STAFF REPORT

DOCKET #  UDO-243
STAFF:     Chris Murphy

REQUEST

A UDO Text Amendment (UDO-243) proposed by the City Attorney’s Office, based on a request from the Community Development, Housing and General Government Committee of the City Council to amend Chapter B of the Unified Development Ordinances to add the use Electronic Sweepstakes Operation. The text amendment contains two versions: (Version 1) Electronic Sweepstakes Operations would be allowed as a principal use in the Highway Business zoning district and would not be allowed as an accessory use in any zoning district; and (Version 2) Electronic Sweepstakes Operations would be allowed as a principal use in the Highway Business, General Business, Central Business, Mixed Use- Special Use, Major Retail and Business- Special Use, and Entertainment zoning districts. The Electronic Sweepstakes Operations would be allowed to operate as an accessory use but would be limited to the use of two electronic sweepstakes machines. Under both versions, existing uses that would be classified as Electronic Sweepstakes Operations but not located in a zoning district that would permit such uses would need to be phased out by June 30, 2015 through an amortization proposal included in both versions.

BACKGROUND

An Electronic Sweepstakes Operation (a.k.a. an Internet Business Center) typically involves a customer purchasing a prepaid Internet access card that can be used at the computer terminals located within the establishment. Part of the software or internet site “pre-loaded” on the computer terminals allows prizes to be revealed through gaming simulations, based on the prepaid Internet Access Card purchased. According to the industry, the simulated computer games do not directly determine what a customer wins; they merely simulate games of chance. If the customers so chose, they could purchase the card and have the prize revealed without ever accessing the Internet via the computer terminal. Many of these operations also offer copy and fax services, as well as other goods and services typically associated with a copy shop or other similar use.

Per Chapter B, Article II, Section 2-4.3 of the UDO, at the time of application for a permit, the Director of Inspections shall classify the proposed use for a property to the use in the Table of Permitted Uses or, if there is no exact match in the Table of Permitted Uses, to classify it to the closest use in the Table. Currently, there is no exact match in the Table of Permitted Uses for these types of business operations. Using the section cited above and given the services offered as part of the business, the Inspections Division determined that the closest use was Services A.

Over the past several years, many permits have been issued for Internet Business Centers as Services A uses. Currently, there are twenty-three (23) locations operating with the principal use of Services A that would qualify under the new “Electronic Sweepstakes Operation” use. There are three (3) known locations that operate as accessory uses with a limited number of machines
(currently, no accessory location has more than 4 machines). The current locations are shown on Map Attachments 1 and 2.

The Community Development, Housing and General Government Committee (CDHGG) of the City Council, concerned with the increasing number of “sweepstakes” operations throughout the City and their neighborhood impacts, asked the City Attorney’s Office to draft a text amendment specifically defining such operations, including a specific use in the Table of Permitted Uses for the operations and limiting or prohibiting them as accessory uses. At the August 13, 2013 CDHGG Committee meeting, the City Attorney’s Office presented a version (now labeled as Version 2) of the text amendment that allows the new use “Electronic Sweepstakes Operation” as a principal use in the Highway Business (HB), General Business (GB), Central Business (CB), Mixed Use- Special Use (MU-S), Major Retail and Business- Special Use (MRB-S), and Entertainment (E) zoning districts. The Electronic Sweepstakes Operations would be allowed to operate as an accessory use but would be limited to the use of two electronic sweepstakes machines. Following discussions at the CDHGG Committee meeting, the Committee asked the City Attorney’s Office to draft a another version of the ordinance (Version 1) that allows the new use “Electronic Sweepstakes Operation” as a principal use only in the Highway Business (HB) zoning district and would not allow it as an accessory use in any zoning district. Both versions include amortization provisions that would require any Electronic Sweepstakes Operation made nonconforming by the adoption of this amendment to cease operation by June 30, 2015. Those locations operating as “accessory uses” would need to come into compliance by the same date (June 30, 2015) – compliance at these locations would mean reducing the number of machines to two (2) or fewer in Version 2; in Version 1, no machines would be allowed as an accessory use.

**ANALYSIS**

**Impacts of the Text Amendment on Existing Electronic Sweepstakes Operations**

There are twenty-six (26) locations operating as “Electronic Sweepstakes Operations” within the City of Winston-Salem. Under Version 1, fourteen of the twenty-six (14 of 26 – 53%) must close or otherwise request/gain approval of a rezoning to either the HB zoning district or in the case of HB-S zoned properties, to add the use Electronic Sweepstakes Operation by June 30, 2015. Under Version 2, seven of the twenty-six (7 of 26 – 27%) must close or otherwise request/gain approval of a rezoning to a zoning district permitting the use by June 30, 2015 (note – 3 of the 26 locations are accessory uses and under Version 2, would have to reduce to no more than 2 machines; under Version 1, no machines would be allowed as accessory uses). Map Attachments 1 and 2 show how the current Electronic Sweepstakes Operations would be affected by Versions 1 and 2, respectively.

**Primary Impacts of Electronic Sweepstakes Operations**

In analyzing land uses for possible impacts, which helps inform decisions about which zoning districts are appropriate, planning-based criteria including traffic impacts, noise impacts, appearance/aesthetic impacts, environmental impacts and safety impacts are examined.

If a large number of sweepstakes machines are located within a relatively small building with a similarly sized parking lot, traffic and parking impacts on surrounding areas could become an issue. For example, a typical convenience store converted to an Electronic Sweepstakes Operation as a principal use with 3,500s.f. in area and sixteen (16) parking spaces could be
problematic and create spillover parking issues in the surrounding neighborhood if it had more computer terminals than the number of parking spaces provided. This problem could be multiplied if a number of similar uses were clustered adjacent to or very close to each other. Locating an Electronics Sweepstakes Operation in a Large Shopping Center, however, may not be as much of an issue due to the larger amount of shared parking. Planning staff is not aware of any particular issues that distinguish Electronic Sweepstakes Operations as having greater noise impacts, appearance impacts, or environmental impacts than other typical commercial uses. Concerning safety impacts, planning staff consulted with the Police Department and was informed that they do not have information to determine if there is a relative concentration of crime incidents or calls for service associated with the Electronic Sweepstakes Operations.

Given the above considerations, there may be some rationale based on the possible parking and traffic impacts to limiting the Electronic Sweepstakes Operations to zoning districts which tend to have larger sites, buildings and parking lots (such as the HB, GB and MRB-S zoning districts), or zoning districts which emphasize shared parking (such as the MU-S, E and CB zoning districts). Additionally, it may be advisable to require parking for Electronic Sweepstakes Operations as a principal use in all allowed zoning districts other than the CB zoning district at a ratio of one (1) space per machine/terminal, plus one (1) space per employee. This would also prevent negative parking and traffic impacts associated from any clustering of several Electronic Sweepstakes Operations in the same vicinity. Since accessory use of Electronic Sweepstakes Operations as proposed in Version 2 is limited to no more than two (2) machines, there should be no traffic or parking impacts associated with that small number.

Planning staff believes Version 2 to be preferable to Version 1. There are other uses allowed in most of the commercial zoning districts which are arguably more intense and have potentially more off-site impacts, so allowing Electronic Sweepstakes Operations in a wider range of zoning districts such as proposed in Version 2 appears more reasonable and consistent, in staff’s opinion. Also, the impacts of allowing only two (2) machines as an accessory use as is proposed in Version 2 appears negligible. Both versions avoid placing this use in zoning districts that are more neighborhood-oriented, which tend to have smaller sites, buildings and parking areas.

Staff would also suggest that for the zoning districts allowing Electronic Sweepstakes Operation uses other than CB (either Version), the exemption from meeting the off-street parking requirements for most changes of use in existing commercial structures provided in GMA 2 (Urban Neighborhoods) not be granted for sweepstakes uses. Otherwise, sites with existing buildings that are compact and located within GMA 2 could be converted to the sweepstakes use without a requirement for adequate parking. The recommendation in this regard would be to treat new sweepstakes uses in existing buildings within GMA 2 the same as restaurants.

**RECOMMENDATION**

Approval of Version 2.
Chris Murphy presented the staff report.

PUBLIC HEARING

FOR:

Leslie Kamtman, 29 Gloria Avenue, Winston-Salem, NC  27127
• When electronic sweepstakes first began in Forsyth County, there was no specific use for them in the Table of Permitted Uses.  As a result, Inspections had to include them in the category which most closely matched - Services A.
• An Electronic Sweepstakes operation is clearly not a neighborhood based use and does not belong in the Pedestrian Business District.
• These operations bring crime and noise issues to surrounding areas.
• It would benefit everyone to clearly define these operations and the areas where it would be appropriately permissible.
• Please support this text amendment.

AGAINST:

Wake Wagner, 225 N. Spring Street, Winston-Salem, NC  27101
• I represent operators of two of these businesses which would be forced to close under either version.
• These uses are clearly not crack houses and would be offended to be so classified.
• People in the community enjoy these operations.
• If this amendment passes, either seven or 14 small, family-owned businesses will be shut down.
• Closing these businesses will create more vacant retail spaces when we already have too much empty retail space.
• There is no data from police to support the increased crime rate.  One of my clients has operated for four years and never had a call from police or a complaint from a neighbor. They have 20 terminals with 75 parking spaces and have never had a full lot so the one reason you’re talking about supporting this amendment which is parking does not stand up to reality.
• If you want to create parking requirements for these businesses there are easier, tailored ways to do that.
• The real reason for this amendment is that people don’t want them in their neighborhood.
• I would urge you not to approve either of these proposals.
• Give people more time to realize the gains on businesses they have begun.
Jennifer Fountain, 101 West Friendly Ave, Suite 400, Greensboro, NC 27401

- I represent a landlord of a facility which would be closed under either version.
- There are no noise, appearance, environmental, or crime issues.
- The only issue which can be brought up is parking. If parking is the issue, then it needs to be looked at on a site-specific basis.
- A text amendment may not even address the issues you are trying to fix. There are unintended consequences of this text amendment.
- They have a legal right to be here.
- Because my landlord was able to lease this space he was able to lease other spaces in his shopping center so this would have a ripple effect.
- This is no different than a convenience store. If people hear a convenience store has sold a lucky ticket people choose to go to that specific store for their next ticket whether they live there or not.
- This is not an appropriate text amendment.

Larry Cigliano, 1961 Lake Drive, Winston-Salem, NC 27127

- I operate one of the businesses Mr. Wagner was talking about.
- In the four years we’ve been open, we’ve never had a scuffle inside the place.
- Our customers are very respectful of the neighborhood.
- We don’t have late night noise.
- We keep it clean.
- We pay City taxes. The City will be losing money if they close these businesses.

**WORK SESSION**

Clarence Lambe expressed the opinion that this type of operation has a negative impact on neighborhoods.

The Planning Board discussed the difference between the two versions.

HB-S zoned sites which don’t have the use “Shopping Center” or don’t qualify for it would have to come back in for rezoning.

This text amendment began with emails from citizens to the City Attorney requesting a meeting about a specific situation in a PB District where parking from the use was spilling over into the neighborhood. The City Attorney has constantly heard that the use is incompatible with neighborhood uses. A City Council Committee initiated the request so it’s probable that they were also hearing concerns from citizens.

This differs from a convenience store because people go to a convenience store, purchase a lottery ticket, and leave. With Electronic Sweepstakes people go and spend time there thus taking up parking spaces for longer periods of time which causes spillover into the neighborhood.

Alcohol is not served in these operations.
We need to be careful to not over-correct a problem. Are we adding unnecessary restrictions based on one particular situation?

Owners of small businesses find it hard to start and/or maintain a business due to the numerous regulations.

We should have a neighborhood meeting to discuss this. I don’t know if we’ve got a problem or not.

Chairman King asked that the request be continued for one month with additional information furnished to the Board at the September 26th work session. Specifically, what are the seven businesses which will be impacted by version two, could they be rezoned, and would a longer amortization period be appropriate? The Board also asked for more specific criminal statistics.

Letters were sent to all business owners and property owners. We did try to get notices out to people both for and against the proposed text amendment.

Hearing who is for or against this and why would be helpful in making a decision.

MOTION: Barry Lyons moved continuance of the zoning petition to October 10, 2013 with each side having 12 minutes next month to discuss their support or opposition.
SECOND: Paul Mullican
VOTE:
   FOR: Tommy Hicks, Arnold King, Clarence Lambe, Darryl Little, Barry Lyons, Lynne Mitchell, Paul Mullican, Brenda Smith, Allan Younger
   AGAINST: None
   EXCUSED: None
An Ordinance Proposed by the City Attorney’s Office Amending the Unified Development Ordinances to Add Electronic Sweepstakes Operation as a Use

Be it ordained by the City Council of the City of Winston-Salem, North Carolina, that the Unified Development Ordinances is hereby amended as follows:

Section 1. Chapter A, Article II – Definitions is hereby amended as follows:

Article II – Definitions

Electronic Sweepstakes Operation (W). Any business enterprise where persons utilize a mechanically, electrically or electronically operated machine or device (collectively, the “electronic sweepstakes machines”) that is owned, leased or otherwise possessed by a sweepstakes sponsor or promoter, to reveal the content of a sweepstakes entry. Electronic Sweepstakes Operations shall not include any lottery approved by the State of North Carolina.

Section 2. Chapter B, Article II, Section 2-4 – Permitted Uses is hereby amended as follows:

Addition to TABLE B.2.6.

Electronic Sweepstakes Operation (W) (Hi): Insert a “Z” for the following zoning district:

HB

Section 3. Chapter B, Article II, Section 2-5 – Use Conditions is hereby amended as follows:

2-5.27.2 Electronic Sweepstakes Operation (W)

(A) Compliance With Applicable Laws
Electronic Sweepstakes Operations shall comply with all applicable local, state and federal laws.

(B) Not Permitted as an Accessory Use
Electronic Sweepstakes Operations shall not be permitted as an accessory use, and shall only be permitted as a principal use within the zoning district designated in Table B.2.6.
Amortization of Nonconforming Electronic Sweepstakes Operations

Electronic Sweepstakes Operations made nonconforming by the provisions of this Ordinance shall be discontinued on or before June 30, 2015. Nonconforming Electronic Sweepstakes Operations shall include businesses classified as another use, but if classified/ permitted following the adoption of this ordinance would be classified as an Electronic Sweepstakes Operation.

Section 4. Chapter B, Article III, Section 3-3 Parking Stacking and Loading Areas is hereby amended as follows:

Addition to TABLE B.3.8:

BUSINESS AND PERSONAL SERVICES

**Electronic Sweepstakes Operation** 1 space per electronic sweepstakes machine plus 1 space per employee

Section 5. Chapter B, Article V, Section 5-4.3(E) – Parking for Nonresidential Structures Built Prior to March 7, 1988 (W) is hereby amended as follows:

5-4.3 (E) Parking for Nonresidential Structures Built Prior to March 7, 1998 (W)

Nonresidential structures that are nonconforming as to off-street parking requirements in GMA 1 and GMA 2 may change uses within the building without any requirement to increase existing off-street parking on the zoning lot including zoning lots without any off-street parking. This exemption includes all permitted uses except the uses of “Electronic Sweepstakes Operation,” "Restaurant (without drive-through service)” and "Restaurant (with drive-through service)”. A Special Use Permit from the Elected Body in accordance with Section B.6-1.5 must be granted for electronic sweepstakes operations and restaurant uses. Additions to these nonresidential structures shall be permitted in accordance with Section B.5-4.3(C), however, no new additions shall be permitted which would eliminate any existing off-street parking on the zoning lot unless the number of parking spaces remaining meets the number required by the Zoning Ordinance for the zoning lot.

Section 6. This ordinance shall be effective upon adoption.
AN ORDINANCE PROPOSED BY THE CITY ATTORNEY’S OFFICE AMENDING THE UNIFIED DEVELOPMENT ORDINANCES TO ADD ELECTRONIC SWEEPSTAKES OPERATION AS A USE

Be it ordained by the City Council of the City of Winston-Salem, North Carolina, that the Unified Development Ordinances is hereby amended as follows:

Section 1. Chapter A, Article II – Definitions is hereby amended as follows:

Article II – Definitions

ELECTRONIC SWEEPSTAKES OPERATION (W). Any business enterprise where persons utilize a mechanically, electrically or electronically operated machine or device (collectively, the “electronic sweepstakes machines”) that is owned, leased or otherwise possessed by a sweepstakes sponsor or promoter, to reveal the content of a sweepstakes entry. Electronic Sweepstakes Operations shall not include any lottery approved by the State of North Carolina.

Section 2. Chapter B, Article II, Section 2-4 – Permitted Uses is hereby amended as follows:

Addition to TABLE B.2.6.

Electronic Sweepstakes Operation (W) (Hi): Insert a “Z” for the following zoning districts:

HB, GB, CB, MU-S, MRB-S, and E

Section 3. Chapter B, Article II, Section 2-5 – Use Conditions is hereby amended as follows:

2-5.27.2 ELECTRONIC SWEEPSTAKES OPERATION (W)

(A) Compliance With Applicable Laws
Electronic Sweepstakes Operations shall comply with all applicable local, state and federal laws.

(B) Amortization of Nonconforming Electronic Sweepstakes Operations
Electronic Sweepstakes Operations as a principal use, made nonconforming by the provisions of this Ordinance, shall be discontinued on or before June 30, 2015. Electronic Sweepstakes Operations as an accessory use, made
nonconforming by the provisions of this Ordinance, shall comply with the limitation on the number of electronic sweepstakes machines on or before June 30, 2015. Nonconforming Electronic Sweepstakes Operations shall include businesses classified as another use, but if classified/permited following the adoption of this ordinance would be classified as an Electronic Sweepstakes Operation.

Section 4. Chapter B, Article II, Section 2-6 – Accessory Uses is hereby amended as follows:

2-6.3 ACCESSORY USES SUBJECT TO OTHER REQUIREMENTS

(G) Electronic Sweepstakes Operation

A maximum of two (2) electronic sweepstakes machines shall be allowed in an Electronic Sweepstakes Operation operated as an accessory use.

Section 5. Chapter B, Article III, Section 3-3 Parking Stacking and Loading Areas is hereby amended as follows:

Addition to TABLE B.3.8:

BUSINESS AND PERSONAL SERVICES

Electronic Sweepstakes Operation 1 space per electronic sweepstakes machine plus 1 space per employee

Section 6. Chapter B, Article V, Section 5-4.3(E) – Parking for Nonresidential Structures Built Prior to March 7, 1988 (W) is hereby amended as follows:

5-4.3 (E) Parking for Nonresidential Structures Built Prior to March 7, 1998 (W)

Nonresidential structures that are nonconforming as to off-street parking requirements in GMA 1 and GMA 2 may change uses within the building without any requirement to increase existing off-street parking on the zoning lot including zoning lots without any off-street parking. This exemption includes all permitted uses except the uses of “Electronic Sweepstakes Operation,” "Restaurant (without drive-through service)" and "Restaurant (with drive-through service)". A Special Use Permit from the Elected Body in accordance with Section B.6-1.5 must be granted for electronic sweepstakes operations and restaurant uses. Additions to these nonresidential structures shall be permitted in accordance with Section B.5-4.3(C), however, no new additions shall be permitted which would eliminate any existing off-street parking on the zoning lot unless the number of parking spaces remaining meets the number required by the Zoning Ordinance for the zoning lot.

Section 7. This ordinance shall be effective upon adoption.
Map 1.

Version 1.

Electronic Sweepstake Location

- Conforming.
- Nonconforming. Amortized - Accessory use.
- Nonconforming. Amortized.

Growth Management Areas

- City or Town Center (GMA 1)
- Urban Neighborhoods (GMA 2)
- Suburban Neighborhoods (GMA 3)
- Future Growth Area (GMA 4)
- Rural Area (GMA 5)
Version 2.

Electronic Sweepstake Location

- Conforming.
- Nonconforming. Amortized.

Growth Management Areas

- City or Town Center (GMA 1)
- Urban Neighborhoods (GMA 2)
- Suburban Neighborhoods (GMA 3)
- Future Growth Area (GMA 4)
- Rural Area (GMA 5)