


Agenda Report Reviewed by:  
City Manager: 

CITY OF SEBASTOPOL  
CITY COUNCIL  
AGENDA ITEM

**Meeting Date:** October 18, 2022  
**To:** Honorable Mayor and City Councilmembers  
**From:** Kari Svanstrom, Planning Director  
John Jay, Associate Planner  
**Subject:** Municipal Code Amendment to Section 5.28 “Coin-Operated Devices”  
**Recommendation:** Hold a Public Hearing and Introduce the Ordinance/Waive the First reading  
**Funding:** Currently Budgeted: \_\_\_\_\_ Yes \_\_\_\_\_ No  X  N/A  
Net General Fund Cost: \$

Account Code/Costs authorized in City Approved Budget (if applicable) AK (verified by Administrative Services Department)

**INTRODUCTION/PURPOSE:**

This is a proposal to remove language from the Municipal Code as it relates to Coin-operated play devices (“arcades”) within the City of Sebastopol. The specific amendment will remove a section of Chapter 5.58 of the municipal code which no alcoholic beverages shall be sold or consumed on the premises, except those businesses where minors under the age of 21 are prohibited by law.

**BACKGROUND:**

In July of 2022 the Planning Department received an application from Adam Lam for the request of an approval from the Planning Commission to allow a “retro arcade” bar (The Rewind) within a location in the Barlow. This request required an Alcohol Conditional Use Permit as it did not fit the criteria of a bona fide restaurant since there was no kitchen within the premises. With that, the Planning Department routed this to the various City departments, including the Sonoma County Environmental Health Department, and was provided with comments and conditions attached in this report. The Planning Commission heard a staff report, a presentation from the applicant, and heard public comments at their August 17, 2022 meeting. The Planning Commission approved the use permit request with additional conditions of having snacks be available through a vending machine or other means, and allowing the hours of operation until 2:00am.

After this approval letter was sent to the applicant it was made aware to the Planning Department that within Chapter 5.58 Coin Operated Play Devices of the Municipal Code, Section 5.58. This provision requires a Use Permit, which the Planning Commission heard, to assess location, appropriateness of site, etc. This Chapter also includes required Additional Conditions (Section 5.58.100) for arcades. The applicant for “The Rewind” meets all of the provisions, except for Condition A.10. “No Alcoholic beverages shall be sold or consumed on the premises, except those businesses where minors under the age of 21 are prohibited by law.”

As one of the main goals of The Rewind is to provide an arcade experience to all ages of people and families, but allow beer/cider to be served, a modification to the Municipal Code to allow this if permitted by the Use Permit would need to be approved for the business to operate as proposed. The Rewind would have to severely alter their business model and could potentially not open if this provision is not adopted.

**DISCUSSION:**

While Planning staff was not aware that the City of Sebastopol had regulations for arcades, staff does recommend that these regulations should be modified to allow additional flexibility in businesses, with the review and oversight of the Planning Commission via the Use Permit already required by Chapter 5.58 of the municipal code, based on the following considerations and analysis.

While the Planning Commission heard the presentation by Adam Lam of The Rewind, Adam mentioned that he wanted to give Sebastopol a family-friendly oriented business that provided a way to which parents could introduce their children to the games they grew up playing as kids. With that, safety was a major concern and, the presence of alcohol on site enhanced those concerns. The Planning Commission deliberated these issues in the Use Permit hearing, and discussed with the applicant, conditions for the project to provide safeguards to limit the possibility of an underaged person from drinking alcohol on site. Customers will check in on arrival to both have ID checked for alcohol service (and an ID card issued for a limited number of drinks) and credits for games. The site is providing alcohol through a 'beer wall', a separate area segregated from the games. A dedicated staff person will be monitoring this area at all times, including ID/age monitoring and responsible alcohol service of any intoxicated patrons, as well as assisting as a 'beer sommelier' for the craft and micro-brews they anticipate offering.

The change of arcades and other coin operated play devices has seen a change over time as more of these devices are upgraded with the current technology of today's world and more accessible to a wide range of players. This Section of the Code was developed during the mid-1970's and early 80's, at the time to be consistent with the current standards towards coin operated play devices and how they were seen similar to gambling machines. These City's regulations were adopted in 1982 and have not been updated since to adjust to the modern way of how coin operated play devices work. For instance, these devices no longer provide a cash payout but now offer "free plays." Many of the other requirements in the code are also standard practices that have been adopted by the industry.

With that, the code section in reference (SMC 5.58.) does not allow this crossover of the past to be shared with today's youth in a place where alcohol is present. The Rewind would offer alcohol to its customers and with this current code section it would limit the arcade experience to customers only of legal drinking age. For the business this could be seen as cost burdensome to have an arcade only experience as it would limit the business to a smaller population of the community, and may not be a financially viable endeavor. This is similar to restaurants, which often struggle without the sale of beer and wine on site. Additionally, a goal of The Rewind, specifically, is to share the arcade experience for those of all ages and to include an adult atmosphere that serves alcohol and is safe for all.

After the staff report and presentation given to the Planning Commission there was an overwhelming amount of support for the project, as many public commentators noted that Sebastopol doesn't have anything like this for families, and residents must travel to Epicenter in Santa Rosa or Scandia in Rohnert Park. Of those two mentioned, Epicenter in Santa Rosa sells alcohol to customers of legal drinking age. Many public comments were received from residents expressing the desire to have such a business locally so that they could patronize a local business in this way. These comments came in the form of written support letters submitted to the Planning Department along with members of the public who provided public testimony at the meeting to express their support for this concept and this particular use.

Finally, as these uses would still require a Conditional Use permit, the Planning Commission and City staff (all departments comment on each use permit application), and the City Council on appeal, would still have the authority and discretion to approve or deny each use, and to condition each project appropriately to its surroundings and operational context, as was done in the case of The Rewind application by Adam Lam. While this particular application is not under review by the City Council, it is a good example of how Use Permit applications for such future uses would also be processed.

**GOALS:**

This action supports the following City Council Goals:

- Goal 8 Encourage new and existing businesses to offer living wage to employees as the new operation will be run and operated by a local Sebastopol resident and will provide local food and drink as available.
- Goal 8.1.1 Develop programs & polices to promote, attract and retain local businesses as The Rewind would be a new business to the City of Sebastopol and providing the municipal code change through the proper City policies directly speaks to this goal.

and General Plan Actions:

- Policy EV 1-11: Work with and support local business organizations in order to promote a strong business base through joint business attraction and retention efforts that include marketing and outreach, technical assistance, workforce development, training, and welcome/orientation activities for new businesses.
- Policy EV 1-13: Assist efforts to attract new industries and businesses that develop new products and expand markets, particularly those that involve research and development of agricultural, sustainable, green, medical, and/or technological products.
- Policy EV 2-3: Develop a distinct image and brand for Sebastopol that reflects its unique identity and sets it apart from the region.
- Policy EV 2-4: Encourage businesses and programs that emphasize and promote shopping locally.
- Policy EV 4-3: Encourage amenities needed to support tourism, including hotels, bed-and breakfasts, eco-lodging, and a variety of restaurants, shopping, and services.
- Policy EV 4-4: Encourage the development of civic amenities, entertainment venues, retail and restaurants, and services that increase visitation, spending, and tourism.

**PUBLIC COMMENT:**

As of the writing of this staff report, the City has not received any public comment. Staff did receive a large number of comments in support of the specific “The Rewind” application prior to and at the Planning Commission hearing for the Use Permit. Staff anticipates receiving public comment from interested parties following the publication and distribution of this staff report. Such comments will be provided to the City Council as supplemental materials before or at the meeting. In addition, public comments may be offered during the public comment portion of the agenda item.

**PUBLIC NOTICE:**

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to schedule meeting date.

**FISCAL IMPACT:**

No direct impact to the City’s budget. However, if this Amendment is approved, it would allow the proposed business, with associated tax revenue, to open within the City.

**RECOMMENDATION:**

Approve the first reading and schedule the second reading. The City Council should hear the staff report and deliberate on the proposed language removal and provide staff with direction going forward.

**Attachments:**

**Proposed Ordinance**

**Redline of Existing Ordinance**

City of Sebastopol  
Ordinance No. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL  
AMENDING CHAPTER 5.58 "COIN OPERATED PLAY DEVICES

1. Whereas, the City of Sebastopol completed a comprehensive General Plan update with adoption of a new General Plan on November 15, 2016; and
2. Whereas, the new General Plan includes policies and actions; and
  - *Policy EV 1-11: Work with and support local business organizations in order to promote a strong business base through joint business attraction and retention efforts that include marketing and outreach, technical assistance, workforce development, training, and welcome/orientation activities for new businesses.*
  - *Policy EV 1-13: Assist efforts to attract new industries and businesses that develop new products and expand markets, particularly those that involve research and development of agricultural, sustainable, green, medical, and/or technological products.*
  - *Policy EV 2-3: Develop a distinct image and brand for Sebastopol that reflects its unique identity and sets it apart from the region.*
  - *Policy EV 2-4: Encourage businesses and programs that emphasize and promote shopping locally.*
  - *Policy EV 4-3: Encourage amenities needed to support tourism, including hotels, bed-and breakfasts, eco-lodging, and a variety of restaurants, shopping, and services.*
  - *Policy EV 4-4: Encourage the development of civic amenities, entertainment venues, retail and restaurants, and services that increase visitation, spending, and tourism.*
3. Whereas, the Municipal Ordinance amendment to modify Section 5.58.100 to allow coin-operated play devices in a business that serves alcohol, with the approval of a Use Permit; and
4. Whereas, on October 18, 2022, the City Council conducted a duly-noticed Public Hearing, deliberated, and found that as revised, the Municipal Ordinance amendment (the "Project") is compatible with the general objectives of the General Plan, in that it directly implements the General Plan policies, thereby achieving consistency between the General Plan and the Zoning Ordinance; and

5. Whereas, the Municipal Code amendment is, pursuant to CEQA Guidelines Section 15061(b)(3), not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The Municipal Code amendment to Section 5.58.100(A) 10 will remove the prohibition of serving alcohol at locations that have more than three coin-operated play devices, however the amendment does not automatically permit such uses, as such uses would still require a conditional use permit, nor does it permit any prevent physical changes to the environment. Therefore, it can be seen with certainty that there is no possibility that the amendment will have a significant effect on the environment; and
6. Whereas, the City Council finds that the amendments will not be detrimental to the public health, safety and general welfare, and will not adversely affect the orderly development of property, in that they will harmonize the General Plan and Municipal Code, while still requiring City review and discretion on a project-by-project basis to allow locations that offer coin-operated play devices to serve alcohol with adequate control to ensure public safety; and;
7. Whereas, the regulation of such uses through a discretionary Use Permit review process will allow the City to promote economic development in balance with public safety and welfare in a way that better express the City's policies.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SEBASTOPOL DOES ORDAIN AS FOLLOWS:

**Section 1.** The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Sebastopol. Said findings are incorporated by this reference.

**Section 2.** The Sebastopol Municipal Code (SMC) is hereby amended as follows:

- A. Chapter 5 "Business License and Regulations", Section 5.58.100(A) "Coin-operated Play Devices, Additional conditions – More than three games" is amended to delete the following (5.58.100(A)10:
    10. No alcoholic beverages shall be sold or consumed on the premises, except those businesses where minors under the age of 21 are prohibited by law.
- Chapter 5 "Business License and Regulations", Section 5.58.100(A) "Coin-operated Play Devices, Additional conditions – More than three games" shall be amended to renumber items 11 through 17 to be numbered 10 through 16.

**Section 3.** The City Council hereby finds that Adoption of this Ordinance will enact only minor changes in land use regulations, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for the development of a specific project anywhere other than where they were previously allowed under existing federal, state and local regulations.

The proposed Ordinance also falls within the "common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

Section 4. Conflicting Laws. During the continuation of the effectiveness of this ordinance, the provisions of this ordinance shall govern. If there is any conflict between the provisions of this ordinance and any provisions of the Sebastopol Municipal Code, or any City ordinance, resolution or policy, the provision of this ordinance shall control. If there are any conflicts between the provisions of this ordinance and any provisions of State or Federal law in effect during the same time as this ordinance, the provisions of this ordinance shall be null and void.

**Section 5.** Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

**Section 6.** Effective Date. This ordinance shall become effective thirty (30) days after its adoption. This ordinance shall become effective (30) days after the date of adoption.

Approved for First Reading and Introduction on this 18<sup>th</sup> day of October, 2022.

Scheduled for Second Reading and Approval on the 1<sup>st</sup> day of November, 2022.

**VOTE:**

Ayes:

Noes:

Abstain:

Absent:

APPROVED: \_\_\_\_\_

Mayor Patrick Slayter

ATTEST: \_\_\_\_\_

Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM: \_\_\_\_\_

Larry McLaughlin, City Attorney



EXHIBIT A

## Chapter 5.58

### COIN-OPERATED PLAY DEVICES

Sections:

- 5.58.010 Definitions.
- 5.58.020 Location restrictions.
- 5.58.030 Hours of operation – Minors.
- 5.58.040 Visibility – Three games or less.
- 5.58.050 Permit – Three games or less.
- 5.58.060 Compliance with law.
- 5.58.070 Posting permit.
- 5.58.080 Nontransferability of permit.
- 5.58.090 Use permit required – More than three games.
- 5.58.100 Additional conditions – More than three games.
- 5.58.110 Revocation.
- 5.58.140 Repeal of conflicting ordinances.

#### 5.58.010 Definitions.

As used in this chapter the following words shall have definitions set forth hereinafter:

“Mechanical or electronic games” shall mean any machine, apparatus, contrivance, appliance, or device which may be operated or played upon the placing or depositing therein of any coin, check, slug, ball, or any other article or device, or by paying therefor either in advance of or after use, involving in its use either skill or chance, including but not limited to tape machine, card machine, pinball machine, bowling game machine, shuffleboard machine, marble game machine, horse racing machine, football game machine, baseball game machine, basketball game machine, electronic video game, or any other similar machine or device.

“Operator” shall mean any owner or lessee of such mechanical or electronic games who installs or maintains the same in any place of business which is not his own or under his direct control where the same can be played or operated by persons in the same place.

“Person” shall mean any corporation, association, syndicate, joint stock company, partnership, club, society or individual.

“Premises” shall mean the location or place of business wherein such mechanical or electronic games are located pursuant to permit.

“Proprietor” shall mean the person in whose place of business any such mechanical amusement device is placed for the use, amusement, patronage or recreation of the public or of persons in or about said place.

“School” shall mean any educational institution, public, secular, or parochial, which offers instruction of high school grade or below.

“Street” shall mean any street, alley, way, boulevard or road, either public or private, that is used or to be used for ingress or egress. (Formerly 3.20.010)

#### 5.58.020 Location restrictions.

It shall be unlawful for any operator or proprietor of a mechanical or electronic game to cause, permit or allow same to be located, operated or maintained to be operated within 1,000 feet of the nearest street entrance to or exit from any public playground or public or private school of elementary or high school grades not within 300 feet from any residential zone; said distance to be measured from said entrance or exit in the most direct line or route on, along or across said street or streets adjacent to said public playground or said public or private school of elementary or high school grade or residential zone. The restrictions established hereunder shall not apply to business lawfully in existence and operating upon the effective date of the ordinance codified in this chapter. (Formerly 3.20.020)

#### 5.58.030 Hours of operation – Minors.

No person, proprietor, operator, employee thereof, or person in charge shall allow any minor under 18 years of age to play or use any such game on school days between the hours of 7:00 a.m. and 3:00 p.m., nor between the hours of 10:00 p.m. and 7:00 a.m., except that on Fridays and public school days before holidays or any other days that all schools will not be in session, time shall be from midnight to 7:00 a.m. (Formerly 3.20.030)

#### 5.58.040 Visibility – Three games or less.

On all premises with three or less machines, all mechanical and electronic games must be visible from the entrance and the entrance must be unlocked during all times that the premises are open for business. There shall be no more than three mechanical or electronic games on any single premises except as authorized by use permit pursuant to ordinances of the City of Sebastopol. (Formerly 3.20.040)

### 5.58.050 Permit – Three games or less.

A permit in addition to the license provided in Chapter [5.04](#) SMC shall be required for all mechanical or electronic games on premises with three mechanical or electronic games or less.

A. Application for said permit shall be made to the Chief of Police of Sebastopol upon a form furnished by the City of Sebastopol, and shall contain the following information and statement, the truth of which shall be sworn to by the applicant:

1. Name of applicant;
2. Residence of applicant;
3. Date and place of birth;
4. Business name (where machines are to be located);
5. Business address (where machines are to be located).

B. All applications shall be acted upon by the Chief of Police in the order in which they are filed, and shall be granted or denied by him within a period of 15 days from the date of filing. Application may be denied for cause. In the event of denial the applicant shall within 10 days from the date of such denial have the right of appeal to and hearing before the City Council.

Upon such applicant's written request to the Chief of Police, he shall forthwith make a report of the reasons why the application for permit was denied. The Council may, upon such appeal, grant or deny the application, and its action shall be final and conclusive.

C. The permit may be renewed annually upon written request upon a form furnished by the City of Sebastopol. The only additional information required shall be changes from those set forth in subsection [A](#) of this section. (Formerly 3.20.050)

### 5.58.060 Compliance with law.

Nothing contained in this chapter shall be construed to permit licensing, maintenance or operation of any mechanical device or apparatus which is contrary to any of the laws of the State of California or the ordinances of the City of Sebastopol, nor to permit the operation of any mechanical or electronic game authorized hereunder in such a manner as to be contrary to any of said laws or ordinances. (Formerly 3.20.060)

### 5.58.070 Posting permit.

The permit shall be permanently and conspicuously posted at the location of the games in the premises wherein said games are to be operated or maintained to be operated, and shall not be removed from said location during the period for which said permit was issued. (Formerly 3.20.070)

### 5.58.080 Nontransferability of permit.

No permit required by this chapter shall be transferable, nor apply to any premises other than originally specified as the location of the thing permitted, except upon written permission of the Chief of Police granted upon written application by the transferee made in the same manner as may be required in the instance of the original application for such permit. (Formerly 3.20.080)

### 5.58.090 Use permit required – More than three games.

No premises shall be permitted to install more than three mechanical or electronic play devices without the issuance of a conditional use permit under the procedures, notice and hearing as required by SMC Title [17](#), and the regulations governing the issuance of conditional use permits. (Formerly 3.20.090)

### 5.58.100 Additional conditions – More than three games.

The following conditions, in addition to those requirements set forth in SMC Title [17](#) relating to conditional use permits and the particular zonings, shall control all premises with more than three mechanical or electronic games.

A. Each use permit shall contain the following conditions:

1. The authorized hours of operation for minors shall be permanently displayed and maintained at each entrance and conspicuous places within the business.
2. No use permit shall be issued or allowed to remain in existence in any building, location or premises that does not comply with all applicable City ordinances and regulations.
3. No mechanical play device or electronic play device shall provide or accrue payoffs or prizes as a condition of playing.

4. No mechanical play device or electronic play device which offers or awards free games as a condition of play shall erase or otherwise eliminate free games awarded.
5. The proposed location shall be reviewed by the Planning Commission to determine if there is adequate parking for vehicles and bicycles.
6. The proposed location shall be reviewed to ensure that its use is compatible with adjacent uses and that its location at the site proposed will not be detrimental to surrounding uses nor will the surrounding uses be detrimental to the proposed locations.
7. The spacing of machines within the premises shall be reviewed so that there is ample space for players, spectators and for ingress and egress during play.
8. The premises shall have adequate full-time adult supervision during all hours that the premises are open to minors.
9. The occupant load shall be approved by the Fire Chief of the City of Sebastopol.
10. ~~No alcoholic beverages shall be sold or consumed on the premises, except those businesses where minors under the age of 21 are prohibited by law.~~
11. No smoking shall be allowed on the premises.
12. No foul language shall be allowed on the premises.
13. The management shall post a regulation reserving the right to refuse entry to anyone who violates the rules.
14. All rules shall be in writing and posted in a conspicuous place.
15. The proposed location shall be reviewed to determine that the exterior and interior lighting is adequate.
16. Any and all exterior modifications, including signs, shall be submitted to and approved by the Design Review Board as required by City ordinances.
17. The licenses or the use permit required by this chapter shall be permanently and prominently posted and shall not be covered or removed from the location during the time for which said permit is issued or the devices are operated.

B. Subsections [\(A\)\(1\)](#), [\(8\)](#), [\(10\)](#), [\(11\)](#), and [\(12\)](#) of this section shall not be applicable to businesses or premises where minors under the age of 18 are prohibited by law. (Formerly 3.20.100)

### 5.58.110 Revocation.

The permit issued hereunder shall be subject to revocation in the event that the premises are declared to be a public nuisance, more than one violation of this chapter in any one year or for other good cause. Upon notice of such revocation the permittee may appeal the decision pursuant to SMC [5.58.050\(B\)](#). (Formerly 3.20.110)

### 5.58.140 Repeal of conflicting ordinances.

Ordinance No. 611 and all other ordinances in conflict herewith are repealed upon the effective date of the ordinance codified in this chapter. (Formerly 3.20.140)