or doesn't know the rules. How can you come up with a fee to do anything if you can't follow the money? By Monday night I think one of the three of you could venture into one of these places and find out how they work and if they pay money out, or is that unreasonable?

Director Pietravoia – I have heard anecdotally but not from first hand observation that some of the establishments in area communities are in fact paying out cash prizes. You earn points and then those points are converted to cash when you're ready to cash out.

Councilman Van Ho – I'm asking for me and for the people who are going to be watching from the audience or on the television, explain what it is because I don't know.

Director Pietravoia – I think what we're going to find is depending on the operator and the software that they license, that will determine how they're operating whether they're giving gift cards out as prizes or cash. We've even been told in one case they set up an area where you can exchange points for merchandise. I think we're going to find, we'll try to confirm it, but we're going to find there's a variety of ways the cafes are operating. I think what it boils down to is locally do we want to have any restrictions on whether it is a prize or cash. Right now it is not written with any restrictions it just allows them to operate however their particular software license requires.

Councilman Van Ho – I don't care whether it is money, prizes or whatever, but I think the citizens are at least entitled to have an idea of what is going to be going on down the street from them.

Director Pietravoia – We will confirm to the best of our ability. We have a list of about a dozen individuals that have inquired and have been waiting for Euclid to pass regulations. I suppose one approach would be to try to reach those individuals and see how they would intend to operate it if they opened up a business here in Euclid.

Councilman Van Ho – I like the other council people have a question, if we're going to license these things, I can't imagine that Richmond Hts. overhead is higher than ours, or that their enforcement costs per machine are going to be higher and they're charging \$5,000 and we're charging \$1,000. Once again, I don't think we're putting high enough fees on it.

Director Pietravoia – I don't have any proof one way or the other of this, but I think some communities are not being as careful in following the standard of the law that basically says your fees should cover your expenses and perhaps see an opportunity to raise some revenue through the licensing of these types of establishments. That doesn't mean it is right and I would be surprised because we do have reasonable fees here and relatively average cost for our employees. I'm hard pressed to see how you get to that \$5,000.

Councilman Wojtila – I also want to say that we appreciate all the work that has gone into this. I think we've taken prudent steps along the way and I'd like to compliment all of you on the work that you've done on this.

Councilwoman Jones – Director Frey I just want clarification, it doesn't really say in the ordinance on page 8, 705.14. I was with the assumption that it was going to be \$30 per device per month. I think you made a statement, per year. Is it per month or per year?

Director Frey – We did not make a monthly fee; that was a per year per device.

Councilwoman Jones – Why would we not charge the \$30 per month per device?

Director Frey – It is the same discussion we've been having, our need to be able to establish that's a reasonable fee. We're going to find out from the other communities what their fee structures are. You have the chart that shows there's a wide variety.

Councilwoman Jones – I was looking at the others that you gave this chart for and most of the other ones, I think there's one in here that's a yearly fee but all of the other ones are a monthly fee which are about \$30 a month.

Director Frey – I understand, your point is well made point. We were trying to establish fees that we could support. We thought that was an appropriate fee. We'll try to get the information from the other communities and report that to Council for your consideration if you send this piece there for Monday night.

Director Pietravoia – I think I'm saying basically the same thing as Director Frey is, but we were hard pressed to see how, after you read the original plans and you charge that \$30 per device that during the course of the year, if nothing changes or not adding new devices, not subtracting, what would we be doing to cause us to go back and charge an additional monthly fee each month of the year. I'm not quite sure how the other communities are justifying it but we were trying to be direct in determining what we thought our costs would be to actually review and oversee the operation of these establishments.

Commissioner Beno – In regard to the fees, we're comparing this to other, I'm looking at what other communities are doing, but we have fairly similar processes in regard to Certificate of Occupancy. Our Certificate of Occupancy fee for example is \$50. This is dramatically higher. We do understand there are some significant potential costs in terms of the field monitoring by the safety department and there are costs in terms of running those criminal background checks which are mandated. But to go more than, the math is pretty stark here in terms of doubling, tripling what we've proposed. It doesn't seem to be really, clearly based on actual costs to go dramatically higher than what we're proposing.

Director Pietravoia – I think he does raise a good point, in my comments I was thinking more about the initial review by Building and all the internal departments. But if during the course of the year there were problems in an establishment and it caused the police or the fire department to go back there regularly, ultimately that should be covered by the fees. If we find through experience that is happening on a regular basis, then I do agree that we would need to either increase the terminal fee or the annual fee for the business for both. We were hard pressed initially to justify much higher fees than what we proposed. We'd be happy to consider a higher, I think we want to be cautious not to go to extreme from where we started. We probably could reasonably justify maybe a little higher fee than originally proposed.

President Holzheimer Gail – They would be subject to the nuisance abatement ordinance as well if there were continued problems and the police were called out more than two times, correct?

Director Frey – That's correct yes.

Councilwoman Scarniench – I was going to thank Mr. Beno because you did a great job with this. I know this was a hard pressed and you worked really hard and researched everything so that it is a good piece of legislation. My last question would be, once the establishment opens, aren't we going to have people who regularly go in there to make sure that they don't have any more devices than their license said. I would assume we would be doing that monthly or something, just to make sure everything is up to snuff. We never had anything like this but many that's where these other cities are justifying the money. This little bit of money to me means, and I don't know without going back and looking at P&Z, how many of these can be put in a row. I can see a whole lot of people wanting to come here and open these up and we could have lines of them because they are going to be so cheap that they'd be moving out of the cities they're in and come here. We could become the internet café Mecca, I don't know. It just seems like it is just too cheap. I will wait until Monday and see what you come up with from the surrounding cities. I thought it was Richmond Hts. that we had heard was talking about changing their fee to \$30,000 a year; I think it was Richmond Hts., I can't be sure. So it is like, okay, you've been doing this for a little while now, so what is it that we don't know yet. I would be interested to see what these surrounding cities are paying.

Councilman Gilliam – The question for me is not what rate do we set, but what are they willing to pay. Obviously Cleveland has been able to get individuals to pay \$10,000 and \$50 every month and they seem not to be complaining. I talked to one investor who owns an internet café in Cleveland and the initial investment was about \$80,000. They had no problem paying the monthly fee after investing \$80,000. Their return on investment is coming back quite fast.

I don't dispute that you want to have some level of trepidation as far as issuing these fees, but I misunderstood the \$30 per device. \$30 per year annual makes no sense to me at all and I'm the sponsor of this and I'm just saying it should be on a monthly basis at minimum just for the simple fact that all these other communities have existing internet sweepstakes café and I know for a fact the one in Richmond Hts. has not complained about any cost that he has associated with this because this individual owns a bar and owns another particular building and he's quite happy paying the fees and dealing with the quote, unquote issues.

I don't think that we can institute this particular type of business, whether it is gambling or not, for some people it is not gambling by the State, but this business does attract people and it does attract revenue. People are living off this and doing extremely well. My only concern is that some of these fees should be utilized toward staff for administrative costs. If that sounds oppressive, we're still under the mark. Vermillion, \$2500; Richmond Hts., \$5,000; Cleveland, \$10,000; Elyria, \$5,000. We're anywhere from 80-90% less than any other surrounding communities. I understand that we're behind the eight ball which means that we may want to do something to entice people to come here, but I'm just not comfortable with \$30 per year because are we going to maximize how many devices, even if they have ten devices, that's only saying they owe us for ten devices. Some people have 40 devices in their particular entity. That's something that I have a concern about. We're going to charge them \$1,000 and \$30 annually and they're going to have 40 devices, potentially bringing in about \$6,000 a month; let's get a loan. The reality of it is, that's what is going to happen and I don't want to be in a situation where we're just giving away the opportunity and letting them earn the opportunity to be here. We passed a moratorium. I appreciate the work that is being here but I'm not comfortable. The more I think about it and the more I realize after talking to one investor, this investor had \$80,000, moved to Cleveland, has no issue, pays it because they are making money. That building is right down the street from Indian Hills apartment complex, the southwest corner and people from Euclid are driving down Euclid Ave. to make it there.

Director Frey – If it is council's pleasure to make the amendment tonight, you're going to do so. If you want to wait for us to try and come up with the data from the surrounding communities, we will do that. We've said it and we've said it at nausea here, we cannot by law charge more than our cost. We'll try and get a better idea of what these other communities actually are putting into it. I don't know what else I can tell you. We'll have the information for Monday if we can get those communities to provide us the data.

Councilman Gilliam – I would appreciate waiting until Monday before any amendments are made. Thank you.

Councilwoman Minarik – If I'm following the logic of my colleagues, what you're saying is because these cafes are making money, we should tap into that profit. Following that logic then, as Lincoln Electric makes more money, we should find ways to grab some of their profit share. That sounds what you're saying. We cannot make a profit, we're already charging them a 2.85% profit tax. They will distribute revenues to the city. If that's what you're saying is because they make money, we need to jump in on what they're making, we cannot make a profit, we don't know what it is going to cost us to oversee these. We are starting low because that's what we're assuming it is going to cost. If you all want to, I don't think that's a business friendly atmosphere because of the message it sends to the community is, to the business community is, come into Euclid and as soon as you start making a really good profit, we're going to find a way to charge some of that above and beyond the profit tax that we're already charging you. That's what it sounds like you're telling me.

Councilman Gilliam – That is not my intent, I'll be more clear. We do have 2.85. But if you were a business woman and you had a chance to pay \$1,000 or \$10,000, where would you go? I'm not trying to tap into businesses' profits, we need to have individuals regulate these. What I'm hearing from the administrative side is that we're just trying to basically not exceed our particular cost to have these businesses in the city. My concern is like any other business, this has the potential to be a problem even though it has not been a problem in other communities, to our knowledge according to Capt. Brickman. All I'm asking for is to increase it to maybe \$2,000 which is a 100% increase, which is still quite less than many of our surrounding communities which has a smaller population which is isolated from many of the highways and accesses that we have. It is not a desire to dip into the profit, it is a desire to make sure that we have funding to pay our staff and to pay for our resources to utilize in case of. That is not necessarily gouging into the profits, it is preventative measure and you and I both know I

don't like 2.85 since 1994 and I wasn't even here. The reality of it is, I'm just pointing out, I don't intend to say okay, you make a profit let's beat you up. What I'm saying is, in order to better serve the business community, to separate the good from the bad, to ensure the safety of our residents, to ensure the safety of our patrons and to make sure that they have a reasonable, comfortable environment for the business to operate, \$2,000 per se would not hurt you in the area of trying to make sure that we have proper enforcement and proper resources available to you. That's my only concern, it is sort of like an insurance policy at this point, that's what I'm saying. If you need it, it's there; if it is not we thank, continue to do good business.

Councilwoman Minarik – I do believe that the administration over there has a good handle on what it costs to do this type of work in their professional estimation. They do this much more than 40 hours a week. They have determined this is a fair price. If they're wrong, we can raise the fees, that's all I'm saying. This is their best guess estimate. That's what they're being paid to do and I believe they've done a good job at that. Thank you.

Councilman Van Ho – Unless there's some emergency that we have to pass this at the next meeting, I think we should hold it off. It doesn't sound to me like we're ready to put this forward because I haven't heard any back up on why these fees are reasonable. Maybe I'm being naïve but if everybody else is charging much more than this, they must know something that we don't and I think we should take our time rather than have to come back later and say oh we goofed, let's raise it to \$5,000. I would say let's hold it until the meeting after the meeting of the 6th and get the data so that everyone knows and we know what we are voting on and we even know if the patrons are going to get cash and various little details like that.

Councilman O'Neill – Well we've waited a year, it has been a year and we've lost a lot of revenue in a year. It was a good wait. I'm ready to proceed on this at the next meeting if the majority of my colleagues on Council are. To Director Frey, with these fees that are being charged in other cities and let's say we charge what Richmond Hts. was charging, potentially could those business owners come back and sue the city for excess fees?

Director Frey – In the case of all of our fees, there have to have a rational relationship between the fee and the service provided for that fee. Anything beyond that is an un-voted tax.

Councilman O'Neill – You're saying that potentially those cities are these businesses really get their foothold and watch what is going on and start doing the research to the different cities and the fee structure and what it actually costs the city to oversee these businesses, potentially they are overcharging, potentially and they could be sued. Am I correct to understand that?

Director Frey – It maybe the case of the employees of the city of Euclid are under paid. There has to be a rational relationship and anything beyond that rational relationship creates some level of liability for the community that charges it.

Councilman O'Neill – We're kind of beating this to death, but I think the Director will bring this to the meeting on Monday. I think we should proceed with it on Monday. If we need to up the fees, I don't have a problem with taking a look at that and maybe review it in six months and see the impact or give it a full cycle of one year, see what the impact is to the city as far as do we need to inspect them on a routine basis. I'm sure the stickers for the machines, to license the machines at least once a year so somebody from the city would potentially be going in there, counting machines, whatever that process takes. There is still some unknown here, I get that, I understand that but I don't think we should delay this any longer with respect to my colleagues. I think we should move ahead on Monday and vote this in and get moving and bring some business and jobs to the city.

Councilwoman Jones – I'm not saying we should increase the fees just because the business will make a profit. I think we need to have an understanding, what is included in those fees or what is included in the servicing of this business. Finding that out from these other establishments will be a good help. We already have this list right here from these establishments and they're charging the fees that we mentioned here and they're charging a monthly fee per device. I would like to know what is their reasoning for charging that monthly fee per device. If it comes back that they're charging hirer fees just because they can and we're charging based on what we actually servicing, then I'm okay with that. But I'd rather go into it knowing that we're charging based on what we need to charge and not necessarily charging to much but in line with other businesses as well.

Councilman Langman – I tend to agree with my colleague Councilman Van Ho. It is clear that for the questions asked the administration has to do some more research, gather some more information and it is going to take some time, clearly. If they gather it by middle of the day Monday or late Monday, that really doesn't give anybody any time to review it and then we'll have this same discussion on Monday for an hour or so. Again, we have had the moratorium on, it makes sense to do it prudently that way we can discuss it instead of debating and auctioning of what the fees should be, much like at an auction. This way they can do the research in a deliberate way, they don't have to rush and we don't have to review it when we arrive on Monday night. I would suggest we keep it in committee, let them do their research, we can then reconvene, send it back to the council for a vote.

Councilwoman Scarniench – I would like to move it forward for Monday night but make it a first reading and then the second meeting of the month is when we would vote on it. We have to do it, otherwise it is all gone. We do it on Monday and we get the information. If we've got any questions about it we can email back and forth so we can go ahead and vote on it at the second meeting in November.

President Holzheimer Gail – I do want to allow if there's questions or comments from the public? Any final comments from the administration?

Director Frey – To the suggestion that we move it to Monday. I suppose unless the council desires to have a committee meeting that would logistically work. On the other hand, if you think it is going to require this level of discussion again before its final, then I would encourage you to leave it in committee and have that discussion in a committee setting and get it on the agenda for the 21st I guess that is. Either way, it is up to council.

Councilman Gilliham – I second council person Langman's motion to keep it in committee.

President Holzheimer Gail – Was that an official motion Councilman Langman?

Councilman Langman moved to keep Ord. (376a-11) and (377-11) in Committee.

Councilman Langman – I know whatever they come up with, we're going to have questions about the assumptions of different communities. I think it makes more sense to do it in the committee setting than trying to do it on the floor.

Councilman Gilliham seconded.

Roll Call: Yeas: Gilliham, Jones, Minarik, Langman, Van Ho, Holzheimer Gail

Nays: Scarniench, O'Neill, Wojtila

Legislation stays in Committee.

President Holzheimer Gail – It will stay in committee and the administration will work on getting a break down of what we anticipate our fees would be; a better sense from other communities at least the surrounding communities, what their fees are so we have that as a comparison. Are there other issues we want to make sure?

Director Frey – My notes indicate that we want to try and understand the relationship between these facilities and either the sale or consumption of alcohol. We want to look at the surrounding communities for fees or if they are allowed without fee. We want to find out about cash pay outs. I think that was the list of questions that Council raised.

President Holzheimer Gail – Given that we do have a moratorium, I think we need to plan to meet. The Council meeting is the 7th, the second council meeting is the 21st. We would have to meet either Wednesday, 9th; Monday, 14th; or Wednesday, 16th. We do need to plan to act on this on the 21st. We do have a moratorium in place. We don't need to pick the date now but I do want council to realize that it is my intent that we will have that committee meeting and get this back to Council for the agenda on the 21st if at all possible.

Director Frey – Just to remind council, the legislation is extinguished if it goes passed the 30th.

Councilwoman Minarik – I think Councilwoman Jones also wanted more justification for the \$1,000 so we can make sure that we're not gouging.

Councilwoman Scarniench moved to adjourn. Councilman Gilliham seconded. Yeas: Unanimous.

Meeting adjourned.

