

**CUYAHOGA COUNTY PLANNING COMMISSION
RESOLUTION NO. 110210-F**

Recommending that the Olmsted Township Zoning Commission approve Olmsted Township Resolution A-11, amending the Township's Zoning Resolution to establish regulations for Sweepstakes Cafes.

WHEREAS, the Olmsted Township Zoning Commission, in concert with the Olmsted Township Board of Trustees and the Olmsted Township Board of Zoning Appeals, has determined it is necessary for the Township to amend the Olmsted Township Zoning Resolution to include regulations governing the establishment of Sweepstakes Cafes in the Township; and

WHEREAS, on January 26, 2011, the Olmsted Township Zoning Commission initiated Olmsted Township Resolution A-11, an amendment to the Olmsted Township Zoning Resolution to revise sections 101.01, 250.03, 270.06, and 270.07 to regulate Sweepstakes Cafes as a conditional use in the R-B Retail Business District and the L-I Limited Industrial District; and

WHEREAS, the proposed text amendments included in Olmsted Township Resolution A-11 were reviewed by the Cuyahoga County Prosecutor's Office who, according to the Ohio Revised Code, provides legal advice and counsel to public officials in Olmsted Township concerning land use and zoning matters; and

WHEREAS, such resolution was submitted on January 28, 2011 to the Cuyahoga County Planning Commission for review and recommendation as required by Section 519.12 of the *Ohio Revised Code* as amended; and,

WHEREAS, CPC staff reviewed the proposed text amendments and as noted in the attached staff report, found that:

- A. The Township conducted a thorough review of the issues and concerns related to Sweepstakes Cafes; and
- B. The proposed regulations are similar to land use regulations recently adopted by neighboring communities; and
- C. While the Township does not have the authority to adopt licensing requirements for Sweepstakes Cafes, it is within the Township's authority under §519.02 of the Ohio Revised Code, to regulate, among other things, the uses of buildings and other structures, and the location, height, bulk, number of stories, and size of buildings, and may establish architectural standards, all in the interest of public health, safety and general welfare; and
- D. Despite the separation requirements from residential districts and other uses, there are locations within the Township where Sweepstakes Cafes can be located in compliance with the proposed regulations.

NOW THEREFORE, BE IT RESOLVED NOW, that the Cuyahoga County Planning Commission recommends approval of Olmsted Township Zoning Resolution A-11 as submitted; and also suggests that the Zoning Commission review the attached zoning analysis maps to determine whether or not the proposed separation standards limit the establishment of sweepstakes cafes to locations that the Zoning Commission deems appropriate.

BE IT FURTHER RESOLVED that the Director is hereby directed to deliver copies of this resolution and the attached staff review report to the Olmsted Township Zoning Commission for its review and consideration.

**CUYAHOGA COUNTY PLANNING COMMISSION
STAFF REPORT**

OLMSTED TOWNSHIP RESOLUTION A-11

**PROPOSED ZONING TEXT AMENDMENT TO ADOPT REGULATIONS FOR
SWEEPSTAKES CAFES**

Date Rezoning Request Received: January 28, 2011

Date of CPC Staff Review: January 31, 2011

Date of Township Zoning Commission Hearing: February 23, 2011

Date of CPC Meeting: February 10, 2011 at 2:00 P.M.
Cuyahoga County Solid Waste District Boardroom
4750 East 131st Street, Garfield Heights, OH 44125

Ohio Revised Code §519.12(E) requires all township zoning amendments to be submitted to the County Planning Commission for review. The purpose of this review is to assist the Township by providing it with recommendations based on professional planning considerations. CPC shall recommend the approval or denial of the proposed amendment or the approval of some modification of it and shall submit its recommendation to the Township Zoning Commission. The recommendation shall be considered at the Township Zoning Commission's public hearing held on the proposed amendment. The recommendation from CPC is **advisory** only.

PROPOSED ZONING AMENDMENT:

A request by the Olmsted Township Zoning Commission to amend sections 101.01, 250.03, 270.06, and 270.07 of the Olmsted Township Zoning Resolution to adopt regulations governing Sweepstakes Cafes as a conditional use in the R-B Retail Business District and the L-I Limited Industrial District. Olmsted Township Resolution A-11 is summarized below, while the complete resolution in which the specific text amendments are fully defined is attached.

Zoning Resolution Section and Title		Proposed Action
101.01	Purpose	To expand the purpose statement and add "general welfare" to reflect the 2006 amendment to ORC §519.02
250.03	Schedule of Permitted Uses	To add a new subsection (d) (7) to add Sweepstakes Café as a conditional use in the R-B and L-I Districts
270.06	Schedule Of Regulations For Conditional Uses In Business, Commercial & Industrial Districts	To add a new subsection 25. Sweepstakes Café to the schedule
270.07	Supplemental Regulations For Specific Uses	To add a new subsection (t) listing the specific conditions that apply to Sweepstakes Cafes, including, but not limited to, minimum floor area per device, minimum parking standards and minimum separation requirements from specific uses.

CPC STAFF RECOMMENDATION:

Staff recommends that County Planning Commission approve a resolution recommending approval of Olmsted Township Resolution A-11 adopting regulations for sweepstakes cafes. Furthermore, staff suggests that the Zoning Commission review the attached zoning analysis maps to determine whether or not the proposed separation standards limit the establishment of sweepstakes cafes to locations that the Zoning Commission deems appropriate.

BACKGROUND AND SUMMARY:

In 2010, when faced with a request to approve a conditional use application for an internet café, which, according to the applicant, is a “retail use” that “provides copy and fax services and sells long distance phone cards” with 60 computer terminals that may be used “to access internet sweepstakes sites”, Olmsted Township officials determined that the existing zoning regulations did not adequately address the unique characteristics of the proposed use. During the public hearings conducted for the proposed application, concerns were raised regarding the impact of the proposed use related to parking, lighting, noise and hours of operation on other businesses in the shopping plaza as well as abutting residences and a nearby church/community center.

In November 2010, the Olmsted Township building and zoning department staff drafted proposed zoning regulations to specifically add sweepstakes cafes as conditional uses to the R-B and L-I zoning districts, along with conditions to address the concerns that were raised during the previously held public hearings. The draft regulations were informally distributed to the County Planning Commission staff and the assistant county prosecutor who serves as the Township Trustee’s legal advisor on land use issues.

On January 12, 2011, the Olmsted Township Trustees conducted a joint work session with members from the Olmsted Township Zoning Commission, Olmsted Township Board of Zoning Appeals and Olmsted Township building and zoning department staff. The assistant county prosecutor and a CPC staff member also attended. Attendees at the meeting reviewed and discussed research regarding the operational characteristics of sweepstakes cafes, their proliferation in Northeastern Ohio, typical standards and regulations being considered or already adopted by local communities, recent court rulings regarding the legality of the use and the constitutionality of ordinances enacted to regulate the use.

CPC STAFF COMMENTARY:

Most communities that have adopted regulations governing sweepstakes cafes have created licensing requirements and imposed a licensing fee. However, unlike home rule municipalities, townships may only enact laws to the extent expressly permitted in the Ohio Revised Code. Townships have been given statutory authority to enact land use and zoning regulations by ORC §519.02, but have not been granted the authority to establish business licensing requirements, with the exception in ORC §503.52 that grants townships the authority to require adult entertainment establishments to obtain licenses.

CPC staff reviewed a number of licensing ordinances recently enacted by local municipalities and found that many of them contain the same or similar land use and zoning related standards such as parking requirements; separation requirements from sensitive land uses such as schools, places of worship, and residential districts; and limits on the hours of operation. Olmsted Township’s proposed zoning regulations are similar to the sweepstakes café land use regulations adopted by neighboring communities.

Using CPC's mapping capabilities and the Township's zoning map, staff was able to identify the areas where sweepstakes cafes could locate based on the proposed standards. While the minimum 500-foot separation requirement from residential districts and residential addresses and the minimum 1,000-foot separation requirement from establishments with liquor permits are significant restrictions, **there are locations within the Township where Sweepstakes Cafes can be located in compliance with the proposed regulations.**

However, based on the number of residences located along Bagley Road in the R-B District and the number of establishments with liquor permits that are located at the vicinity of the Stearns/Bagley intersection, CPC staff also generated two additional maps for the Zoning Commission's consideration.

Alternative 1: Illustrates the effect of eliminating the 500-foot separation requirement from residential addresses in the R-B district.

Alternative 2: Illustrates the effect of eliminating both the 1,000-foot separation requirement from establishments with liquor permits **and** the 500-foot separation requirement from residential addresses in the R-B district.

Providing the Township with the three maps will enable the Zoning Commission to make an informed decision on which separation standards best meet the needs of the Township. However, in illustrating the two alternatives, CPC staff in no way intends to imply that any modification to the separation standard is needed, as there are parcels where sweepstakes cafes could locate and still comply with the 500-foot separation requirement from residential addresses in the R-B district and the 1,000-foot separation requirement from establishments with liquor permits.

Prepared by:

Kristin Hopkins, AICP
Principal Planner
Cuyahoga County Planning Commission

January 31, 2011

**Olmsted Township
Resolution A-11**

January 26, 2011

AMENDING THE OLMSTED TOWNSHIP ZONING RESOLUTION TO INCLUDE THE
REGULATION OF SWEEPSTAKES CAFÉS

WHEREAS, in recent years, companies have developed electronic machines and devices featuring sweepstakes games, which currently are not clearly regulated under Ohio law; and

WHEREAS, Olmsted Township, Ohio may legitimately regulate land use, including computerized sweepstakes, sweepstakes cafes, and similar operations, and the premises upon which they are located and operated; and

WHEREAS, there has been a demonstrated need to provide regulations for the location and operation of computerized sweepstakes and sweepstakes cafes in order to ensure that such businesses are operating in a manner that is not harmful to the community, and

WHEREAS, the Olmsted Township Zoning Commission has held the required public hearing on XXX, and

WHEREAS, the Olmsted Township Zoning Commission has submitted to the Cuyahoga County Planning Commission and received recommendations from Resolution XXX, and

NOW, THEREFORE, BE IT RESOLVED THAT the Olmsted Township Zoning Commission recommends approval to the Olmsted Township Board of Trustees that computerized sweepstakes and sweepstakes cafes be permitted as a Conditional Use in Retail Business and Limited Industrial Districts in Olmsted Township with the following requirements and be added to sections, 250.03(d) Sweepstakes Café as a Conditional Use in R-B and L-I districts and 270.07 Supplemental Regulations for Specific Uses in the Olmsted Township Zoning Resolution as set forth below:

1. Amend Section 101.01 Purpose to read as follows:

SECTION 101.01 PURPOSE.

According to Section 519.02 of the Ohio Revised Code (ORC), a board of township trustees may regulate buildings and land uses in unincorporated territory for public purposes. For the purpose of promoting the public health and safety and morals, and in the interest of public convenience, comfort, prosperity and general welfare, the Olmsted Township Board of Township Trustees may, in accordance with a comprehensive plan, regulate by resolution the location, height, bulk,

Underlined text is proposed to be added; ~~Strikethrough~~ text is proposed to be deleted.

number of stories, and size of buildings and other structures, including tents, cabins, mobile homes and manufactured homes, percentages of lot areas which may be occupied, setback building lines, sizes of yards, courts, and other spaces, the density of population, the uses of buildings and other structures including tents, cabins, mobile homes and manufactured homes, and the use of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of Olmsted Township, and for such purposes may divide all or any part of the unincorporated territory of the township into districts, or zones of such number, shape, and areas as the Board determines. All such regulations shall be uniform for each class or kind of building or other structure or use through any district or zone, but the regulation or zone may differ from those in other districts or zones.

2. Amend Section 250.03 Schedule Of Permitted Uses to add a new subsection (d) (7) to read as follows:

LAND USE CATEGORY	R-B Retail Business	C-S Commercial Services	L-I Limited Industrial
(a) <u>Offices</u> ****			
(b) <u>Retail/Services</u> ****			
(c) <u>Auto Oriented</u> ****			
(d) <u>Entertainment/recreation</u>			
(1) Adult entertainment	--	--	C
(2) Assembly hall, meeting place, party center	C	--	--
(3) Commercial recreation, indoor	C	C	--
(4) Commercial recreation, outdoor	C	C	C
(5) Membership sports/fitness club	C	--	--
(6) Movie Theater	C	--	--
(7) <u>Sweepstakes Cafe</u>	<u>C</u>		<u>C</u>
(e) <u>Supplies/Storage/Distribution</u> ****			
(f) <u>Manufacturing, Packaging, Fabrication, Assembly</u> ****			
(g) <u>Community Services and Facilities</u> ****			
(h) Wireless telecommunication towers	SEE CHAPTER 350		
P = Principal Use permitted by right. C = Conditional Use permitted only when approved by the Board of Zoning Appeals.			

Underlined text is proposed to be added; ~~Strikethrough~~ text is proposed to be deleted.

3. Amend Section 270.06 Schedule Of Regulations For Conditional Uses In Business, Commercial And Industrial Districts to add a new subsection 25. to read as follows:

CONDITIONAL USE	Minimum Lot Requirements		See also
	Area	Width	Section
1. Adult day care facility	(a)	(a)	270.07(a)
2. Adult-entertainment use	(a)	(a)	270.07(b)
3. Animal clinics	(a)	(a)	270.07(c)
4. Assembly hall, meeting place, party center	(a)	(a)	--
5. Auto repair garage	(a)	(a)	270.07(d)
6. Car or truck wash facility	(a)	(a)	270.07(e)
7. Catering establishment	(a)	(a)	--
8. Child day care center	(a)	(a)	270.07(f)
9. Commercial recreation, indoors	(a)	(a)	270.07(g)
10. Commercial recreation, outdoor	(a)	(a)	270.07(h)
11. Community center	(a)	(a)	--
12. Drive-thru in association with a permitted use	(a)	(a)	270.07(i)
13. Funeral home	1 acre	200 feet	--
14. Gasoline station	(a)	(a)	270.07(j)
15. Hospital	2 acres	200 feet	270.07(n)
16. Hotel, motel	(a)	(a)	--
17. Libraries, museums	(a)	(a)	--
18. Membership sports/fitness club	(a)	(a)	--
19. Movie theater	(a)	(a)	--
20. Outdoor display of merchandise	(a)	(a)	270.07(o)
21. Outdoor storage of materials, vehicles, trailers and equipment	(a)	(a)	270.07(p)
22. Overnight storage of fleet vehicles	(a)	(a)	--
23. Places of worship	(a)	(a)	270.07(q)
24. Rail or motor freight yards	(a)	(a)	270.07(r)
25. Sweepstakes Cafe	(a)	(a)	270.07(t)
<p>NOTES FOR SCHEDULE 270.06 ^(a) Shall comply with the district regulations. NA = Not applicable.</p>			

Underlined text is proposed to be added; ~~Strikethrough~~ text is proposed to be deleted.

4. Amend Section 270.07 Supplemental Regulations For Specific Uses to add a new subsection (t) to read as follows:

(t) **Sweepstakes Cafés** in Retail Business and Light Industrial Districts:

Olmsted Township has determined that for the health, safety and general welfare of its residents, it is necessary to adopt reasonable regulations for the control of computerized sweepstakes devices, sweepstakes cafes and similar operations to prevent the adverse effects of concentration or clustering of sweepstakes cafes and to prevent the negative effects of such uses individually upon an area.

The objectives of this subsection are to prevent safety and fire hazards, disturbances, disruption of pedestrian traffic, disorderly assemblies, theft of personal property, gambling and truancy.

(1) Definitions. The following definitions shall apply for the purposes of regulating sweepstakes cafes:

(A) "Computerized Sweepstakes Device" means any computer, machine, game, apparatus or Internet access device which, upon the insertion of a coin, token, access number, magnetic card, or similar object, or upon the payment of anything of value, and which may be operated by the public generally for use as a contest of skill, entertainment or amusement, whether or not registering a score, and which provides the user with a chance to win anything of value, whether or not the value is predetermined, provided that such use is not in violation of any applicable law, regulation or ordinance regarding illegal gambling. This term includes, but is not limited to internet cafes, internet sweepstakes, sweepstakes terminal cafes, electronic gaming operations or cybercafés. This does not include any machines designated for use by the State Lottery Commission.

(B) "Sweepstakes Cafe" means any parcel upon which any "Computerized Sweepstakes Device" is located for the use or entertainment of the public, whether or not such premises has other business purposes of any nature whatsoever.

(C) "Sweepstakes" means any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, the determination of which may be predetermined.

(2) Sweepstakes cafes shall be located in accordance with the following distance requirements:

(A) A minimum of five hundred (500) feet from any residence or residential zoning district.

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- (B) A minimum of five hundred (500) feet from any church, religious institution, day care center, public or private school, public park or playground, public library, or recreation center or facility regularly housing children.
 - (C) A minimum of one thousand (1000) feet from any existing sweepstakes cafe, establishment with a liquor permit, tattoo and/or body piercing establishment, or adult entertainment use.
 - (D) All measurements shall be based on the shortest distance from property line to property line.
 - (E) The above distance requirements shall not apply to property lines that abut the Ohio Turnpike (Interstate 80), except at the point where a property line intersects with a public street right-of-way that provides access to parcels on the opposite side of the Ohio Turnpike, such as but not limited to Stearns Road.
- (3) The computerized sweepstakes devices shall not be prohibited by state or federal law.
- (4) Configuration:
- (A) There shall be a minimum of 30 square feet of floor space required for each device.
 - (B) A minimum of 1.5 parking spaces shall be provided for every two computerized sweepstakes devices.
 - (C) The gaming operations shall be visible and open to the store front.
 - (D) No exterior window shall exceed a window tint of 35%.
 - (E) All devices shall be located on the premises in conformity with the floor plan filed with the application for the zoning permit and shall:
 - i) not impair ingress or egress to the premises; and
 - ii) not interfere with free and unfettered passage through the premises; and
 - iii) be located so to permit a clear and unobstructed view of the entire portion of the premises devoted to the operation of computerized sweepstakes devices immediately upon entry.
- (5) Operations:
- (A) Each sweepstakes café shall be operated in compliance with any and all pertinent rules and regulations of the Federal Trade Commission and State of Ohio.

Underlined text is proposed to be added; ~~Strikethrough~~ text is proposed to be deleted.

- (B) Hours of operation shall be limited to 1:00 pm until midnight Sunday and 10:00 am until midnight Monday through Saturday.
 - (C) No person under the age of 18 shall be permitted on the premises.
 - (D) There shall be no sleeping facilities and/or living quarters located on the premises.
 - (E) No alcoholic beverages shall be served or be permitted to be consumed on the premises.
 - (F) The operation of the sweepstakes café shall not:
 - i) Create any obstruction to a public street, sidewalks, alleys or walkways in the vicinity of any entrance or exit of the sweepstakes cafe.
 - ii) Permit the premises or the activity conducted thereon to become a public nuisance to the surrounding properties.
- (6) Application requirements. Each application for conditional use approval for a sweepstakes café shall be required to submit a final development plan in accordance with Section 520.04, plus the additional information set forth below: :
- (A) A floor plan of the premises indicating the location and dimensions of the building floor area indicating the proposed locations of the computerized sweepstakes devices, cashier terminal, storage spaces, the location of any other taking place within the premises, exit locations, and windows locations. All areas of the premises must be clearly labeled for their proposed use.
 - (B) A map of the area within 1,500 feet of the proposed sweepstakes café indicating the distance from all residences, religious institution schools, day care center, public or private school, public park or playground, public library, or recreation center or facility regularly housing children, any existing electronic gaming operation, establishment with a liquor permit, tattoo and body piercing establishment or adult and sexually oriented business.
 - (C) Specifications of the days of the week and the hours of the day during which the sweepstakes café will be open.
 - (D) The applicant shall provide copies of applicable licenses and provide a certificate or report from an authorized independent testing laboratory showing that the computerized sweepstakes devices comply with all state requirements.

Underlined text is proposed to be added; ~~Strikethrough~~ text is proposed to be deleted.

On a motion of Mr. _____, seconded by Mr. _____, the foregoing resolution was approved.

AYES:

NAYS:

ABSTAIN:

Chairman Zoning Commission

Date

Adopted this _____ day of _____, 20____

Attest:

Township Clerk

Township Trustees

Underlined text is proposed to be added; ~~Strikethrough~~ text is proposed to be deleted.