

## **Underground Video Gambling: Still in Violation of the Law, and Still Thriving**

*A year after The Abell Report chronicled an illegal industry in Baltimore City and County, with income largely unreported, not much has changed.*

### **EXECUTIVE SUMMARY**

In January 2006 The Abell Foundation released a study chronicling an illegal, multi-million dollar slot machine industry in Baltimore City and County, with income that goes largely unreported to tax collectors. The study, “Underground Video Gambling Industry Costing Maryland More than \$15 million Annually in Uncollected Taxes,” reported there were nearly 3,500 video gambling devices in 2005 in bars and other businesses where gamblers are awarded their winnings by bartenders and clerks, instead of from slots in the machine.<sup>1</sup> Most of the machines are owned by vending companies that split the proceeds with bar owners.

One year later the industry is still thriving, with the city and county governments continuing to license the machines under the pretext that they are for “amusement only.”

However, the Maryland Comptroller’s office responded to the 2006 study by attempting to collect one of the taxes that has gone underpaid by vending machine owners. For the first time, the comptroller’s compliance division is coordinating with the city office that registers the machines to collect the Admissions and Amusement tax, a levy of 10 percent of income from each machine. By cross-checking the city’s list of vending machine owners with state tax records, the comptroller’s office was able to locate more than a hundred machine owners who had not been paying the tax.<sup>2</sup> The new

effort goes to the heart of the problems cited in the Abell study, which calculated that the industry brings in between \$91 million and \$181 million a year, much of which (\$63 million to \$153 million) goes unreported to tax collectors.<sup>3</sup>

The study also prompted two unsuccessful bills in the Maryland General Assembly's 2006 session. They would have clarified the illegality of the machines and required the Maryland Comptroller's office to report its efforts to get rid of the devices and to give the legislature an accounting of audits and tax liens against vending companies. One of the bills was introduced by Montgomery County Delegate Peter Franchot, who used the report as a platform early in his campaign for the Maryland Comptroller's office. He won the election and took office in January 2007. In a statement for this report he said he will work to rid the state of video gambling devices.

The Baltimore City Council also responded to the Abell study, though hardly in a civic-minded way. In November 2005 the council introduced legislation that would increase the number of so-called "amusement devices." The legislation was in direct response to the discovery by the Abell researcher that hundreds of Baltimore businesses had more machines than city zoning law allowed. The city council's response was to accommodate the video gambling industry (operated in part by expired corporations, convicted felons and tax evaders) instead of trying to rid the city of the illegal activities.<sup>4</sup>

The bill was heard in a committee chaired by a city councilman who, with his family, owns a bar with four gambling machines. The council member, Edward L. Reisinger, abstained from voting on the bill, but neglected to invite city vice detectives to testify about their experience observing gambling payouts and seizures of thousands of dollars inside the machines and in tavern drawers and safes.<sup>5</sup> Neither did he respond to

the city law department's warning that allowing more of the machines could lead to the proliferation of illegal gambling.<sup>6</sup> His committee voted in favor of the bill, sending it to the full council, where it received preliminary approval. In January, however, it was sent back to committee, where its fate was uncertain as of this writing.<sup>7</sup> The only opponent to the bill on Reisinger's Land Use and Transportation committee was council member Mary Pat Clarke.

In a statement for this report Clarke said, "We oppose slots, then we encourage illegal gambling which lacks oversight and accountability. Where's the consistency? Where's the help for addicted gamblers and their loved ones? What's the point and who's this for? Permitting proliferation is poor city policy."

In the meantime, the city's attempt to crack down on vending machine owners violating the zoning law has met only partial success. Although many "amusement device" owners followed city orders to remove machines in excess of zoning code's limits, others have not.<sup>8</sup> Fifty-two owners of "amusement devices" have kept the machines and appealed to the city's Board of Municipal and Zoning Appeals in an attempt to maintain their excess devices.<sup>9</sup> While the zoning appeals sit unheard, the office that licenses the machines has been reluctant to fine the owners for violating the law (or even charge them the city's usual registration fees). The result is that the city now has hundreds of machines that are not even licensed. However, in December 2006 a city official said that the city plans to remedy this problem in 2007 by sending a list of violators to the city's zoning office for legal action.

## **COMPTROLLER'S RESPONSE**

A draft of the initial Abell gambling report was sent to Maryland Comptroller William Donald Schaefer for his review and comment. In a January 9, 2006, letter to The Abell Foundation, Schaefer downplayed the importance of the lost revenue and noted how difficult it is to track. His letter stated that the video gambling industry's revenue "can quite easily be obscured from audit scrutiny" and that the state places a "higher priority" on collecting other taxes "where the return to the State treasury is greater."

Since that statement was made, much has changed in Maryland politics. Schaefer lost his bid for re-election to Franchot, who took office in January 2007.

In a statement issued for this Abell study update, Franchot said:

The sustained operation of illegal slot machines in Maryland is deeply troublesome to me. Business establishments that house these machines and collect their proceeds are doing so in clear violation of state law.

The fact that revenues from these machines are not duly reported, and are therefore not subject to the same taxes as legitimate amusement games, adds further insult to injury.

Under my direction, the Office of the Comptroller will work closely with state and local law enforcement agencies to enforce the State of Maryland's prohibition on slot machine gambling.

If, over my strenuous personal objections, "gray machines" were to

become legal through state or local legislation, the Office of the Comptroller will work aggressively to collect all appropriate amusement taxes from their proprietors.<sup>10</sup>

Despite Schaefer's misgivings about scrutinizing the largely untaxed industry, his compliance division began an earnest attempt to crack down on the vending machine owners shortly after the Abell study was released.

In spring 2006 the comptroller's office contacted the city's collection division in the Finance Department's Bureau of Treasury Management, which registers the machines. The city office produced a spreadsheet of vending company owners with the specific names of the machines they own, such as Cherry Master or Draw Poker, thus providing a road map for state tax collectors, showing who owns video gambling machines.<sup>11</sup>

Daniel C. Riley, the assistant director of the compliance division of the Maryland comptroller's office, said he used the city report to cross-check names of amusement device owners with his records of Admissions and Amusement Tax accounts, a tax of 10 percent of receipts from amusement devices. If a vending machine owner had no account with his office, he knew they were not paying the tax.<sup>12</sup> (Though the tax is collected by the comptroller, it is given to the city, except for a small state processing fee. The original Abell report found that in 2005 the state collected \$1.3 million in the tax, but should have collected up to \$11 million, based on the study's estimates of unreported gambling revenues.<sup>13</sup>)

Based on the documents given to Riley by the city, the comptroller's office sent out 116 letters to businesses or individuals who did not have amusement tax account numbers.<sup>14</sup> In addition, he said, the state will begin auditing businesses that have numerous gambling devices but report a suspiciously low income. He said the comptroller's office will "look at what people are remitting to see who we should consider for an audit. We are trying to make sure everybody is paying their fair share."

He also said he suggested that the city stop renewing licenses for amusement devices if the owners don't have an admission and amusement tax account with the state. "We all should be working together," he said.<sup>15</sup>

Stanley J. Milesky, chief of the Bureau of Treasury Management in the city's Department of Finance, said the city had not received such a request in writing from the Maryland Comptroller. He added that he would have to research such a request before deciding whether to grant it.

## **ZONING**

In September 2005, the Abell researcher informed the city that hundreds of city businesses were violating the zoning code by keeping more amusement devices than the law allows.<sup>16</sup> Two examples were the Hampden Food Market on 36<sup>th</sup> street, with 17 gambling machines (13 licensed), and Mt. Everest, an Indian takeout restaurant and convenience store in Northeast Baltimore with 10 machines (7 licensed). Each of these businesses was allowed one or two machines, depending on the floor space.<sup>17</sup>

Since then, the city's licensing office has ordered hundreds of businesses to remove excess machines. Consequently, the number for all vending machines, both gambling and others, has been reduced from 3,650 to 3,265.<sup>18</sup> The city has also hired four retired fire department inspectors to inspect businesses for unlicensed machines, as well as other types of violations.<sup>19</sup>

The city's attempts to enforce the zoning code during the past year has created a problem between the finance department's licensing office and the zoning board, which hears appeals to the zoning code.

Fifty-two owners of hundreds of vending machines have refused to remove excess machines and instead filed appeals with the city's Board of Municipal Zoning Appeals.<sup>20</sup> However, no law allows a special exception for owners to keep excess machines. "I don't think coming to the zoning board is going to resolve anything," said David Tanner, executive director of the zoning board. The vending owners, however, were allowed to file the appeals, though none of the cases have been heard by the board.

In the meantime, the city's licensing office has delayed any enforcement efforts such as ordering the machines be removed pending the appeals. Tanner said he believes the appeals should not stop the licensing office from citing the owners for the extra machines and ordering the devices removed.

Milesky said that in January 2007 the city's Department of Finance planned to do just that by filing a "business regulation" with the city's office of Legislative Reference. The regulation will be sent to vending machine owners, ordering them to remove machines in excess of the zoning limit. If the machines are not removed in ten days, he

said, the cases will be turned over to the city's zoning office. At that point, he said, "It becomes a matter for the courts."

## **CITY COUNCIL**

To gauge the entrenchment of the video gambling industry, one need only look as far as the Baltimore City Council. When vending company owners discovered that many were violating zoning laws, they asked the City Council to introduce a bill amending the zoning code to increase the number of machines allowed in local businesses. The bill was heard in a committee chaired by a councilman who owns a bar with four gambling devices.

The bill was introduced at the request of the Baltimore Licensed Beverage Association, whose president at the time was vending company owner John Vontran. (In 2005 Vontran's company, Amusement Vending Inc., owned 93 video gambling machines licensed in the city and county.<sup>21</sup>) The bill would amend the zoning code to increase the number of "amusement devices" allowed in bars and other city businesses, and double the number of machines in some cases.<sup>22</sup> The bill was sponsored by nine city council members, including City Council President Sheila Dixon, who has since become mayor.

City Councilman Edward L. Reisinger presided over the zoning bill in its early stages. The licensing of amusement devices is a subject Reisinger knows intimately, since he and his wife own a bar with four of the machines.<sup>23</sup> Though he could financially benefit from passage of the bill, Reisinger said he saw nothing wrong with chairing the committee, as long as he didn't vote on the bill. "I was objective," he said.



While acknowledging he has a conflict of interest, Reisinger said, “I chaired the hearing, but there wasn’t no vote taken or anything like that. The city solicitor didn’t say I couldn’t chair the hearing, just that I couldn’t vote on it,” he said in a recent interview.

Reisinger owns the Good Times Tavern in Morrell Park with his wife and stepson.<sup>24</sup> He acknowledged the bar has four video gambling machines, but said he did not know if players are paid out their winnings. He said his wife runs the bar and he has no knowledge of its day-to-day operations. If machine players are paid their winnings, he admitted, that would be illegal. But he did question why the city licenses the machines, if police – and a Maryland Court of Appeals decision from 1985 – deemed them illegal.<sup>25</sup>

“If it’s illegal then they shouldn’t be issuing licenses,” he said of the city.

Reisinger acknowledged he and his wife know Vontran and are members of the Baltimore City Licensed Beverage Association. Vontran also gave \$375 to Reisinger’s campaign fund in 2003 and 2004, according to state campaign records. Vontran was also criminally charged with operating illegal slot machines in November 2005 in Baltimore County, but the case was dropped by the Baltimore County states attorney, according to court records.<sup>26</sup>

Reisinger said he believes he mentioned his ownership of the bar during the hearing, though that could not be verified because the council does not tape its bill hearings. Reisinger’s financial disclosure statement filed at City Hall did not include his ownership of the Good Times Tavern at 2522 Washington Boulevard until June 2006, seven months after the bill was introduced. He has owned the bar with his wife and stepson since 1999, according to land records. Liquor board files name his wife, Maria Reisinger, and his stepson, Martin E. Barnes, as the licensees.

He said he does not know why his financial disclosure statement omitted his partnership in the bar. “It wasn’t intentional,” he said. The council bill file noted that Reisinger planned to ask city police representatives to testify about the bill, but none were ever invited. Reisinger said he doesn’t recall why police department representatives were never invited to testify.

An assistant city solicitor, Elena R. DiPietro, wrote to the council that it would not be illegal to pass the bill, but she warned that it “could serve to promote illegal gambling through amusement devices in Baltimore City.” She said the city law department had no authority to legally oppose the bill, since it only involved amending the zoning law and did not refer to the state’s anti-gambling laws. Nevertheless, she wrote to Reisinger’s committee that “there are serious public policy concerns surrounding this legislation.”<sup>27</sup> In an interview she said the council members at the hearing appeared not to have read the Abell report. Her arguments that the machines are used illegally “were falling on deaf ears.” Though the bill had widespread approval early on, at this writing the bill’s fate is uncertain.

In the months after the bill was introduced, the Abell researcher asked a spokeswoman for Mayor Martin O’Malley for his position on the bill.

“We do not support any legislation that would increase the number of these types of terminals in the city,” she responded.<sup>28</sup>

But the mayor’s office stopped short of banning the machines outright, even though Anne Arundel, Carroll, and Harford Counties ban them. A spokesman for Baltimore County also responded by saying the county has no plans to stop registering their machines.<sup>29</sup>

Stanley J. Milesky, chief of the Bureau of Treasury Management in the city's Department of Finance, said that although his office sanctions the machines with licenses, the idea of banning them as illegal is "an issue beyond my responsibility."<sup>30</sup>

## **CONCLUSION**

While new efforts are being made by the Maryland Comptroller's office to finally crack down on tax evaders in the vending machine industry – and more is promised by the Comptroller – Baltimore City and Baltimore County are unlikely to ban the machines outright, unless slot machine gambling is legalized in Maryland. If it is, the state would be more inclined to pressure local jurisdictions to eliminate the illegal machines to avoid competition with legal slots.

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<sup>1</sup> The total was reached from Baltimore City and County "amusement device" registration records by separating out machines known by the FBI as gambling devices.

<sup>2</sup> Interview with Daniel Riley, assistant director, compliance division, Maryland Comptroller's office.

<sup>3</sup> The income range was determined by multiplying the number of gambling machines registered in Baltimore City and County by an estimate of \$500 to \$1,000 a week income per machine. These weekly income estimates were based on interviews with city and county vice detectives who count cash inside gambling machines they seize; police reports; and calculations by gambling expert James Douglas Dunlap, FBI supervisory forensic examiner, who is a retired Baltimore County vice detective. The numbers were also verified with several former bar owners who shared in the machine profits. The unreported income of \$63 to \$153 million was found by subtracting the amount of income reported (based on the 10 percent amusement tax) from the actual income estimate.

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<sup>4</sup> State corporate charter records show that the charters of several vending companies have expired; court records show tax liens against vending companies; and criminal records show that two of the largest vending companies are owned by felons.

<sup>5</sup> Interviews with city and county vice detectives and a review of numerous Baltimore City Police reports.

<sup>6</sup> April 11, 2006, letter from Elena R. DiPietro to the Baltimore City Council concerning City Council Bill 05-0294.

<sup>7</sup> Fritze, John, "City Council Elects Leadership," *Baltimore Sun*, January 23, 2007.

<sup>8</sup> Interview on November 1, 2006, with Mary Ann Uhl, supervisor, collection division, Baltimore City Bureau of Treasury Management.

<sup>9</sup> Interview with David Tanner, executive director of the Board of Municipal Zoning Appeals.

<sup>10</sup> Statement by Peter Franchot, December 1, 2006.

<sup>11</sup> Uhl interview.

<sup>12</sup> In an e-mail dated December 18, 2006, Riley stated that it was too early to determine the increased taxes from vending companies notified that they needed to begin paying the Admissions and Amusement tax.

<sup>13</sup> The true revenues were estimated from interviews with FBI gambling expert James Douglas Dunlap, interviews with city and county vice detectives, and a review of numerous police reports, which account for the amounts of cash found in confiscated gambling devices.

<sup>14</sup> Riley interview.

<sup>15</sup> *Ibid.*

<sup>16</sup> Interview with Donald Small, Baltimore zoning administrator.

<sup>17</sup> The city zoning code allows 1 machine in an establishment with up to 600 square feet and 2 machines in an establishment with more than 600 square feet.

<sup>18</sup> Uhl interview.

<sup>19</sup> *Ibid.*

<sup>20</sup> Tanner interview.

<sup>21</sup> Baltimore City and County amusement device registration records.

<sup>22</sup> City Council Bill 05-0294 introduced November 21, 2005, at the request of the Baltimore Licensed Beverage Association and sponsored by nine council members.

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<sup>23</sup> Interview with City Councilman Edward L. Reisinger; review of city amusement device licenses; and a visit to his bar, Good Times Tavern, at 2522 Washington Boulevard.

<sup>24</sup> Baltimore City land records, Liber 8973/ Page 89, Baltimore City Liquor Board license records for Good Times Tavern.

<sup>25</sup> State v. One Hundred and Fifty-Eight Gaming Devices, 304 Md. 404 (Md. App. 1985).

<sup>26</sup> Baltimore County court records.

<sup>27</sup> DiPietro letter.

<sup>28</sup> Feb. 7, 2006, e-mail from Mayoral Press Secretary Raquel M. Guillory.

<sup>29</sup> Interview with Don Mohler, spokesman for County Executive James T. Smith, Jr.

<sup>30</sup> Interview with Sanley J. Milesky, chief, Bureau of Treasury Management, Baltimore City Department of Finance, December 13, 2006