

# REQUEST FOR Planning Commission Action



**PLANNING COMMISSION MEETING DATE:**

**SEPTEMBER 9, 2019**

**TITLE:**

**PUBLIC HEARING – ZONING ORDINANCE  
AMENDMENT NO. 2019-04 PROHIBITING  
CYBER CAFÉS AS A PERMITTED USE  
CITYWIDE {STRATEGIC PLAN NO. 5,4}**

**PLANNING COMMISSION SECRETARY**

**APPROVED**

- ☐ As Recommended
- ☐ As Amended
- ☐ Set Public Hearing For \_\_\_\_\_

**DENIED**

- ☐ Applicant's Request
- ☐ Staff Recommendation

**CONTINUED TO** \_\_\_\_\_

Prepared by Jerry C. Guevara

A blue ink signature of the Executive Director, consisting of a stylized 'J' followed by a series of loops and a final flourish.

Executive Director

A blue ink signature of the Interim Planning Manager, appearing as a stylized 'M' followed by a horizontal line.

Interim Planning Manager

## **RECOMMENDED ACTION**

Recommend that the City Council adopt an ordinance approving Zoning Ordinance Amendment (ZOA) No. 2019-04 prohibiting cyber cafés as a permitted use citywide.

### **Project Background**

There has been a proliferation of cyber café businesses in the City and statewide. Such businesses are often connected to illegal gambling and other criminal activities. Some of the illicit operations are in the form of "promotional sweepstakes," in which the business allows customers to play gambling-themed games on computers to win cash prizes. Crime statistics and calls for service in the areas of the City where cyber cafés have been established have increased significantly. The Santa Ana Police Department (SAPD) identified 460 incidents occurring between January 1, 2018 and September 2018 related to cyber cafés. These incidents included violent crime, loitering, illegal gambling, illegal drug use and sales, burglaries, assaults, fights, theft, public intoxication, vandalism, property damage, weapons offenses, and other criminal activities in and around cyber cafés at various locations throughout the City. Some of these incidents have led to criminal arrests for possession of firearms, narcotics, and stolen vehicles and parole/probation violations.

Based on these concerns, on October 16, 2018, the City Council adopted Urgency Ordinance No. NS-2956 establishing a 45-day moratorium on the approval, commencement, establishment, operation, relocation or expansion of cyber cafés within the City. On November 20, 2018, the City Council extended the moratorium for an additional ten months and 15 days to allow staff time to analyze cyber cafés and provide an enforcement plan and recommendations on whether to adopt a regulatory ordinance permitting such establishments, institute operational guidelines, or adopt an outright ban on cyber cafés.

Since the adoption of the moratorium, there have been additional incidents at and/or near cyber cafés. One incident involved an altercation and the shooting of a female victim in the parking lot of a business providing internet access and illegal gaming. Another incident involved the arrest of documented gang members by SAPD for firearm violations and gang enhancements at an approved cyber café.

### **Analysis of the Issues**

The cyber café moratorium has provided staff the ability to consider all aspects of a cyber café business. Staff from the Planning Division, Code Enforcement Division and Police Department have analyzed the City's current regulations and reviewed regulations from other cities that have similar cyber café uses. In order to protect and preserve the public health, safety and welfare of the City and its residents, staff has determined that an outright prohibition of cyber cafés citywide is the best option to address the myriad of concerns. The proposed ordinance amendment will prohibit the establishment of new cyber cafés in the City and will prohibit the relocation or expansion of any legally operating cyber café. Further, all existing cyber cafés that were legally established prior to the date of the urgency moratorium will be allowed to continue to operate and will be subject to the City's non-conforming ordinance.


The proposed ordinance will not affect those businesses where computer access is incidental to the permitted use, such as reproduction businesses (i.e. FedEx Office and Staples). In addition, this ordinance will not affect cyber learning centers in any manner. As defined in Section 41-46 of the SAMC, cyber learning centers are establishments that provide computer access to the general public without monetary charge and which are operated by a government entity, a school district, or by a non-profit organization.

**Table 1: CEQA, Strategic Plan Alignment and Public Notification & Community Outreach**

<b>CEQA</b>	
CEQA Type	Exempt per Section 15061(b)(3)
Reason(s) Exempt or Analysis	In accordance with the California Environmental Quality Act (CEQA), the recommended action is exempt from CEQA per Section 15061(b)(3). This exemption applies to projects covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. As it can be seen with certainty that there is no possibility that this code amendment may have a significant effect on the environment, therefore, the activity is not subject to CEQA.
<b>Strategic Plan Alignment</b>	
Goal(s) and Policy(s)	Approval of this item supports the City's efforts to meet Goal No. 5 – Community Health, Livability, Engagement & Sustainability, Objective No. 4 (support neighborhood vitality and livability).
<b>Public Notification &amp; Community Outreach</b>	
Required Measures	A notice of hearing was published in the Orange County Register.
Additional Measures	The proposed amendments are citywide and the project site is not located within the boundaries of one single neighborhood association.

### **Conclusion**

Based on the analysis provided within this report, staff recommends that the Planning Commission recommend that the City Council approve Zoning Ordinance Amendment No. 2019-04.



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Jerry C. Guevara  
Assistant Planner I

JG:S:\PlanningCommission\2019\9-9-19\ZOANo.2019-04CyberCafes

Exhibit: 1. Proposed Draft Ordinance

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# **EXHIBIT 1**

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## ORDINANCE NO. NS-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING SECTIONS 41-45, 41-198.200, 41-365, 41-377 AND 41-424 OF CHAPTER 41 (ZONING) OF THE SANTA ANA MUNICIPAL CODE PROHIBITING CYBER CAFÉS AS A PERMITTED USE CITYWIDE

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. The City of Santa Ana has witnessed a proliferation of cyber café businesses that has resulted in an increased number of public nuisance complaints emanating from such establishments in recent years, involving the following:
- (1) A documented increase in crime including serious and violent crimes such as loitering, illegal gambling, illegal drug use and sale, burglaries, assaults, fights, theft, robbery, public intoxication, vandalism, property damage, weapons offenses, and other criminal activities in and around cyber café establishments, as well as increased pedestrian traffic, noise, parking violations, and other nuisance activities which have resulted in a documented increase and demand for police responses.
  - (2) The City has experienced serious adverse impacts due to the unique manner in which cyber café businesses operate the “sweepstakes” games. Customers occupy a computer for hours which results in waiting lines and people congregating or loitering outside the establishment. The long game times and often late night hours have also increased demand for police response regarding noise complaints, criminal activity including fights, drug sales, and adverse gang activity affecting surrounding residential neighborhoods and commercial centers.
  - (3) Crime statistics and calls for service in the City have increased in areas where cyber cafés have been established. The Santa Ana Police Department (SAPD) identified 460 cyber café related incidents occurring between January 2018 and September 2018 throughout the City. These incidents include criminal arrests such as possession of firearms, narcotics and stolen vehicles and parole/probation violations. Since January of this year, SAPD has responded to a noticeable increase of calls for service and officer generated activities.

- (4) SAPD has spent a significant amount of resources and time conducting surveillance operations around cyber cafés. It was also found that this type of business primarily attracts clientele involved in criminal activity. Enforcement checks on cyber cafes and of customers entering or leaving such locations often result in drug related arrests, evidence of drug trafficking, illegal gambling and gaming and an influx of individuals on probation, parole, or wanted subjects. There has also been prostitution related activity occurring in nearby parking lots and surrounding areas.
- B. On October 16, 2018, the City Council adopted Urgency Ordinance No. NS-2956 establishing a forty-five (45) day moratorium on the approval, commencement, establishment, operation, relocation or expansion of cyber cafés. On November 20, 2018, the City Council extended said moratorium for an additional ten (10) month and fifteen (15) day period.
- C. The Planning Division, Code Enforcement Division and Police Department staff have analyzed the City's current regulations and other cities' regulations pertaining to cyber cafés and have determined that in order to protect and preserve the public health, safety and welfare of the City and its residents, prohibiting cyber cafés citywide will mitigate one potential path for engaging in these illegal activities. The proposed ordinance amendment will prohibit the establishment of new cyber cafés in the City.
- D. On September 9, 2019, the Planning Commission held a duly noticed public hearing and voted to recommend that the City Council adopt Zoning Ordinance Amendment No. 2019-04 prohibiting cyber cafes.
- E. The City Council, on October 1, 2019, held a duly noticed public hearing on this ordinance and has considered all testimony presented thereto.
- F. All provisions of the Santa Ana Municipal Code (SAMC) which are repeated herein are repeated solely in order to comply with the provisions of Section 418 of the Charter of the City of Santa Ana. Any such restatement of existing provisions of the Code is not intended, nor shall it be interpreted, as constituting a new action of decision of the City Council, but rather such provisions are repeated for tracking purposes only in conformance with the Charter.

Section 2. Section 41-45 (Cyber Café) of Chapter 41 of the SAMC is hereby amended to read as follows:

**Sec. 41-45. – Cyber Café.**

Cyber café shall mean an establishment whose primary purpose is to provide ~~that provides more than six (6)~~ computers and/or other electronic devices for access to the Internet, e-mail, ~~video games~~ or computer software programs which are networked (via LAN or WAN) or which function as a client/server



program, and which seeks compensation in any form from users. Cyber café is synonymous with PC cafe, internet cafe or cyber centers, but does not include a cyber learning center as defined in Section 41-46 or recreational or entertainment uses as defined in Section 41-142.

Section 3. Section 41-198.200 (Cyber Cafés) of Chapter 41 of the SAMC is hereby amended to read as follows:

**Sec. 41-198.200. – Cyber Cafés - Prohibited.**

~~Notwithstanding any other provisions of this chapter, cyber cafes may be conducted in any C1, C2, C4, and C5 zones, provided they are carried on in accordance with the limitations hereinafter set forth, and provided a ministerial land use certificate is first obtained in accordance with sections 41-675 through 41-677 of this Code. Cyber cafes shall not be permitted in a special districts or a specific plan unless explicitly set forth as a permissible use. For the purpose of preserving public health, safety and general welfare, cyber cafés as defined by Section 41-45 are prohibited within any zone or district in the City.~~

Section 4. Section 41-365 (Uses Permitted in the C1 District) of Chapter 41 of the SAMC is hereby amended to read as follows:

**Sec. 41-365. - Uses permitted in the C1 district.**

The following uses are permitted in the C1 district:

- (a) Retail and service uses.
- (b) Professional, administrative and business offices.
- (c) Automobile parking lots and parking structures.
- (d) Automobile sales, but excluding truck, trailer, tractor and boat sales.
- (e) Churches and accessory church buildings.
- (f) Mortuaries.
- (g) Theaters.
- (h) Hospitals, clinics, and sanitariums.
- (i) Animal hospitals and veterinaries.
- (j) Plant nurseries.
- (k) Gymnasiums.
- (l) Golf courses, both regulation and miniature, and driving ranges.

- (m) Public utility structures, including electric distribution and transmission substations.
- (n) Restaurants, cafes, and eating establishments, other than those specified in Section 41-365.5.
- (o) Schools and studios operated for commercial or public purposes.
- (p) Childcare facilities.
- (q) Service stations.
- (r) Automobile servicing.
- ~~(s) Cyber cafes, subject to compliance with the requirements of section 41-198.200.~~
- ~~(ts)~~ Tattoo and/or body art establishments, subject to the development and operational standards set forth in Section 41-199.3.

Section 5. Section 41-377 (Uses Permitted in the C2 District) of Chapter 41 of the SAMC is hereby amended to read as follows:

**Sec. 41-377. - Uses permitted in the C2 district.**

The following uses are permitted in the C2 district.

- (a) All uses which are permitted in the C1 district pursuant to Section 41-365.
- (b) Automotive garages including body and fender repair, painting, and engine replacement.
- (c) Blueprinting, photo-engraving, including all types of reproduction processes.
- (d) Reserved.
- (e) Equipment rental yards.
- (f) Metal shops.
- (g) Tire recapping.
- (h) Wholesale establishments as follows:
  - (1) Automotive equipment, including parts and supplies for machinery.
  - (2) Drugs, chemicals and allied products excluding explosives and industrial chemicals.

- (3) Dry goods and apparel.
- (4) Food products.
- (5) Farm products.
- (6) Electrical and plumbing supplies.
- (7) Office equipment and supplies.
- (i) Truck, trailer, tractor and boat sales.
- (j) Research institutions and laboratories.
- (k) Adult entertainment businesses subject to compliance with the requirements of article XVII of this Chapter.
- ~~(l) Cyber cafes, subject to compliance with the requirements of Section 41-198.200.~~

Section 6. Section 41-424 (Uses Permitted in the C5 District) of Chapter 41 of the SAMC is hereby amended to read as follows:

**Sec. 41-424. - Uses permitted in the C5 district.**

The following uses are permitted in the C5 district:

- (a) Administrative and professional offices.
- (b) Retail and service uses.
- (c) Automobile parking lots, but excluding the sale or storage of automobiles, trucks, trailers, boats, or tractors, whether new or used.
- (d) Churches, chapels, mortuaries, and theaters.
- (e) Government buildings.
- (f) Restaurants and cafes, other than those specified in Section 41-424.5.
- (g) Schools and studios operated for commercial or public purposes.
- (h) Child care facilities.
- (i) The printing, publishing, and circulation of a newspaper, including plant and office.
- (j) Two-family dwellings not exceeding one (1) unit per three thousand (3,000) square feet of lot area, provided such units front on a secondary or local street.

~~(k) — Cyber cafes subject to compliance with the requirements of Section 41-198.200.~~

(~~h~~) Gymnasiums and health clubs.

Section 7. The proposed ordinance has been reviewed with respect to the applicability of the California Environmental Quality Act ("CEQA") and the CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.). The project is exempt from CEQA as it can be seen with certainty that there is no impact on the environment [Section 15061(b)(3)] and a Notice of Exemption (Environmental Review No. 2019-68) will be filed upon adoption of this ordinance.

Section 8. If any section, subsection, sentence, clause, phrase or portion of this ordinance for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 9. The City Council of the City of Santa Ana hereby adopts an ordinance amending Sections 41-45, 41-198.200, 41-365, 41-377 and 41-424 of Chapter 41 (Zoning) of the Santa Ana Municipal Code prohibiting the establishment of cyber cafés as a permitted use Citywide. This approval was based upon the evidence submitted at the above said hearing, which includes, but is not limited to: the Request for City Council Action dated October 1, 2019, and exhibits attached thereto; and the public testimony, all of which are incorporated herein by this reference.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Miguel A. Pulido  
Mayor

APPROVED AS TO FORM:  
Sonia R. Carvalho  
City Attorney

By: \_\_\_\_\_  
Lisa Storck  
Assistant City Attorney

AYES: Councilmembers \_\_\_\_\_

NOES: Councilmembers \_\_\_\_\_

ABSTAIN: Councilmembers \_\_\_\_\_

NOT PRESENT: Councilmembers \_\_\_\_\_

### CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, DAISY GOMEZ, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-XXXX to be the original ordinance adopted by the City Council of the City of Santa Ana on \_\_\_\_\_, 2019 and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Council  
City of Santa Ana

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