



# MEMORANDUM

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**TO:** City Council

**FROM:** Richard Olson, City Manager

**DATE:** January 28, 2013

**REF:** Hold a Public hearing – CUP 04-09 Request of the City of Elizabeth City to rescind conditional use permit of Luther's Inc. (Robert Luther) to operate an internet sweepstakes café at 1016 W. Ehringhaus Street.

**PREPARED BY:** June C. Brooks, Planning & Community Development

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## **BACKGROUND:**

At your January 14, 2013 City Council meeting, a public hearing was called to rescind CUP-04-09. City Council approved a conditional use permit for of Luther's Inc. (Robert Luther) to operate an internet sweepstakes café at 1016 W. Ehringhaus Street in February, 2010; however, the recent ruling of the North Carolina Supreme Court made internet sweepstakes gambling illegal in North Carolina.

## **ANALYSIS**

Since October 2010, the State of North Carolina has been in litigation as to the legality of internet sweepstakes gambling. The North Carolina Supreme Court ruled in December, 2012 this type of use is illegal in North Carolina and that such uses had to cease operations by January 3, 2013. While these businesses have ceased operating, staff is of the opinion that the conditional use permits should be rescinded in order to eliminate any questions that the City would allow such uses.

In accordance with the Unified Development Ordinance, City Council acts in a quasi judicial capacity when issuing a conditional use permit and is required to observe the procedural requirements of the Board of Adjustments when approving and rescinding a use permit. The applicant was notified in December by Certified mail and again in January by first class mail that a public hearing would be held to rescind the conditional use permit.

In this case, the Supreme Court has made these uses illegal, thereby, over riding the use in the Unified Development Ordinance and approval and conditions placed by City Council.

**Legal:**

After further discussion with the Institute of Government, Bill Morgan has requested a closed session at the beginning of work session to discuss recently obtained information. A separate and confidential memo will address this issue. Council members will be advised how to address this item.

Staff withholds a recommendation on CUP-04-09.



*State of North Carolina*  
*General Court of Justice*  
*First Prosecutorial District*

FRANK R. PARRISH  
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January 2, 2012

TO: LAW ENFORCEMENT  
RE: INTERNET SWEEPSTAKES

Effective January 3, 2013, the operation of internet sweepstakes is illegal.

The statute, 14-306.4, makes it unlawful for any person to operate or place into operation an electronic machine or device to do either one of two things: 1- conduct a sweepstakes through the use of an entertaining display or 2- promote a sweepstakes that is conducted through the use of an entertaining display.

The North Carolina Supreme Court upheld this statute in a unanimous opinion in the Hest Technologies case, filed December 14, 2012.

If you have evidence supporting probable cause that this statute has been violated, charges may be issued.

If, in your discretion, you would prefer to warn the operators of a sweepstakes game and later charge them if they continue in that operation, then that is an option you may elect to choose.

This office will prosecute cases arising under this statute if there is sufficient evidence to support a conviction.

Items related to proof of a possible crime or crimes are of course subject to seizure if the Fourth Amendment is satisfied.

Furthermore, please note that, under G.S. 14-293, if gambling is going on, the provision of food and/or drink for the "comfort or subsistence" of players or bettors is itself a violation.

Any person convicted of violating G.S. 14-293 may be barred permanently from acquiring privilege licenses for similar businesses.