

APPLICATION CHECKLIST AND CASE PROGRESS LOG

Case Identification No. CUP-631-02 Case Planner N/A

Related Case File Nos. _____

Date Filed N/A Hearing Date 12/10/02 Hearing Body City Council

Applicant: Steve Im/Steve Choi	Prop. Owner: Llano Frederick Trustee
Address: 13121 Brookhurst St.	Address: 2136 Lomita Blvd.
City: Garden Grove CA 92843	City: Lomita CA 90717
Phone: (714) 530-1797	Phone:

Representative:
Address:
City:
Phone:

* * * * *

Site Address: 13121 Brookhurst **APN:** 09807071

Location: _____ **General Plan:** Community Commercial

Flood Zone: X **Current Zone:** C-2

Map/Panel No.: 06059C/0020F **Proposed Zone:** n/a

Processing Information

	<u>Date</u>		<u>Date</u>
Application Submitted	<u>n/a</u>	Resumes distributed	_____
App Correction Notice	_____	Legals sent to Newspaper	_____
App Determined Complete	<u>n/a</u>	Radius Map	_____
Fees sent to cashier	<u>n/a</u>	Legal Notices sent	_____
ZAP review	_____	Final Staff Report	_____
PCC review	_____	Staff Report Delivered	_____
Site Inspection	_____	NOD sent to County	_____

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF GARDEN GROVE APPROVING
A CONDITIONAL USE PERMIT FOR A CYBERCAFE
FOR PROPERTY LOCATED AT 13121 BROOKHURST
STREET, GARDEN GROVE, ASSESSOR'S PARCEL
No. 098-070-71

Whereas, a CyberCafe business is presently being operated at the location of 13121 Brookhurst Street, Garden Grove, by Steve Im, and

Whereas, certain litigation entitled Choi, et al v. City of Garden Grove, Case # 02CC13030, has been filed relating to the legality of time, place, and manner restrictions enacted under Ordinance 2573, and

Whereas, certain litigants desire to terminate the litigation under a settlement agreement which provides in part that Steve Choi shall apply for and receive a use permit for the Cyber Café business, and

Whereas, a use permit for this business at this location is exempt from the requirements of the California Environmental Quality Act under the Class I Exemption pursuant to state guideline section 15301,

Now Therefore Be It Resolved by the City Council that a Use Permit be granted for the property at 13121 Brookhurst Street, Garden Grove for the operation of a Cyber Café based upon the following findings and subject to the following conditions:

A. Findings.

The City Council hereby finds that this commercial use is consistent with the City's General Plan; that this use will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area; or unreasonably interfere with the use, enjoyment or valuation of property of persons located in the vicinity of the site; or jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare. Pursuant to established law, this use permit shall run with the land in perpetuity.

B. Conditions.

1. Curfew For Minors. Minors may not enter or remain in a Cyber Café establishment on any day after 10 p.m.; or between the hours of 8 a.m. to 3 p.m. during those weekdays when the public school

EX. "A"

system within the city jurisdiction is open and classes are being conducted.

A notice shall be posted at the entrance of the business in lettering of at least two (2) inches in size advising patrons of the time restrictions applying to minors.

This time restriction shall not apply when a minor is accompanied by a parent or guardian (with the guardian being able to authenticate guardianship).

2. Hours of Operation. The hours of operation shall be limited to 7 a.m. to 1 a.m., daily; excepting Friday and Saturday nights wherein hours of operation shall be limited to 7a.m. to 2 a.m.
3. Employees/Security Guard. (a) Employees. There shall be a minimum of one employee over the age of 18 on the premises during all hours of operation. There shall be an additional employee over the age of 18 years on the premises if the business has more than 30 computers; however, this requirement shall not apply during the school hours of 8 a.m. through 3 p.m. described in subpart 1 above.

(b) Security Guard. There shall be a California licensed, uniform security guard on the business premises at all times between the hours of 8 p.m. through 2 a.m., Friday and Saturday nights. The presence of the security guard may be counted as satisfying the second employee requirement described in 3(a) above, except that an owner may not act under any circumstances as a security guard to satisfy the security guard requirements of this subpart.

The Chief of Police may require additional security guard presence on the premises at other hours of the day in the event that there are significant calls for service relating to assaults, gang related activity, weapons offenses, disturbances and juvenile related crime. Such a decision by the Chief of Police may be appealed to the City Council within 5 working days following receipt of the Chief's decision.

4. Occupancy. Patron occupancy shall conform to the Uniform Building and Fire Codes of the City. The maximum occupancy as allowed by those Codes shall be posted at the main entrance.
5. Adult Entertainment Uses. Adult entertainment uses as defined in Municipal Code section 9.04.060 are prohibited on the premises unless specifically authorized under the zoning requirements for such uses pursuant to Municipal Code section 9.08.070.

6. Fire Exit Plan. The owner shall submit and receive approval of a exit plan from the City's Fire Department. The plan shall address all existing requirements of the Uniform Building and Fire Codes. This includes, but is not limited to, providing an existing plan showing equipment location, aisle locations and dimensional widths, and having approved exit doors and panic hardware.
7. Lighting. During evening hours, the existing interior lighting system shall be turned on and provide sufficient lighting to enable police officers to observe individual customers either from inside or outside of the premises. This lighting system has been inspected by the City and as long as it remains the same, at a minimum, and in good working order, then it is deemed acceptable under the terms of this use permit.
8. Unobstructed Windows And Entrance Door / Visibility. The main entrance door and business windows shall be left open, clear and unobstructed so as allow an unimpaired line of sight by police officers into the interior of the business, except that the operator shall be permitted to lightly tint the upper third portion of the windows to eliminate glare from the sun into the interior premises.
9. Camera/Video Surveillance System. There shall be a camera video surveillance system capable of delineating on playback of the system the activity and physical features of persons or areas within the premises. The system shall cover all entrances and exit points and all interior spaces, excepting restroom and private office areas. The operator's existing 9 camera DVR system is deemed by City to satisfy this requirement.

The system shall be maintained in good working order, including the recording of videotape at all times. The videotape shall be maintained for a minimum of 72 hours.
10. Pool Tables/Amusement Devices. Pool tables or other amusement devices not directly related to internet computer devices are prohibited.
11. Effective Date. This Use Permit shall take effect only upon the adoption of the above referenced settlement agreement and revised CyberCafe Ordinance No.____.

SETTLEMENT AGREEMENT

STEVE IM ("Owner") and the CITY OF GARDEN GROVE, a Municipal Corporation, and the CHIEF OF POLICE FOR THE CITY OF GARDEN GROVE (collectively "City") hereby agree as follows:

RECITALS

1. Owner is the owner of a Cyber Cafe located in the City of Garden Grove. Specifically, STEVE IM owns a Cyber Café called Gizmo2 located at 13121 Brookhurst in the City of Garden Grove; The City is a Municipal Corporation that is seeking to regulate said Cyber Café.
2. Commencing in January, 2002, the City introduced ordinances to provide restrictions on the operation of Cyber Cafes within the City. On June 18, 2002, the City introduced and presented its permanent ordinance for regulation of Cyber Cafes. Ordinance No. 2573.
3. On August 7, 2002 Owner filed a request for a temporary restraining order and complaint to prevent the permanent ordinance from taking effect. The temporary restraining order and complaint bears Orange County Superior Court Case No. 02CC13030.
4. On August 7, 2002 the Court granted Owner's request for a temporary restraining order. Following a continuance requested by both parties, the hearing for a preliminary injunction on this matter is currently scheduled for January 9, 2003.
5. Without admitting fault or wrong doing, the parties to this Agreement desire to settle all outstanding disputes without incurring the cost or expense of further administrative or judicial proceedings.

AGREEMENT

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Owner agrees to dismiss his legal action entitled SEOK JUN CHOI , THANH THUY VO, JOHN PHAM and STEVE IM v. CITY OF GARDEN GOVE, CHIEF OF POLICE OF CITY OF GARDEN GROVE et. al., Superior Court Case No. 02CC13030, against City with prejudice, providing City: a) amends Ordinance No. 2573 to provide for the issuance of a use permit to the owner and b) adopts a use permit for owner, more particularly set forth in Exhibit A.

2. An executed copy of the dismissal with prejudice is appended hereto as Exhibit B which said dismissal shall not be filed with the court by City until such time as City has served certified copies of the amended ordinance and use permit upon Owner's legal counsel.

3. Except as otherwise expressly provided in this Agreement, Owner on behalf of himself and his heirs, executors, administrators, guardians, conservators, successors and assigns, hereby release and discharge City and their respective agents, officers, employees and representatives, from any and all claims, actions, causes of action of any nature, including, but not limited to any and all liabilities and/or obligations of every kind and nature arising out of Superior Court Case No. 02CC13030. In so doing, Owner **WAIVES** the benefits of the provisions of section 1542 of the Civil Code of the State of California, which reads as follows:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY**

**HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
THE DEBTOR."**

Owner also agrees to waive any claims, actions and causes of action of any nature arising from Ordinance No. 2573 or amendatory Ordinance No. _____. The waiver and discharge provisions of Section 3 do not apply to any other future amendatory ordinances other than those described in this agreement.

In the event that Ordinance 2573 or amendatory Ordinance No. ____ are declared invalid in their entirety by a court of competent jurisdiction, then owner shall not be bound by the terms of the use permit.

In the event that the above cited ordinances are amended by the City Council, any newly enacted less restrictive CyberCafe operating conditions than those contained in the use permit shall apply and govern owner's operations.

4. Each party executing this Agreement understands and acknowledges the significance and consequences of entry into this Agreement, and the waiver of section 1542 of the California Civil Code. Each party executing this Agreement warrants and represents that in executing this Agreement, said party has had the opportunity to fully discuss the consequences of this Agreement with the legal counsel of said party's choice. Each party executing this Agreement further warrants and represents that the terms of this Agreement and their consequences have been completely read, and that said party fully understands each of the terms of this Agreement and the releases contained herein.

5. This Agreement shall bind and inure to the benefit of all successors, assigns, and heirs of the parties to this Agreement.

6. Owner represents that he has not heretofore assigned or transferred, or purported to assign or transfer, to any person, firm, corporation, association or entity any

of the rights, claims, warranties, demands, debts, obligations, liabilities, action, damages, costs, expenses or other claim whatsoever that he might have had against City. Owner agrees to indemnify and hold harmless City against, without limitation, any and all rights, claims, warranties, demands, debts, obligations, liabilities, actions, damages, costs, expenses and other claims, including attorneys' fees, arising out of or connected with any such assignment or transfer, or purported assignment or transfer.

7. This Agreement shall not be altered, amended or modified except by a writing executed by all of the parties to this Agreement.

8. This Agreement shall be construed and governed by the laws of the State of California.

9. Each party shall bear his/its own attorney's fees and costs.

10. This Agreement, including the attachment hereto, states the entire agreement among the parties hereto, and supercedes any prior agreements, negotiations or understandings by or between the parties. Each of the parties to this Agreement acknowledges and agrees that no other party to this Agreement, nor any agent or attorney thereof, has made any promise, representation or warranty, express or implied, not set forth in this Agreement. Each party to this Agreement acknowledges that such party has not executed this Agreement in reliance on any promise, representation, conduct or warranty of any other party to this Agreement not set forth in this Agreement.

Owners: Paul A. Rianda
Gregory J. Marcot
Kring & Chung, LLP
38 Corporate Park
P.O. Box 19782
Irvine, CA 92623

City: John Shaw
Woodruff Spradlin & Smart
701 S. Parker St., Suite 8000

Each person executing this Agreement represents and acknowledges that it has the authority to legally bind the party for whom it signs.

Executed this ____ day of December, 2002 at _____, California.

CITY OF GARDEN GROVE

By: _____
STEVE IM
Owner

By: _____
GEORGE TINDALL
City Manager

APPROVED AS TO FORM

APPROVED AS TO FORM

KRING & CHUNG, LLP.

WOODRUFF, SPRADLIN & SMART

By: _____
PAUL A. RIANDA
GREGORY J. MARCOT
Attorneys for Owner

By: _____
JOHN R. SHAW
Attorneys for City of Garden
Grove and Chief of Police for
the City of Garden Grove