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A PARTNERSHIP OF PROFESSIONAL BUSINESS ENTITIES

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November 7, 2013

Planning Commission for
City of Hayward
c/o Hayward City Clerk
sent by email to: miriam.lens@hayward-ca.gov

Re: Comments in connection with Agenda Item 3 for Planning Commission of Meeting of November 7, 2013, i.e., proposal to adopt two ordinances regarding "simulated gambling devices."

Dear Planning Commission Members:

I represent IBiz, LLC, which operates a business center located at 22466 Maple Court in Hayward, California, and is one of the three businesses specifically referenced in the Report prepared on tonight's Agenda Item 3 for your consideration by the Director of Development Services.

I write to oppose adoption of the two ordinances and express the following: (1) there is (demonstrably) a sizable demand for our client's product in Hayward; (2) it is an entirely lawful business in compliance with all state gambling laws; and (3) to request that, before you approve legislation to ban this lawful business, the City coordinate meetings with all interested parties – including our client and us – in order to delineate and accurately identify the source(s) of any concerns and strive to address any problems attributed to the business which may have been alleged or otherwise brought to the attention of the authorities.

The Director's Report appears to simply *assume* that all businesses which provide "simulated gambling devices" *necessarily* "attract undesirable activities that have significant negative impacts on the surrounding community." While it is certainly possible that *some* such businesses may operate in this manner, we do not believe the same can be said with accuracy as to our client's business and, in any case, we have not been advised of specific complaints about our client's business nor given an opportunity to respond or correct them. In any event, even if some of the complaints mentioned in the Report were attributable to our client's business, there is nothing in the nature of our client's business which is inherently incompatible with the peace, quiet and safety of the community and, consequently, we would like to work with the City to eliminate any such perceived problems and arrive at a reasonable solution which is fair to all involved.

City Planning Commission

November 7, 2013

Page 2

We are writing to request that, before taking the drastic step of banning this lawful business from all sites in the City, you allow us the opportunity to work with the City to eliminate any potentially negative effects believed to be attendant to its operation.

While the Report references "approximately fifty calls for service," it doesn't mention whether one or two businesses are the more problematic ones, nor does it indicate how many, if any, of these calls for service actually turned out to truly merit a police response. Although the Report makes vague references to "late-night loitering, parking problems, illegal smoking, excessive noise, and other problems," it does not say how many, if any, of these problems were attributable to our client's business. More importantly, all of these types of problems, even if they exist, can easily be ameliorated short of the banning of an entirely lawful business for which there is substantial patron support.

The only negative thing about these businesses contained in the Director's Report which would specifically and necessarily apply to all three businesses (including, of course, our client's) is the following sentence at page 2 of the report: "However, based on complaints from citizens and upon investigation by Hayward Police officers, it was revealed that the businesses were engaged in activity that appeared to be online computer-based gambling." However, state law defines what gambling is, and our client's business does not violate state gambling laws.

In short, the sole purpose of the ordinance seems to be to prohibit entirely lawful conduct which state law does *not* define as gambling.

If there are any specific reports you have received of negative secondary effects of our client's business, we would be most eager to address them and take any steps necessary to prevent them from recurring. In that spirit, we would urge you to work with us to correct any perceived problems, rather than taken the draconian step of banning a lawful business from operating anywhere in the City.

I would also note that ever since we first learned of the City's concern with this business, we have attempted to establish a dialog for resolution of any complaints the City may have received about this business. In my letter to the City attorney of February 22, 2012, following my explanation of why it does not violate any state gambling laws, I said:

"We would also be pleased to discuss any other concerns the City may have with the operation of this business. As I said, our client desires to be a good citizen, and a good corporate neighbor."

We have reiterated this position frequently since then, but have never received notification of or exposition about any specific complaints regarding our client's business, nor have we ever been given the opportunity to ameliorate or eliminate any perceived problems, once identified. We

City Planning Commission

November 7, 2013

Page 3

emphatically reiterate our request to simply sit down with City officials and work out a plan for assessing and eliminating any of the concerns which may have motivated these ordinances.

Another possibility is to send these ordinances back to the drawing board and, instead, have them re-drafted as an ordinance imposing a conditional use permit requirement on such businesses which will allow the Planning Commission the ability to monitor and regulate such businesses individually as merited by each business.

Finally, yet another possibility, but only as a last resort, would be to specifically require such uses to relocate in designated areas (deemed appropriate) within the City, and/or to allow them to do so pursuant to a conditional use permit requirement, with appropriate protections for pre-existing lawful uses to permit them a reasonable time and opportunity to obtain new sites and qualify for requisite municipal approvals.

In short, we request your consideration of any of these various reasonable approaches in the alternative to the unusual immediate adoption of the draconian one of a total ban, unsupported by any clear showing of need. These businesses are entitled to the same opportunity to operate as any other highly popular business, notwithstanding that highly popular businesses inherently often create additional community issues, but understanding that such issues are routinely solved by the communication of specific concerns and/or devices such as conditional use permits and locational requirements to insure proper operation.

We thank you for your consideration of this request and would be pleased to meet at the convenience of the appropriate City personnel.

Lastly, we reserve the right to adopt any other comments submitted in opposition to the adoption of the ordinances.

Respectfully,

WESTON, GARROU & MOONEY

By

JOHN H. WESTON

JHW:

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