

Meeting Date: 6/22/2010



Agenda Item # 5B

CITY COUNCIL AGENDA ITEM

Contact Name: William E. Reischmann Department Director: _____
Department/Contact # City Attorney City Manager: _____

- Type of Item:
- | | | | |
|-------------------------------------|--------------------------|--------------------------|---------------------|
| <input type="checkbox"/> | Public Hearing | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | Ordinance First Reading | <input type="checkbox"/> | Discussion & Action |
| <input type="checkbox"/> | Ordinance Second Reading | <input type="checkbox"/> | Council Approval |

Subject: Enact a 180 day moratorium on the issuance of business tax receipts, permits, development orders, or any other official action to allow businesses specializing in providing telephone card sweepstakes and electronic game promotions within the City limits.

BACKGROUND: This item seeks the City Council’s approval to enact a 180 day moratorium on the issuance of business tax receipts, permits, development orders, or any other official actions to allow businesses specializing in providing telephone card sweepstakes and electronic game promotions within the City limits. These businesses are often known to operate as “internet cafes”, “adult arcades”, or “promotional sweepstakes”.

Recently, Orange City has observed a dramatic increase in the operation of electronic game promotion businesses in and around the City limits. Indeed, the City has recently been engaged in litigation involving one of these establishments as well as the review of an application for a conditional use permit. The City may very well receive additional interest in opening similar businesses within the City limits.

Throughout the State of Florida, other jurisdictions have chosen various methods to regulate these businesses. Some cities have refused to issue business tax receipts, others have initiated criminal enforcement and/or code enforcement. This has prompted some of these local governments to become involved in litigation over these actions. Investigation by City staff and legal counsel as well as conversations with representatives of these other governments have revealed a range of opinions regarding the legality of these operations. Currently, these establishments to the extent that they are legal, can be permitted in the City of Orange City, within certain limited zoning districts, as conditional uses. Changes may be needed to Orange City’s current regulations to address the anticipated growth of these establishments and the negative effects that they may have upon the City and its citizens.

RECOMMENDATIONS: City staff recommends the City Council support to immediately pursue a 180 day moratorium in order to further review these issues and the options available to the City.

ATTACHMENTS: Ordinance No. 425

FINANCIAL IMPACT:

Reviewed by City Attorney _____
Reviewed by Finance Dept. _____
Reviewed by: _____

1st Discussion Date: 6/22/2010	2nd Discussion Date: Click here to enter a date.	Third Discussion Date: Click here to enter a date.	Other Dates: Click here to enter a date.
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ORDINANCE 425

AN ORDINANCE OF THE CITY OF ORANGE CITY, FLORIDA, IMPOSING A TEMPORARY MORATORIUM FOR 180 DAYS ON THE ISSUANCE OF ANY BUSINESS TAX LICENSE, PERMIT, CONDITIONAL USE APPROVAL, SITE PLAN APPROVAL AND ANY OTHER OFFICIAL ACTION OF THE CITY OF ORANGE CITY HAVING THE EFFECT OF PERMITTING OR ALLOWING THE CONSTRUCTION AND/OR OPERATION OF CERTAIN BUSINESSES WITHIN THE CITY OF ORANGE CITY, RELATED TO GAME ROOMS, ARCADES, INTERNET CAFES, SWEEPSTAKES REDEMPTION CENTERS, ESTABLISHMENTS USING SLOT MACHINES OR SLOT MACHINE LIKE EQUIPMENT AND SIMILAR INDOOR ENTERTAINMENT AND AMUSEMENT ACTIVITIES AS MORE SPECIFICALLY DESCRIBED IN THIS ORDINANCE, EXCLUDING APPROVALS AND PERMITS FOR THE CONTINUANCE OF AN EXISTING BUSINESS; THE TEMPORARY MORATORIUM SHALL APPLY TO ALL REAL PROPERTY LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY OF ORANGE CITY; PROVIDING A PROCEDURE FOR EXTRAORDINARY HARDSHIP; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, the City of Orange City, Florida provides municipal services to its citizens, including regulation and licensing of businesses; and

WHEREAS, the appropriate regulation, licensing and permitting of businesses are vital to the public's health, safety, morals and welfare as deficient or inadequate regulations can lead to public harm; and

WHEREAS, the City Council has learned of certain activities related to game rooms, arcades, internet cafes, sweepstakes redemption centers, establishments using slot machines or slot machine like equipment and similar indoor entertainment and amusement activities within the City of Orange City being proposed or considered, which activities would harm the City's economic and redevelopment activities and otherwise significantly and adversely affect the public health, safety, morals and welfare, since said activities may include forms of gaming or gambling which could lead to illegal activities; and

WHEREAS, the City Council of the City of Orange City, Florida, deems it necessary to the public's health, safety, morals and welfare to cause a study to be accomplished relative to the criteria for issuance of permits for game rooms, arcades, internet cafes, sweepstakes redemption centers, establishments using slot machines or slot machine like equipment and similar indoor entertainment and amusement facilities, and to place a temporary moratorium on the issuance of permits and the receipt of the business tax for such activities for a period of one hundred and eighty (180) days; and

WHEREAS, the City Council, after holding a public hearing, finds that it is appropriate to impose a temporary moratorium on the licensing and permitting of certain activities related to game rooms, arcades, internet cafes, sweepstakes redemption centers establishments using slot machines or slot machine like equipment, and similar indoor entertainment and amusement facilities; and

WHEREAS, public hearings were held pursuant to the required published notices at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard; and

WHEREAS, the City's Planning Commission has reviewed this moratorium for consistency with the City's Comprehensive Plan.

NOW, THEREFORE, BE IT ENACTED by the City Council of the City of Orange City, Florida:

SECTION 1. PURPOSE AND LEGISLATIVE FINDINGS.

The above recitals are hereby adopted as the legislative purpose of this Ordinance and as the City Council's legislative findings.

SECTION 2. TEMPORARY MORATORIUM UPON THE ISSUANCE OF GAME ROOMS, ARCADES, INTERNET CAFES, SWEEPSTAKES REDEMPTION CENTERS, ESTABLISHMENTS USING SLOT MACHINES OR SLOT MACHINE LIKE EQUIPMENT AND SIMILAR INDOOR ENTERTAINMENT AND AMUSEMENT ACTIVITY PERMITS.

All activities relating to the acceptance, review and action upon permit applications for game rooms, arcades, internet cafes, sweepstakes redemption centers, establishments using slot machines or slot machine like equipment and similar indoor entertainment and amusement facilities are temporarily suspended in order for the City of Orange City, through its officials and staff, to have adequate time and opportunity to conduct a study or studies and comprehensively analyze the adequacy of application criteria, standards, and other approved processes and procedures related to the issuance of said permits within the City of Orange City. Accordingly, based upon the foregoing, there is hereby imposed a temporary moratorium on the receipt and/or acting upon applications for licenses related to game rooms, arcades, internet cafes, sweepstakes redemption centers, establishments using slot machines or slot machine like equipment and similar indoor entertainment and amusement type activities.

During the time the temporary moratorium is in effect, the City will accept no applications or act on any pending applications for permits or business tax receipts for such activities and no such new activities shall be permissible within the City. It is unlawful for any person or entity to engage in the activities that are the subjects of the Ordinance without first obtaining a business tax receipt or permit for such activities. During the period of time that the temporary moratorium is in effect, the City shall not accept payments of the

business tax for such activities and shall return any funds accepted for pending applications.

SECTION 3. GEOGRAPHIC AREA COVERED.

The temporary moratorium established in this Ordinance shall be effective in the corporate and municipal boundaries of the City of Orange City.

SECTION 4. IMPOSITION OF MORATORIUM.

(a) The temporary moratorium set forth in this Ordinance shall take effect immediately upon the effective date of this Ordinance and shall terminate one hundred and eighty (180) days after said effective date. The City will accept no applications or act on pending applications which are subject to the moratorium until the moratorium has expired.

(b) The City Council may extend the temporary moratorium established in this ordinance one (1) time for a period not to exceed ninety (90) days upon a finding by the City Council set forth in the ordinance that the problems giving rise to the need for the temporary moratorium established herein continue to exist and that reasonable progress is being made in carrying out a specific and prompt plan of corrective legislative action, but that additional time is reasonably needed to adequately address the issues facing the City.

SECTION 5. ALLEVIATION OF EXTRAORDINARY HARDSHIP.

(a) The City Council may authorize exceptions to the moratorium imposed by this Ordinance when it finds, based upon substantial competent evidence presented to it, that deferral of action on an application for permit, business tax receipt, development order, or other official action of the City for the duration of the moratorium would impose an extraordinary hardship on a landowner or petitioner.

(b) A request for an exception based upon extraordinary hardship shall be filed with the City Manager or designee, including a non-refundable fee of \$350.00 by the owner/petitioner, or the petitioner with the consent of the owner/petitioner, to cover processing and advertising costs, and shall include a recitation of the specific facts that are alleged to support the claim of extraordinary hardship, and shall contain such other information as the City Manager shall prescribe as necessary for the City Council to be fully informed with respect to the application.

(c) A public hearing on any request for an exception for extraordinary hardship shall be held by the City Council at the first regular meeting of the City Council that occurs after the expiration of the period for publication of notice of the request for an exception.

(d) Notice of the filing of a request for an exception, and the date, time, and place of the hearing thereon shall be published once at least 7 days prior to the hearing in a newspaper of general circulation within the city limits of the City of Orange City, Florida.

(e) In reviewing an application for an exception based upon a claim of extraordinary hardship, the City Council shall consider, at a minimum, the following criteria:

- (1) The extent to which the applicant has, prior to the Effective Date of this Ordinance, received City of Orange City permits or approvals for the game room, arcade, internet café, sweepstakes redemption center, establishments using slot machines or slot machine like equipment or similar indoor entertainment and amusement activity.
- (2) The extent to which the applicant has, prior to the Effective Date of this Ordinance, made a substantial expenditure of money or resources in reliance upon permits or other approvals of the City of Orange City directly associated with the operation of the game room, arcade, internet café, sweepstakes redemption center, establishments using slot machines or slot machine like equipment or similar indoor entertainment and amusement activity.
- (3) Whether the applicant, prior to the Effective Date of this Ordinance, has contractual commitments in reliance upon permits or other approvals of the City of Orange City to operate the game room, arcade, internet café, sweepstakes redemption center, establishments using slot machines or slot machine like equipment or similar indoor entertainment and amusement activity.
- (4) Whether the applicant, prior to the Effective Date of this Ordinance, has in reliance upon permits or other approvals of the City of Orange City incurred financial obligations to a lending institution which, despite a thorough review of alternative solutions, the applicant cannot meet unless the game room, arcade, internet café, sweepstakes redemption center, establishments using slot machines or slot machine like equipment or similar indoor entertainment and amusement activity is permitted or allowed.
- (5) Whether the moratorium will expose the applicant to substantial monetary liability to third persons; or would leave the applicant completely unable, after a thorough review of alternative solutions, to earn a reasonable investment backed expectation on the real property that is affected by this Ordinance.

(f) At a minimum, the City Council shall consider the following non-exclusive factors under the criteria set forth in subsection (e) above:

- (1) The history of the property;

(2) The history of the commercial, business or any use on the property.

(g) At the conclusion of the Public Hearing and after reviewing the evidence and testimony placed before it, the City Council shall act upon the request either to approve, deny, or approve in part and deny in part the request made by the applicant.

SECTION 6. PENALTIES.

(a) Any person, firm, corporation or agent who shall violate any provision of this Ordinance or who fails to comply therewith, or with any of the requirements thereof, shall be fined in an amount not exceeding five hundred dollars (\$500.00) or be imprisoned for a period not exceeding sixty (60) days. Either or both penalties may be imposed. Each day during which any violation occurs constitutes a separate offense.

(b) Nothing herein contained shall prevent the City from taking such other lawful action including, but not limited to, equitable legal action, as it deems necessary to prevent or remedy any violation of this Ordinance.

SECTION 7. SEVERABILITY. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 8. CONFLICTS. This Ordinance shall stand repealed as of _____ on _____, _____, 2010, unless sooner repealed; provided, however, nothing herein shall prevent the re-adoption or ratification of this Ordinance in the same or similar form.

SECTION 9. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida.

ROLL CALL VOTE AS FOLLOWS:

First Reading, this _____ day of _____, 2010.

O. William Crippen	_____	Anthony Pupello	_____
Gary A. Blair	_____	Tom Abraham	_____
Jeff Allebach	_____	Tom Laputka, Vice Mayor	_____
Harley Strickland, Mayor	_____		

ROLL CALL VOTE AS FOLLOWS:

Second Reading, this _____ day of _____, 2010.

O. William Crippen	_____	Anthony Pupello	_____
Gary A. Blair	_____	Tom Abraham	_____
Jeff Allebach	_____	Tom Laputka, Vice Mayor	_____
Harley Strickland, Mayor	_____		

PASSED and ADOPTED this _____ day of _____, 2010.

ATTEST:

AUTHENTICATED:

Deborah J. Renner, CMC, City Clerk

Harley Strickland, Mayor

Approved as to form and legal sufficiency:

William E. Reischmann, Jr., City Attorney