

ORDINANCE NO. 860

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK, CALIFORNIA, ESTABLISHING A TEMPORARY MORATORIUM ON AND PROHIBITING THE ISSUANCE OF PERMITS OR OTHER ENTITLEMENTS FOR THE ESTABLISHMENT, EXPANSION OR RELOCATION OF CYBER CAFES PENDING THE REVIEW AND POSSIBLE AMENDMENT OF ZONING AND OTHER REGULATIONS TO SUCH BUSINESSES AND ACTIVITIES, TO BECOME EFFECTIVE IMMEDIATELY

THE CITY COUNCIL OF THE CITY OF ROHNERT PARK HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Authority. This Ordinance is adopted pursuant to the provisions set forth in Government Code Sections 65868 and 36937 and pursuant to other applicable law.

SECTION 2. Findings.

- A. Pursuant to Article XI, Section 7 of the California Constitution, the City of Rohnert Park may make and enforce all regulations and ordinances using its police powers.
- B. The stated purpose of the Rohnert Park Zoning Code, codified as Chapter 17 of the Rohnert Park Municipal Code (RPMC), is to manage future development and growth consistent with the Rohnert Park General Plan and ensure that development creates harmonious, convenient, workable relationship among land uses.
- C. Under RPMC Chapter 17, cyber cafes, as that term is defined in Chapter 17.04.030 ("Cyber Cafes"), are conditionally permitted in the C-R Regional Commercial Zoning District as provided for in Chapter 17.06.060.
- D. The Graton Resort and Casino project, a casino development with Las Vegas style gambling and a 3,000 slot-machines located adjacent to the city limits ("Graton Casino"), is expected to open by November 1, 2013. The Graton Casino will operate 24 hours a day, 7 days a week, and is expected to attract - on average - approximately 8,000 visitors per day from locations throughout the Bay Area and beyond.
- E. The Graton Casino, like other casinos in California and the United States, is expected to foster growth in related businesses that cater to the resort and casino clientele. The demand for Cyber Cafes is expected to increase with the influx of visitors. Cyber Cafes recently have been established to promote "sweepstakes gaming" which, encourages game playing that provides chances to be awarded prizes. The casino patrons who are interested in gambling may also be interested in engaging in such sweepstakes gaming. The City has received inquiries and anticipates numerous requests by operators regarding the applicable regulations for Cyber Cafes.
- F. The RPMC's regulations of Cyber Cafes need to be studied to consider the disbursement of such businesses throughout the zoning districts, proximity to similar businesses and sensitive uses, and operational regulations such as the hours of operation in relation to public health, safety and welfare concerns, including the impacts these businesses may have on the surrounding uses and the community.
- G. The issue of criminal activity at or around Cyber Cafes is increasingly recognized as a problem in localities across the country. State and local governments in Florida, Ohio, North Carolina and South Carolina are considering or have enacted moratoria on these businesses.
- H. Cities with cyber cafes have experienced increased calls for police services, increased reports of violent criminal behaviour and related detrimental neighbourhood effects associated with these businesses. For example, the cities of Pittsburgh, Antioch, Oakley, Hesperia, Sacramento, and San Diego experienced increased criminal activity associated with Cyber Cafes, including incidents involving assaults, burglary, illegal drug use and sales, illegal lotteries, loitering, property damage, public

intoxication, robbery and vandalism. Alameda County, the City of Hayward and other municipalities have imposed moratorium on cyber cafes while they develop a regulatory scheme.¹

- I. In December of 2012, the Office of the Attorney General, through the Bureau of Gambling Control ("Bureau"), issued a Law Enforcement Advisory indicating that so called "internet cafes" that sell internet time or phone cards in conjunction with a "promotional sweepstakes" were operating throughout California. According to the Bureau, the internet cafes that offer these types of sweepstakes are considered by the Bureau to be illegal gambling operations. Bureau personnel are assisting local law enforcement agencies with enforcement actions against the gambling operations, in an effort to eliminate these uses.²
- J. Between February and July of this year, law enforcement in the immediate area served search warrants on five Cyber Cafes and seized computers and cash from the establishments. The Sonoma County District Attorneys Office is reviewing the investigation.
- K. The establishment of comprehensive regulations for the issuance of permits for Cyber Cafes would serve to reduce the risk of illegal and potential criminal activity.
- L. The City published notice of the public hearing to consider the adoption of this interim urgency ordinance in accordance with Government Code § 65090, held a public hearing on July 23rd, and considered the public's testimony.
- M. Government Code sections 65858 and 36937 authorize the adoption of an interim urgency ordinance to protect the public health, safety and welfare, and to prohibit otherwise permitted land uses when those uses may conflict with land use regulations that the City's legislative bodies are considering, studying or intending to study within a reasonable time.
- N. The City Council hereby determines that the RPMC is in need of further review and possible revision to protect the public against potential negative health, safety, and welfare impacts and to address potential deficiencies in its Code associated with Cyber Cafes. Further, time is required for staff to study and analyze whether to limit such businesses to certain zoning districts, which districts would be appropriate for such uses, and what design and operating restrictions and conditions would advance the public's interest.
- O. Failure to adopt this moratorium would impair the orderly and effective implementation of contemplated amendments to the RPMC, and any authorization of these Cyber Cafes within the City during the period of the moratorium may be in conflict with or may frustrate the contemplated amendments to the RPMC
- P. The City Council further finds that this moratorium is a matter of local and City-wide importance and is not directed towards any particular Cyber Cafes that currently seek(s) the issuance of a permit.

SECTION 3. Imposition of Temporary Moratorium.

A. In accordance with the authority granted the City under Government Code section 65858 and 36837, and pursuant to the findings stated herein, the City Council(1) hereby finds that there exists a current and immediate threat to the public health, safety, and welfare requiring this change in the City's permitting provisions for Cyber Cafes, (2) further finds that this ordinance is necessary for the immediate preservation of the public peace, health and safety, and (3) hereby declares and imposes a temporary moratorium for the immediate preservation of the public health, safety and welfare as set forth below.

The City orders as follows: For a period of forty-five (45) days from and after the date of adoption of this Ordinance, no permits (including use permits, conditional use permits, special or temporary permits) or other applicable use entitlement (including variances, building permits, or business licenses) under Chapters 17 of the RPMC may be issued for the establishment or operation of a new Cyber Cafes within the City, except as

¹ See e.g., <http://www.ci.hayward.ca.us/NEWS/2013/InterimUrgencyOrdinance.pdf>

² The Bureau's Law Enforcement Advisory is available online at http://oag.ca.gov/sites/all/files/pdfs/gambling/internet_cafes.pdf.

otherwise provided for herein. In addition, no existing Cyber Cafes may be expanded, whether by means of additional space, construction of new facility, or by reconfiguration.

B. For purposes of this Ordinance, the terms Cyber Cafes shall have the same meaning as provided for in RPMC 17.04.030, which provides that: "Cyber café' means an establishment that provides four or more computers and/or other electronic devices for access to the internet, e-mail, video games, or computer software programs which are networked or which function as a client/server program, and which seeks compensation in any form from users. Also referred to as PC café, internet café, cyber center, but does not include a cyber learning center."

For the purposes of this Ordinance, "cyber learning center" shall mean an establishment that provides computer access which is operated by the City of Rohnert Park, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction, or a non-profit organization which does not receive compensation or reimbursement in any form other than school tuition.

C. Establishment or operation of unpermitted Cyber Cafes in the City of Rohnert Park shall be a public nuisance per se, enforceable by any applicable law, including but not limited to injunctions, administrative citations or criminal penalties.

SECTION 4. Legal, Operational and Planning Study. The Planning Department and the City Attorney's Office are directed to study and analyze issues related to the establishment, permitting, and operation of Cyber Cafes within the City, and their potential impacts on public health, safety and welfare of the community, the desirability of such Cyber Cafes in various zones, and the extent of regulatory controls, if any, to impose on such Cyber Cafes. The City Council directs that all studies be pursued as expeditiously as practicable. In order to prevent frustration of these studies and the implementation of new regulations, the public interest, health, safety, and welfare require immediate enactment of this Ordinance.

SECTION 5. Written Report. Pursuant to Government Code section 65858, staff must prepare for consideration and issuance by the City Council a written report describing the measures taken to address the conditions which led to adoption of this Ordinance. The report will be provided to the City Council so that it may be considered and issued no later than ten (10) days prior to the expiration of this Ordinance.

SECTION 6. Environmental Review. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; rather it prevents changes in the environment pending the completion of the contemplated municipal code review.

SECTION 7. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 8. Effective Date and Duration. This ordinance is an urgency ordinance enacted under California Government Code sections 65858(a) and 36937. This urgency ordinance is effective upon adoption by a four-fifths (4/5) vote of the City Council and will extend for a period of forty-five (45) days from the date of adoption at which time it will automatically expire unless extended by the City Council in accordance with California Government Code section 65858.

SECTION 9. Publication. The City Clerk is directed to cause this ordinance to be published in the manner required by law.

This ordinance was introduced and duly adopted by the City Council of the City of Rohnert Park at the regular meeting held this 23rd day of July 2013 by a four-fifths vote of the City Council as follows:

AYES: FOUR (4) Councilmembers Ahanotu, Mackenzie, Callinan and Mayor Stafford
NOES: NONE (0)
ABSENT: ONE (1) Councilmember Belforte
ABSTAIN: NONE (0)

Pam Stafford
Pam Stafford, Mayor

ATTEST:

JoAnne M. Buergler
JoAnne Buergler
City Clerk



APPROVED AS TO FORM:

Michele M. Kenyon
Michele M. Kenyon
City Attorney

STATE OF CALIFORNIA)
COUNTY OF SONOMA) ss.
CITY OF ROHNERT PARK)

CITY CLERK'S CERTIFICATION OF
THE ADOPTION OF ORDINANCE

I, JoAnne Buergler, City Clerk of the City of Rohnert Park, do hereby certify that the foregoing Ordinance No. 860 was introduced and adopted, as an urgency measure pursuant to California Government Code section 36937 (b), at a regular meeting of the City Council on the 23 day of July, 2013 by the following roll-call vote:

AYES: FOUR (4) Councilmembers Ahanotu, Mackenzie, Callinan and Mayor Stafford

NOES: NONE (0)

ABSENT: ONE (1) Councilmember Belforte

ABSTAIN: NONE (0)


JoAnne Buergler
CITY CLERK