

**EXECUTIVE & FINANCE COMMITTEE MEETING  
WEDNESDAY, NOVEMBER 16, 2011**

Council President Holzheimer Gail called an Executive & Finance Committee Meeting for Wednesday, November 16, 2011 at 6:30 PM in the Euclid Municipal Center Council Chamber.

Members Present: Gilliam, Jones, Minarik, Langman, Holzheimer Gail

Excused: Scarniench, O'Neill, Wojtila, Van Ho

Councilwoman Minarik moved to excuse Council members Scarniench, O'Neill, Wojtila, Van Ho. Councilman Gilliam seconded. Yeas: Unanimous.

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

**AGENDA**

Ord. (376a-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)

President Holzheimer Gail – We are here to continue our discussion on the ordinances for the internet sweepstakes terminal café. We did have a committee meeting on this about two weeks ago and wanted to get some additional information. I will turn it over to Law Director Frey if you would like to report any of that information and the new draft that is before us this evening.

Director Frey – We have tried to follow up on a number of the questions that were raised at the last meeting in the Executive & Finance committee relative primarily to Ord. (376). We have before you tonight a version (376b-11) based on a discussion we had with a sweepstakes internet café operator, some follow up work that Mr. Beno has done with the County Planning Commission and review of some of our ancillary information. What we are proposing to do is to add to our definition section in 705.03 by including two new definitions, one a quarterly gross net revenue report, which would require the licensee, which I see we have a typo in one of these, we'll fix that. It would require the licensee to provide to the Euclid Tax Commissioner on a quarterly basis essentially the net revenue from the operation. As we had that discussion at the last meeting, I had indicated, or I believe in the discussion we had indicated that commercial enterprises are subject to net profits taxes. This would ensure that they are reporting to the city, they're net profits if you will and we can then track and be assured that we are getting those income taxes that are due to the city. I will say that is how our tax code is drafted and complies with our requirement that our fees represent actual services provided. We want the businesses to be successful, we want them to report and pay their net profits to the city.

Second definition we added was sweepstakes software provider and it was because that is who will likely produce the information, the provider of the software to these internet based devices will be providing the software that will make those kinds of reports. They will be generated and provided to the city. That's the change in the definition section.

We have a requirement in 705.10 new section G, and it requires that quarterly report that I described in revenue. In 705.12 we wanted to in our re-reading of this you can see we removed a revocation of the license, the rationale for the revocation of the license being a twice convicted within a year's period of a violation of this chapter. What we did is we added to Section B that a basis for revocation would not require a conviction but actually a violation of a provision of this chapter. If a license holder was in violation of any of the provisions that they're required to comply with in Chapter 705 upon notice and hearing, that license to operate could be revoked and it would not require a criminal conviction. Criminal conviction for violence, gambling activities, controlled substances and so forth remain a basis for revocation; those felony offenses.

We know that Councilwoman Scarniench has suggested 1,000 ft. separation between facilities and if it is council's desire to include that, we would suggest that go into 705.13A and we would make it #8 in that section. If we want to amend to include that at some point this evening, we would go ahead and put it there. That would be part of the physical requirements of the sweepstakes terminal café. I'll defer to Mr. Beno if there were any other changes that we had made that I have failed to address.

Commissioner Beno – We also eliminated a provision which would have required a 5 ft. spacing between the terminals themselves. After talking with Chief Building Official we felt the Ohio Building Code provided sufficient regulation of the access and aisle way within the machine area, or the playing area.

Director Frey – Those are the changes that we made, we did not and are not recommending changes to our fee structure. We're recommending based on our review of our actual costs that our fee structure would remain as we proposed it and that is \$1,000 annual license for a primary use and \$30 per year per device fee. For accessory use, \$500 license fee annually and the same \$30 per device per year fee. We recognize that it is substantially different from every other community that we have looked at in our area, but are comfortable that it is rationally related to our actual costs. By my calculation looking at our current rate for a police officer first class, it would provide us between 40-50 hours a year of enforcement time per license holder. I believe that's an adequate amount for the periodic inspection that there's compliance with the license requirement and the other necessary background checks and so for that are part of our code.

President Holzheimer Gail – One of the other issues Director Frey was from the Liquor Control Board. Were you able to make any contact with them?

Director Frey – I've placed a call to Liquor Control and did not get a response. I placed a call to the Ohio Attorney General's office, I did not get a response. We've looked at the administrative code, we looked again at our ordinance, we know that any operator who is going to sell alcoholic beverages would have to have a liquor license. Our ordinance is clear that they would have to be in compliance with all other provisions of State and Local code to operate here. In looking at the Ohio Administrative Code, so long as they are not operating a gambling establishment, it appears that they could in fact sell alcoholic beverages and operate a sweepstakes internet café. I don't know of any of the internet cafes that hold liquor licenses but that is not to say that someone could not if a license was available. They would have to be compliant with our code, they would have to be compliant under the requirements of the liquor control laws of the State as those may from time to time change and it would be incumbent upon the operator to know. To have a license they would now what they have to do to be in compliance.

Councilwoman Minarik – Director Frey, if a restaurant that serves liquor decides they want to get into this business, they can't serve the liquor in the gaming area, but as long as there's that partition people can wander in and out of the gaming area, is that what you think?

Director Frey – We think so. We said it had to be partitioned off, had to be restricted age-wise, they had to be compliant with the law. So if it is equipment that is compliant as sweepstakes terminal provides something of value as I read the administrative code, it appears that would be possible, there could be both the consumption of alcohol at that site and the playing of those devices.

Councilwoman Jones – Director Frey, I know you just explained this, so the gaming device has to be separate, so an establishment that serves alcohol, a restaurant or whatever, would they be able to, a patron be able to walk onto the other side where the gaming devices are with the alcoholic beverage in their hand? How specific is it?

Director Frey – I think if they're otherwise compliant, if the establishment is compliant, yes they could do that.

Councilman Langman – Law Director Frey, do you know of any cases that are going through the court system that would help clarify some of these issues?

Director Frey – Not on the liquor control issue I'm not. There have been several cases that have tried to deal with identifying whether these are gambling devices or not. We're aware that the State has at least started to discuss the issue, I don't know the status of legislation if it has been introduced and is pending in a committee. That's part of the reason I called to the AG's office is to try to get a sense of that since it was the Attorney General who first raised the specter of state legislation. There are some cases, there was a case out of Toledo that I'm aware of. I believe there may have been a case out of the Columbus area that likewise found the devices, as long as they provided something of value that was retained by the player if you will, did not fall within the definition of a gambling device. That's the bone of contention.

Councilman Langman – The bottom line for right now is that we are on our own as far as making the appropriate regulations.

Director Frey – Unless the 8<sup>th</sup> District Court of Appeals which covers Cuyahoga County or the Ohio Supreme Court were to rule definitively, we're on our own and taking our guidance from our neighboring communities. Many of them have come to the conclusion that these are not gambling devices.

Councilman Langman – Another question for the administration based on Councilwoman Scarniench's proposed restriction. Has the administration investigated whether you get more of these establishments if your fees are lower or not? In other words, does it have any correlation with how many establishments might be in the community or not?

Director Frey – I don't have any information that would bear on that issue one way or the other.

Director Pietravoia – Part of the issue is that it is so new that there's not a lot of practice out there yet to base, the question you're asking, to base an answer on at this point.

Councilman Langman – Do we know if any of these establishments that have gone out of business for lack of business or any other reason? That would be in our immediate area of course.

Director Frey – I know that Cleveland closed a couple but it was their determination at the time that they were not compliant and were gambling devices. I don't know if I recall those organizations may have resumed operation at this point. Cleveland is now allowing in certain limited way internet cafes.

Councilwoman Jones – Director Frey at the last meeting we were discussing when we talked about the fees, we were discussing the other cities fees and what do they include in the fees that they are charging. I think one of the three of you had mentioned that you had contact with one of the other cities and find out what do they include in their fees as far as services, provisions or whatever.

Director Frey – The legislation that's before Council has been modeled after legislation that's been enacted in other communities so you have a good sense of what is required of the operators and what those communities do from a licensing perspective. We know that some of the fees have been associated with communities, I couldn't sit here and tell you that I know any way that you would rationalize those fees, other than as an effort to generate revenue for that community. We added to our mix the fees that are charged by the City of Eastlake and they're substantially more than ours. We have no indication that they do anything different than what we are proposing in our legislation from service perspective. I don't believe there's significantly more police presence than what we would envision in our situation. I don't believe there's any more code review than what we would envision in our community. If there were alterations to the building to get it to open after they receive a certificate of occupancy, those fees would be in addition to what is in here, those would be building permit fees, plan review fees. Those are all additional to what we have. I don't believe the other communities have included, we haven't seen it in their legislation that it is part of their fee structure.

Councilwoman Jones – I just wanted to make sure we were covering as much of the basis as we can since we haven't actually had one established in Euclid yet, going based on other cities it just seems like the fee structure was significantly different.

I do have another question on 705.08 (19), it says a description as to the nature and type of property or services which will be sold or supplied upon the premises. Is this in addition to the terminals or are we speaking of the terminals here?

Director Frey – To comply as a sweepstakes terminal device, there must be something of value that's provided, internet access, phone cards or something of value that is purchased by the player that is held by the player or used by the player that allows the player also then to have access to the sweepstakes games that are available on the terminal. We would want to know what that object is. There are also, many of the facilities as we are aware, provide beverages and some either pre-packaged foods or some type, and we would want to know if there is a food service component that is part of that operation. Primarily what we're looking at in that definition section is what am I buying when I go into that outfit. Am I buying office services, am I buying internet access, what is it that I'm acquiring thing of value.

Councilwoman Jones – The parking, let's say there's an internet café in a plaza that has other uses in that plaza as well. I have seen other establishments in other cities that have them in a plaza and the patrons in the plaza are using the parking spaces from the other businesses. I know there is a mention in here about parking for multi-use plaza. Would the other business owners have to designate their parking spots? How is that handled?

Commissioner Beno – Basically what this proposes is the premises will have to have a parking of one space for every two terminals in addition to the regular parking required for all of the other tenants. It is a cumulative parking requirement and the parking ratio required specifically for the internet café is significantly higher than a typical retail type of business. The overall shopping center, if it goes into a multi-tenant shopping center for example, would have to have a sufficient amount of parking to meet all of the other tenants as well as the internet café tenant in order to be located in that center.

Councilwoman Jones – That would include handicapped spots as well?

Commissioner Beno – None of the other requirements go away. This is in addition to all of the other requirements. While we're on Councilwoman Jones' questions, there was the question about the revenue generation related to the proposed fee. We do feel that having the auditable trail of cash payments into these devices will provide a significant ability of our tax department to collect additional revenues, collect legitimate taxes which might because of the cash nature of this transaction find its way not to be reported. We're insisting that it be reported and it be reported to our tax division by the provider of the back up services for the software. While other communities are including whatever they're including into their fee structure, we feel that it is more legitimate to focus on the collecting of the appropriate tax rates through reporting of the cash going into the operation, the net remaining in the operation.

Councilman Gilliam – In response to Commissioner Beno's statement by supporting the quarterly gross net revenue report which is a quarterly report, does that add to our administrative responsibilities at that point? I know that I'm supposed to submit something and if I'm an owner of a sweepstakes café, I'm going to submit something quarterly to the tax department. Does that increase our administrative costs in any way? Or is it simply have someone assigned to address this and then speculate with the tax department on what the annual income will be based on the quarterly basis?

Commissioner Beno – My understanding is that the same quarterly reports are being reviewed. This would be an additional document, very similar to a W-9 being sent out to any business transacting cash, so it would basically go into the overall stack of receipts that are being reviewed on a quarterly basis. The actual amount of increased work would be miniscule but it would be a reporting mechanism that should reflect the dollar value of the transactions going through the overall license.

Councilman Gilliam – Page 7, Section 705.13, the physical requirements. I'm looking at Section A, #6. I just want to be clear on this. It says so that at least 30 gross square feet of floor area is specifically designated for each amusement device excluding areas used for other principle uses. Then on the next page, page 8, letter B(1), it talks about the sweepstakes terminal area should not exceed 10% of the customer floor area of the main use of the premises. I'm a little hazy about this so I just want you to clarify a couple of things.

Commissioner Beno – The two sections, Section A & B in this particular case are talking about two very different types of license holders. Section A is referring to a situation where the main use of the tenant space is an internet café. Section B is referring to a typical tavern or restaurant that might have an area where a smaller number of games is provided to the patrons who would probably be there anyway.

Councilman Gilliam – I assumed that but I just wanted to make sure that I didn't misstep when I looked at this legislation because it said café area but I can clearly understand what you meant by the accessory use in that capacity. If a restaurant or a convenience store for that matter, let's look at both options, has about 10,000 sq. ft. of space for an accessory use, they can have only about 10% which is 1000 sq. ft. for machines if they were putting it in as an accessory area, correct?

Commissioner Beno – 10% of 10,000 sq. ft. would be 1,000.

Councilman Gilliam – I apologize, my math is a little slow today.

Commissioner Beno – A typical mercantile use is not being allowed to get this type of accessory license. In order to get an accessory license you have to be an assembly type of use which would be your restaurant, tavern, theater, church, that type of thing that has lots of people coming to it.

Councilman Gilliam – Director Frey, I have a question for you. Page 4, talking about the procedure for obtaining license, Section 705.08, there are numerous procedures that must be followed. Very clear to me but #25 states, any other information which the Safety Director may deem reasonably necessary for the full interest of the public in the application. Two questions, the intent behind this and could you give us an example of what any Safety Director would need beyond these 24 prescribed steps that would have any type of determination of an eligible person having a license or an entity having a license in the city?

Director Frey – It is not uncommon in drafting legislation to provide those kinds of catch all provisions. I don't know of potential information that we would want that isn't listed in the 24 items above but we haven't done these yet. As we get an application we may find consistently we needed something that we didn't enumerate in here and short of coming back to City Council and amending to be able to take that application in, we would be able to have that catch all provision say to the proposed licensee that you have to provide us these additional items. I don't have examples off hand. I would imagine if we found repeatedly that we needed something from the license applicant that wasn't in here, we would come back and amend this and say here's an addition. The point of this is to try to give notice to the applicant of what we're going to want from them, not just things we made up to think they'd be neat and put somebody through a hurdle. But, ones that we actually think that we will need and we want the applicant to be aware ahead of time as they study our ordinance and know that they will have to be prepared to provide that information if they chose to apply for a license here. It is a lack of experience on this, we just don't know until we actually start the licensing process whether somebody from the police department, somebody from the fire department, somebody from the building department, zoning, says oh we should have asked for this. We could do that and continue to process that application under this provision until such time as we came back and amended the code to make it specifically in there. Again our point is to give notice to the applicant.

Commissioner Beno – As a person who reviews applications and floor plans, I would see an item like #25 as being there to provide the opportunity to ask follow up questions if as you're looking through one of the items 1-24, you see something that either seems to be a red flag or a red herring, you can ask why it is or what's going on with that document. The other thing is since some of the documents come from outside sources, it gives you the ability that even the applicant might not have control over, it gives you the ability to ask follow up questions about, say for example the results of the background checks that are done, or the results of looking at the contract. The contract between the service provider and the software. There maybe need to just get clarification about what the person is doing. Section 25 allows you that ability to ask those follow up questions.

Councilman Gilliam – Director Frey, I've talked to some individuals who are considering this internet sweepstakes café as a possibility. There are some particular entities within Euclid that are retail that would be acceptable to the terms of an internet sweepstake café, but they may have a vacant building. They are listed as an entity, whether it be an S corp., C corp. or LLC. They're paying their taxes. The question came up that even though that building is vacant and they are up to date and they are registered as an entity in the city, could they apply as an accessory use due to the fact that they own property that is in good standing with the city as a potential accessory use for their current buildings? That was a very direct question.

I'll be a little clearer. I own a building, let's say I own 10,000 sq. ft. of commercial property and my property could be utilized for internet café. Currently my taxes and everything are paid up and I'm registered as David Gilliam LLC in the City of Euclid but my buildings are not being rented to anyone, they are vacant. If I decide as an owner of this building to add in an internet sweepstakes café, can I apply as an accessory use considering that I'm a company registered in the city, paying taxes and I want to put it in my building now?

The question came up that there was concern would they be considered paying \$1,000 because they want one portion of that building to be internet café? Or because they actually own the building and they are a business in this city, could they come in as an accessory use because they are a registered business an LLC in this city?

Director Frey – I think we go back to what Mr. Beno indicated before that to be an accessory use it has to be an assembly use already in that building. If there isn't a use in that building and it doesn't otherwise fit that definition then it is going to be the primary use or the sole use and it will be the \$1,000 annual license.

Councilman Gilliam – That was a concern based upon the fact that if it is deemed an accessory use they were wondering could they come in as an accessory use versus an individual new building that's self sufficient. I think you and I know what particular area that I'm talking about Director Pietravoia as well. I have bluntly speaking vacant property in my ward that needs to be addressed and I was called by certain individuals regarding this particular issue. Could I come in and put an internet café in my building that's currently vacant right now even though I'm a registered company and am in good standing with the city as far as taxes, codes, whatever the case may be. That was a question I could not answer and it is a question that may not be answered tonight but I just want to be mindful of the fact that's one of the proposed questions by a property owner that asked me about this particular legislation.

Commissioner Beno – I don't believe there's anything in this ordinance that makes any difference whether the person is the owner of the property or a tenant. In this case if the landlord wants to go ahead and operate and be not leasing but be a tenant of his own space, there's nothing to prevent that, there's no double jeopardy of any sort whether you're owning or renting.

President Holzheimer Gail – The clarifying point to me is you can only be an accessory licensee if you have some other business going on and it is a restaurant, bar or something of assembly. You can't come into an empty building and use it just as an accessory because you only want to buy a couple of machines or rent a couple of machines. You would have to become a full fledged internet café at that point, rather than accessory use because there is no other use there.

Councilman Gilliam – I'm not a legal advisor by any means, but the argument was that I have a business, I just don't have any tenants in it, so this is an accessory to my business that exists. I'm not here to dispute that, I just wanted to get clarification on that.

Director Frey – The other thing just to clarify for that property owner is it has to be in a U4 or U5 zoned area. We've limited these to retail districts.

Councilman Gilliam – Thank you, like I said I wasn't for or against, I just wanted to asked the question publicly and thank you for your clarification on this.

Director Pietravoia – I just want to add to that, I think we mentioned before Councilman Gilliam that one of the limiting factors in an accessory use is that it is 10% of the floor area and that's per space. For example if we were looking at a whole center that had multiple vacancies, you wouldn't take 10% of all the vacancies. You would say which unit is it going in that would be 10% of that unit. That might be very limiting in terms of what you could actually put into the space if you're limited to that 10% maximum. The intent was clear, that's the way we would proceed in interpreting the code. If you look at 705.07B where we're talking about the licenses for an accessory use, the second paragraph makes it clear again that it is a sweepstakes area within the floor area of an existing business. So you're within an existing business, you're limited to 10%. I think all of those factors combined would make it impractical for someone with empty space to come in and try to start a business as an accessory use under these definitions.

Councilman Gilliam – I would agree but I just wanted to make sure that question was publicly asked; whatever that person does with the information that's their business practice.

Councilman Langman – I know we talked about this at the past meeting, but do we have any data on any criminal activity surrounding these establishments? Robberies, anybody hurt, prostitution, etc?

Director Pietravoia – We have not had any additional feedback from Capt. Brickman. He did indicate in earlier conversations that he had talked to his colleagues in area communities and they've not been experiencing the kinds of problems that you described. We're still without any evidence of those kinds of problems in those cities surrounding the City of Euclid.

Councilman Langman – I know the Law Director is busy but Law Director Frey, can we simply ban these establishments from coming into the city?

Director Frey – We practically speaking have done so by not having them part of our allowed zoning use. If Council determines not to approve (377) the amendments contained to the zoning code in (377) then yes they would be prohibited because they're not a permitted business type at this point.

Councilman Langman – As you said earlier since there's no real guidance from the State we're perfectly within our legal grounds to say we don't want these businesses here.

Director Frey – That's my opinion yes.

Councilman Langman – I would not suggest banning the businesses, I haven't heard anything that makes me think that these businesses are necessarily worse than some other businesses that are in the city. It is almost like you come down to a moral judgment. Some people might say fast food establishments are more detrimental to a person's health than this type of establishment. I think it is clear that it is gambling even though it may not be legally defined as such. I also think the marketplace is going to determine how many of these establishments are going to locate inside the city. I don't think we're going to have one every couple hundred yards, there's no market for that. The same factors that mitigate how many dollar stores we have, fast food places or check cashing establishments or pawn shops, I think the same market

forces will come to bear on this. I haven't heard anything that indicates that they are a nuisance or have been a nuisance. I think it is a legal business and some of our property owners and restaurant owners and bar owners can probably use the boost in activity. I would tend to support the "b" version of this ordinance as drafted by the administration. I thank them for doing the research on it. I know we spent several, several hours on this. I think we should move forward with it. Thank you.

Councilwoman Minarik – Director Frey back to the quarterly gross net revenue report, how does that work that the software provider provides, when the machines, can you explain the process? It is not the businessman that provides it, it is the software provider because through the internet they're getting all this information?

Director Frey – It is the responsibility of the license holder to get us the information but we would anticipate that the information would be provided either directly to us or through the license holder to us from the software provider. In large operations these are connected to the internet to some host site. The devices themselves are providing a record of the receipts as well as the payouts. That information is as I understand it then transmitted to that host site. The local site can also produce the information. I think it can be produced at two places.

Councilwoman Minarik – Is the business responsible to pay taxes every quarter as well or just file the report?

Director Frey – That would be under our tax code and I don't know the answer sitting here. It would be under our tax code and I believe there are quarterly net profit payment requirements under our code. I don't know whether that covers all business types or it is just business with income over some threshold. For instance individuals are required to make estimated payments on their income tax obligation, an individual is. That's regardless of their income. I would think the same provision would apply to businesses.

Councilwoman Minarik – Whether they pay or not that's going to be up to our tax code?

Director Frey – Yes, we don't have the tax code enforcement provision in here. What we have is a reporting requirement. Much like we have with contractors doing business in the city. If their contract has them engaged in work in the city for more than "x" number of days and I don't recall what that magic number is, they must report their employee withholding for that project. Otherwise transient contact with the city is still reported to the tax department.

President Holzheimer Gail – Follow up question to look at when we send it to Council, the definition reads that the report should be provided by the sweepstakes software provider and the section on page 6 letter G, says each licensee shall provide a quarterly gross net revenue report. We just want to make sure we're consistent on who is responsible for providing that report. The information may come from the software provider but the licensee I'm assuming is the one who is responsible to make sure the city gets it. A follow up question is, do we typically include a timeframe in that, within 30 days of the 90 day period, or is that part of the tax code?

Director Frey – I would defer that to the tax code that timeliness issue. I think you're right on the other aspect that we should indicate the quarterly report maybe compiled by the sweepstakes software provider but it is the responsibility of the license holder to make the report.

Councilman Gilliam – I think there is a market for this based upon we have a State sanctioned lottery that doesn't seem to go out of business. We have many different internet sweepstakes cafes coming up in different communities. Looking at 705.14, I'm hesitant to approve the current fees even though we are not experienced in this particular field. I am hesitant due to the fact that, for the other particular communities that charge much higher they seem to have been speeding up the process of adding new internet sweepstakes café around the perimeter of our city and I do not know whether or not this \$1,000 per year and \$30 per device annually will deter individuals from coming into our city, in some cases having a higher frequency of these in certain parts of our city. I'm more hesitant not to allow this particular industry to come to our city because as I stated before, I was against the moratorium and I am for businesses to come in as long as they are able to work within the laws of our city and provide a service without becoming a public nuisance and utilizing our services to our detriment, the City of Euclid.

The question that I have, if we were in a situation and this is purely speculation where there was a questioning of raising the fees for any particular reason, what would be the justification because if I were a business owner and I had an opportunity to expand, Euclid would be on my radar and I think others would follow trend if they are eligible to do so based upon our qualifications. My concern is that we don't have a significant number of businesses that become troublesome to us and we don't have a

significant number of these types of businesses concentrated in certain areas. It is not to say that this will all happen, it is pure speculation. But I will say that I am hesitant to not let this, I would like for this to pass. I just want to bring those things out because I haven't seen in other communities where you had internet cafés in close proximity to each other and that might be because of the fee structure, maybe it is not, I don't know, I'm not an expert on this. I think if there's an individual that has the additional funding, \$1,000 a year to the city plus maybe if I had 30 devices plus another \$900, that's \$1,900 that's a drop in the bucket concerning what they were paying in other communities. I'm putting my fears out on record, not saying they will happen, but I don't want it to be a situation where this causes us to have a strain on our city services. Those are just my comments, I'm not trying to amend anything. I just want to put that out there because at this point we need to allow this industry to come into our city.

President Holzheimer Gail – One of the suggestions that Councilwoman Scarniench who couldn't be here tonight forwarded was and I think what might help address some of that is to limit and I'm assuming it is the cafes and not the accessory uses to within 1,000 ft. of each other which we have done in other businesses. That might be a prudent thing to include in here as a starting point to see so that we don't get the concentration. I would assume somebody could always apply for a variance if there happened to be a situation that two might want to co-locate or within 1,000 ft. Curious about your thoughts Mr. Beno?

Commissioner Beno – Basically in regard to the concern that because our fees are low we might get too many of them clumping on top of each other, Councilwoman Scarniench did raise that point and proposed that we amend 705.13, where it is 1-7 and add #8 which would require a spacing of 1,000 ft. between these types of license holders. 705.13A8, would read, so as not to be located within 1,000 ft. of another licensed sweepstakes terminal café. That should eliminate or at least control for getting too many of them too close to each other, in terms of the concern raised by Councilman Gilliam. If you add section 8, would be 1,000 ft. spacing between internet cafés.

Councilwoman Jones – That would mean for an internet café that's the primary business is the internet café, not an accessory business?

Commissioner Beno – That's true. The regulations for the accessory are covered in 705.13B and we're not proposing any change there. So if you have two taverns next to each other, just because one has a licensed area within that tavern doesn't mean that the guy next door can't also have a similar number of machines.

Councilwoman Jones – But if I have an establishment where my primary use is going to be internet café and there is within the 1,000 ft. a restaurant or something that has the terminals in it, am I still allowed to do that because I'm the primary but they're the accessory?

Commissioner Beno – We are not proposing creating a spacing requirement between the accessories and each other or between the accessory and the primary but only between primaries and those be required a minimum of 1,000 ft.

Director Frey – From our discussion with the one operator we met with, it is a different customer. The accessory use customer is going to be a very different customer than the primary or the café customer and probably the café is longer in duration, more frequent visitor. Whereas the accessory use is likely to be somebody who is going to take a fly at this game for a little bit, by the nature of where these establishments are where these would be located. In other words, a free standing or a storefront internet café is likely to attract people who are going to come there and play for some considerable period of time. Whereas the accessory use is likely to be a very short duration and not the reason they went to the establishment.

Councilwoman Minarik – The problem I have with 1,000 ft. distance restriction, it implies or presumes that these businesses are bad. It is not like when we were dealing with the hot dog vendors. We don't put such a restriction for example on any other industry. We're allowed to have fast food restaurants within 1,000 ft. of each other and you got a Burger King, Wendy's, we're probably going to get a McDonald's, we have no such restriction on any other business. We don't say pawn shops can't be within 1,000 ft. of each other. I don't think this is right. I think the market will take care of itself. We don't put a restriction on businesses that sell lottery tickets that they have to be 1,000 ft. away from each other. I think it is being a little too restrictive. I think we're a little bit too afraid of what this business is. I would like, if it is possible before we come to any conclusions instead of waiting until the end since we do have people, I would like to get their feedback on the quarterly reports, on this 1,000 ft. distance, things like that so we have a better idea.

President Holzheimer Gail – At this point residents or members of the public who are here that would like to ask questions or make comments, now is the time if you would come to this microphone and state your name and address for the record.

Mr. Anthony Schilero – I live in Mentor. I lived in Euclid for 45 years. I totally disagree with 1,000 ft. because if you go around Euclid, if you place one in downtown Euclid, you'll never get another one within 1,000 ft, it is just the lay out. There's only so many shopping centers and it just won't work. I like the idea that public demand will say how many are here. I think they are great things, we operate one now on the border of Euclid and it is a terrific business and people enjoy it and there are no problems. That's it, thank you.

Mr. Christopher Michael Litwinowicz – 21970 Morris Ave. Like Ms. Mary Jo Minarik said, we restrict too much. Give leeway and you'll see businesses come into the city. A fee, what is the normal, can anybody over there tell me what the normal fee is just for any type of business to start up like \$125 is the state code but what is a normal fee? What would be the normal fee, \$25?

Director Pietravoia – There are no typical fees. This is a licensing fee. Most businesses there's no licensed required they're not paying a fee, they might pay a fee to take out a building permit or an occupancy permit, which is about \$100. Other than that, there's not a licensing fee like is being proposed here.

Mr. Litwinowicz – When I was sitting in the public I heard a fee was announced and I was just making a comment that right now it is only \$100 fee if they want to build something inside a building. But if they just want to rent a facility and have computers shipped in, there is no internal construction. So what type of fee would a business. Why I'm asking is because I have interest in doing that. So what do I have to do for this once it passes at the next council meeting?

Director Pietravoia – If this passes, I would recommend that you contact our building department and they'll walk you through the application process for both a building permit if it is needed. If you're making any electrical connections that don't exist for example that would require an electrical permit. At a minimum you'll need an occupancy permit which generally runs about \$100.

Mr. Litwinowicz – Thank you.

Director Pietravoia – There maybe others that want to comment on the distance requirement. It really is a policy design that each community makes. Of the research that we've done by the County Planning Commission, of about 19-20 different communities they surveyed, about 7-8 had a distance requirement. All but one were 1,000 ft and one was 500 ft. It is a little over a third, about 40% of the communities surveyed decided they did feel a distance requirement was worth considering. We do have just in a couple of instances here in Euclid already, pawn shops is one, adult use, so there are a couple. In each case there are circumstances why we put those requirements in place.

Councilman Gilliam – Thank Director Pietravoia for clarifying it because I was pretty sure we do have that particular stipulation for our pawn shops. One of the things I'm just going to be very direct with and if I offend anyone I apologize up front. Most of these particular internet sweepstakes café are targeting certain cities based on a lot of different variables, but one of them is income. We do know that in certain areas, the more affluent areas are not even dealing with this issue. If we're trying to, in my opinion look at how we present our city and to be competitive to those other cities that we are striving to "compete" with, we need to have a diversity of businesses and I don't think that 1,000 ft. prevents that from happening. I think it supports that. Any community that you drive through whether it is west, north, south, east, to many particular businesses in some cases do presume a certain image. If you have too many Burger Kings, too many McDonald's, but if you have too many Ruth Chris Steakhouses, that's another thing to talk about.

My suggestion is the 1,000 ft. that Councilwoman Scarniench put in, is not necessarily a deterrent but establishing a standard of not only allowing businesses to come here but making sure we are diverse on who we allow to come in here. Many people who own these particular internet café don't even reside in the city that they are putting their businesses in. I don't have an issue with that, but my concern is that when we are bringing in new industry, whether we deem it good or bad is not the issue. That industry will prove itself to be good or bad based on operations. I wouldn't want to put myself in a position to have too many of one thing anywhere, whether it is Euclid or whether I lived in Richmond Hts., or whether I lived in Eastlake.

I think the 1,000 ft. may seem restrictive, but we are looking at being inclusive but just making sure that we have opportunities for other new industries, other new ideas to pop up within that 1,000 ft. that could benefit from being next door to internet café or vice versa. Thank you.

Councilwoman Minarik – The pawn shops, I understand that but again that's presuming this is not a desirable entertainment venue. Would we restrict how many movie theaters? Would we restrict the distance between movie theaters? Would we restrict the distance between, do we do it with bars; do we do it with restaurants? If it is an entertainment venue, why would we put a restriction on it unless the presumption is that this is a bad industry?

Councilman Gilliam – I would answer that and say I don't think it is a bad industry. Remember, I voted against the moratorium. We're talking after the fact. At that particular time I felt Euclid which was over a year ago needed to allow this industry in here. I don't assume it is a bad business. As a matter of fact Capt. Brickman has basically stated that there was no incidence that he could report on other communities where the issues were nuisance or any type of criminal activity at these businesses. Director Frey eluded to a couple of bad operations in one city but they were bad operators. I don't have a perception of it being a bad business at all. As a matter of fact I've been asked by some people, do you want it in your ward? I welcome it, as long as it is operating properly. What I don't want to see is the potential to have businesses whether it be internet café, pet shops or barber shops having a high density in any particular area of the city. That's my concern. Not that it's a bad thing but you have six barber shops within 1,000 ft. or three barber shops, okay the market will determine who will stay or who will go, but that doesn't necessarily show the opportunity for diversification of anybody's ward or the city when it comes to businesses. I'm for internet café coming in. What I don't want to see is the possibility of driving down Euclid Ave. or driving 185<sup>th</sup> and I see one, two, three, an accessory, stand alone; an accessory, stand alone. Or two primaries and an accessory. At the end of the day we need to have this business but we don't necessarily need to have them on top of each other or concentrated in any particular area. If you look at the number of buildings that are vacant in Euclid, you will find that some particular areas have more vacancies than others and that's my concern. It is north/south thing, it is a Euclid thing. You will find vacancies all across this city. The reality of it is, you may have some situations where you have to be mindful of the fact that, let's just say for instance, the landlord who owns a building on, I'm using the example, Tungsten doesn't want to lease to that person. But you go down 260<sup>th</sup> and you have the Family Dollar there and the owners of that building don't mind having 2-3 or in there because they need income. If I'm a landlord, I'm renting as long as it is legal and the city will comply with it. My concern is not that having them in is appropriate, but I think 1,000 ft. is fair, it is not going to kill anybody's business. In some cases it might even enhance the property for some of these businesses based on how they located their businesses.

President Holzheimer Gail – There's always the possibility of asking for a variance. If there is a location that is within 1,000 but they can make the case, they can request.

Councilwoman Minarik – Is it possible to ask some of these internet café people how the market operates in terms of how much can the market bear. Can you build ten and put ten up on the north side of the freeway and still be profitable? You're all the experts, how far apart? How much can Euclid support in terms of the number of internet café and the number of people? Do they move from one to the next because of sweepstake? That is the type of thing I think would be good to know.

Councilman Langman – I really think the market is going to dictate how many and where. Unfortunately we're not going to get Ruth Chris anytime soon without doing some fundamental changes, so I don't think we have to worry about that. I understand what Councilman Gilliam is saying, but I think right now the choice is, do we encourage businesses to come here that more than likely is going to go into an empty space. I don't foresee like a thriving retail space right now being converted from that to a sweepstakes café. I really think they're going to go into under utilized shopping areas and want something that's empty. I'll yield my time to the speaker.

Ms. Beverly Schilero – Also I spent many, many years in Euclid but I do live out in Concord now. I just want to say that when it comes to the diversity that the one councilman is talking about, a lot of times you can be in situations, example like when the Flats were put together and you had a lot of bars in one area. You still had a lot of people and you still had some diversity within the type of bars that they were. You'll find that people will tend to go to the different bars as well. A lot of times when you're putting the same kind of similar businesses closer to each other this helps the competition but it really helps to breed business for those businesses. If you go to a bar in the Flats and you go to the bar and get something to eat or something to drink, your tendency when you walk out is maybe to walk a few doors over and go to that business as well as opposed to getting into your car and driving someplace else if you're still in the mood for the same type of entertainment that you started out with for the evening. With the internet café I would think bringing them a little closer together would help with the clientele as far as bringing the competition for each other amongst the businesses. I think it is very good to keep them closer together.

When Mr. Schilero was talking to you about the 1,000 ft. rule, if one gets to be in a particular part of Euclid and I don't know if council has had anybody survey how many can stem out from that but, you might not want to just only have a couple. You may want to be able to have a few more than that because it seems to be a very entertaining business and the clientele really seems to be probably about 45 and up. It has become a social event for these people and they like it. I think if they had a choice of other places to go to, this might be better for them. Suppose you only had one or two of those businesses in Euclid, well again, we talked about the fact in the certain area there were a couple of operators that didn't operate maybe as well as it could be operated. Then you're constituents don't really have a choices do they if you can only fit a couple of them in. You may want to give opportunity for other business owners to be able to run the business in the respect that the customers would like to have it and let them have more of a choice than maybe one or two places to go to. That's what I wanted to say.

President Holzheimer Gail – Are there other comments from the public? I don't know that we're going to solve that issue tonight with only five of us here. In deference to our time say that's something for those who want to look at where we have available sites, where I would suggest looking at areas that are zoned appropriately to see are there spots that would accommodate two or three or four. I am a little concerned, it is an unknown, we've heard anecdotally from other communities there's no problems but if they are clustered will that increase the likelihood, we don't know. I tend to be more cautious and would consider 1,000 ft. restriction to start until we see what type of interest. Again, I'm not sure we will solve that tonight.

Councilman Langman – To the administration, if then one of these entities opens up in one of the spaces at the Mall, would that preclude then others from opening up in other empty spaces at the Mall?

Director Frey – If we had the 1,000 ft. restriction, I'm not sure if you went from Babbitt Rd. on the one end to 260<sup>th</sup> on the other, whether that's 1,000. I don't know what that distance is. Let's assume it is not 1,000 ft., unless they've obtained a variance, yes it would preclude somebody from opening on the Babbitt Rd. side and somebody else opening on the 260<sup>th</sup> side.

Councilman Langman – There the idea would be if you cluster than that can draw in other activities to what is clearly under utilized property. There are many variables that is why I don't want to go to a restriction right away because it is hard to anticipate all of the variables that might be in play. As the lady said, from the folks that I've talked to that go to these, it is almost like a social event and again I don't hear anything that indicates that these draw undesirable elements or draws crime or any of the bad things we've heard about other types of businesses. I would prefer to move this back to Council if we can, maybe get some consensus before the meeting. Perhaps we move it back with no recommendation so it can be discussed further.

President Holzheimer Gail – Director Frey, we have a “b” version before us. Do we need to act to amend it to accept the “b” version?

Director Frey – That would be my recommendation without what we talked about in 705.13A8. That would not be part of, what we presented to you this evening, prior to our discussion of that distance restriction, I would however ask that we would consider in this “b” version the definition of the quarterly gross net revenue report, to read instead of what we provided, would read, means a quarterly report from the licensee and maybe provided by the sweepstakes software provider to the City of Euclid. Just so we are clear that it is the licensee who has the responsibility.

President Holzheimer Gail – All the changes are in yellow.

Councilwoman Jones moved to accept the amended version. Councilman Gilliham seconded.

Roll Call: Yeas: Gilliham, Jones, Minarik, Langman, Holzheimer Gail.

President Holzheimer Gail – For this evening's purposes that does not include any restrictions on distance. Any final questions?

Councilman Langman moved to send Ord. (376a-11) as amended back to Council without recommendation. Councilwoman Jones seconded.

Roll Call: Yeas: Gilliham, Jones, Minarik, Langman, Holzheimer Gail.

President Holzheimer Gail – The other piece (377-11) which sets up the zoning use and would allow it in a U4 and U5, that's a general summary. Is there anything else to add?

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Director Frey – It has the parking restrictions that we talked about and some landscape requirements as well.

President Holzheimer Gail – This was fully discussed at the last Committee meeting and I don't think any questions but we wanted them to stay together.

Councilman Gilliam moved Ord. (377-11) back to Council. Councilwoman Jones seconded.

Roll Call: Yeas: Gilliam, Jones, Minarik, Langman, Holzheimer Gail.

Councilwoman Jones – In public establishments since there are no longer allowed smoking inside an establishment, for establishments that are in a plaza situation, do we have any regulations as far as where the smoking areas should be or need to be? If it is in a plaza, sometimes it is in the front, sometimes in the back. Do we have any regulations specifying designated smoking areas?

Commissioner Beno – What I'm understanding your question to be is, there a regulation against smoking outdoors. My understanding is no, there is not.

Councilwoman Jones – No, not just smoking outdoors, but if you come outside the establishment, the front door of the establishment and smoke, as opposed to the business owner having to establish a section either in the back or the side or somewhere else where smoking can be allowed.

Commissioner Beno – Again, my understanding is, even if the area is set up to be conducive to people smoking, there's no requirement how far outdoors you have to be, just that it cannot be inside the contained building. There are restrictions if it is a patio that there has to be a certain amount of open wall area. There are sort of winterized patios nowadays that smokers use that are maybe on top and two sides at some bar or night club establishment. I don't believe there's any particular requirement that they be a certain distance from the doorway or from an entrance.

Councilwoman Jones – Thank you.

Councilwoman Minarik moved to adjourn, Councilman Langman seconded. Yeas: Unanimous.

Meeting adjourned.