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REPORT TO: Doug Russell, City Manager DR
FROM: Jarod Nygren, Senior Planner JN
SUBJECT Casinos Work Session
MEETING DATE: April 27, 2015

BACKGROUND: The Kalispell City Council met on April 6, 2015, and held a duly noticed public hearing to consider a conditional use permit request from Eureka Town Pump, Inc. for a casino. The request for the casino created a significant amount of public opposition regarding the proposed use. In addition to the use of the casino, there was significant opposition to the project's location, which is north of the U.S. Highway 2 corridor. There was a perception in the community that casinos were prohibited north of U.S. Highway 2. The city has no policy that would prevent the establishment of a casino in any location of town, as long as it meets the applicable regulations.

The council had lengthy discussion regarding the casino and whether or not it should be approved. Ultimately, the council voted 5 in favor and 4 opposed to approve the conditional use permit, subject to conditions. The reasoning for the approval was based on the fact that the applicant had done their due diligence, and was within the rules of the city at the time the application was submitted. The majority of the council felt that it would not be fair to the applicant to delay their application while new casino regulations were considered. Accordingly, the council directed staff to schedule a work session so the existing casino regulations could be evaluated and to discuss whether additional regulations should be considered.

According to the Montana Department of Justice, gambling control division, there are 29 casinos within the city limits. With the addition of the proposed Town Pump Casino, there will be a total of 30 casinos within city limits (see attached map). Casinos are limited by state law to 20 machines and a casino has to be tied to a state issued liquor license. From a practical standpoint, liquor licenses are capped. However, existing liquor licenses within the city could be transferred to a new location with an associated casino.

The Kalispell Zoning Ordinance is the mechanism used to regulate where casinos are located within the city. Provided a conditional use permit is obtained, a casino is permitted within the B-2, B-4 and B-5 zones. In addition, casinos are regulated by Section 27.34.040 of the Kalispell Zoning Ordinance, which states the following:

- (1) Casinos shall be a minimum of 300 feet from churches, schools, parks, city residential zones, and other casinos, measured from property line to property line.
- (2) Casinos may be located closer than 300 feet from churches, schools, parks, city residential zones, and other casinos, measured from property line to property line if the casino is considered a minor accessory use and meets the parameters of both subsections (3) and (4).
- (3) A casino is considered a minor accessory use to a primary use if the primary use (e.g., restaurant or bar, but not shopping center or other multi-use designation) and its associated facilities constitute at least 80% of the proposed floor space, and the casino constitutes no more than 20% of the proposed use. In addition, the casino is generally shielded or screened from view of the primary use and patrons.
- (4) The following design standards as appropriate may be placed on the casino:
 - (a) Limiting or prohibiting the on-premises signage or building from using the following:
 1. Any terms such as gaming, gambling, cards, dice, chance, etc.
 2. Any reference to any associated activity or any symbols or words commonly associated with gaming.
 3. Any words, terms, figures, art work, or features intended or designed to attract attention to the fact that a casino is on-site.
 4. Neon lighting.
 - (b) Limiting the number and location of entrances into the casino.
 - (c) Increasing landscaping requirements in order to create a buffer between the casino and adjacent land uses.

At this time, the regulations stipulated above are the requirements that can be placed on new casinos within the City of Kalispell.

Municipalities have taken different approaches when it comes to regulating casinos. In general terms, there are a few approaches that have been taken. Some cities have concentrated casinos within certain areas and others have chosen to disperse them. The methods used to accomplish this are varying. The City of Whitefish has created a small casino overlay zone where all new casinos shall be located; any existing casinos not within the overlay zone are nonconforming and are limited accordingly. Other municipalities such as Kalispell, Bozeman and Helena have chosen to disperse the casinos through zoning and setbacks. The zoning limits where a casino can be located within the city, and the setbacks limit the proximity of casinos to one another and to sensitive uses (residential, parks, schools, church, etc.). The setbacks typically range from 300 feet to 600 feet, keep certain areas from becoming over concentrated with casinos, and coincide with state liquor license laws.

When considering additional casino regulations there are a few questions that should be considered:

1. Are the current regulations sufficient?

The ramifications to leaving the regulations the same is that casinos would still be permitted within all areas of the city, where the regulations would permit them. The existing regulations would

continue to keep new casinos from being in close proximity to sensitive uses and would keep an undue concentration from occurring.

2. Should the setbacks be expanded beyond 300 feet?

If the setback is increased there is still the potential for new casinos to be constructed in all areas of the city, where regulations permit them. This option would decrease the amount of casinos that could potentially be permitted.

3. Should overlay areas be created within the city where casinos are permitted?

The ramifications to this idea are that it concentrates casinos to a specified area, which is contradictory to current policy. Currently, the city regulations disperse the casinos through setbacks. If this option is considered, additional questions need to be considered. Where is the best location to concentrate casinos? Should new casinos be prohibited within the core area and downtown redevelopment areas?

4. Should casinos be prohibited north of the U.S. Highway 2 corridor?

A majority of the public comment received in opposition to the proposed casino was due to the location north of town, where there are currently no casinos. The public comment indicated that there were enough casinos elsewhere in the city, and that the north side of town should not be developed with any casinos. The ramifications to this potential policy are that new casinos could be pushed to the south end of town, which is also an entry corridor into the city.

The options listed above are ones staff has researched when directed to hold a work session with the council. The options are presented for the council to discuss and new options may be considered.

RECOMMENDATION: It is recommended that the Kalispell City Council direct staff to take the proposed amendments, if any, to the Kalispell Planning Board for consideration and recommendation.

ATTACHMENTS: Helena, Bozeman and Whitefish casino regulations
Kalispell City casino location map

c: Aimee Brunckhorst, Kalispell City Clerk

Helena

Chapter 40 ESTABLISHMENT OF AREAS THAT ALLOW THE SALE OF ALCOHOLIC BEVERAGES AND CASINOS WITHIN CITY LIMITS

11-40-1: INTENT:

This chapter is intended to:

- A. Identify safe and appropriate locations for establishments selling alcoholic beverages for on premises consumption near public school property;
- B. Identify safe and appropriate locations for casinos; and
- C. Protect and enhance safety of public school students and property near such establishments.
(Ord. 2868, 2-22-1999)

11-40-2: DEFINITIONS:

For purposes of this chapter, the following definitions apply:

CASINO: An establishment licensed for on premises consumption of alcoholic beverages which:

- A. Is licensed for and has six (6) or more video gaming machines or gambling devices; or
- B. Is licensed for and used to conduct any of the following types of gambling: calcutta pools, live card games, live card game tournaments, and live keno.

EXISTING CASINO: Licensed premises that previously had a gambling operator's license and operated as a casino or which had a pending application before the Montana department of justice prior to April 1, 1999, for a gambling operator's license for a casino use.

EXISTING LICENSED PREMISES: Licensed premises that were licensed, or which had a pending application before the Montana department of revenue, for the retail sale of alcoholic beverages for on premises consumption prior to the enactment of this chapter and which have continuously operated under said licenses.

LICENSED PREMISES: Establishments licensed by the state of Montana for the retail sale of any alcoholic beverage for on premises consumption. This does not include premises upon which any alcoholic beverage is catered and sold for on premises consumption to persons attending a

special event.

SCHOOL PROPERTY: Property owned, leased or exclusively possessed by a public school district that is used for educational purposes or school sanctioned activities for primary and secondary education students. This includes school buildings and adjacent land, playgrounds, athletic fields, stadiums, and other places used by primary and secondary education students for educational purposes or school sponsored events. It does not include property owned by commercially operated or postsecondary schools or school district property that is not regularly occupied or used by students for school activities. (Ord. 2799, 7-14-1997; amd. Ord. 2868, 2-22-1999)

11-40-3: LOCATIONS OF LICENSED PREMISES AND CASINOS:

A. Pursuant to the authority granted under section 16-3-309, Montana Code Annotated, the following are areas where alcoholic beverages may not be sold at retail for on premises consumption:

1. In any zoning district that does not allow licensed premises as either a permitted or conditional use under this title;
2. An area restricted by section 16-3-306, Montana Code Annotated, as amended; and
3. An area located within six hundred feet (600') straight line distance from the closest exterior edge of a licensed premises to the closest boundary of school property, except as permitted by this chapter. (Ord. 2868, 2-22-1999)

B. Pursuant to the authority granted under sections 16-3-309 and 23-5-171, Montana Code Annotated, casinos are only allowed by conditional use permit in those districts shown in section [11-2-3](#), table 1 of this title and are subject to subsection A of this section. A casino may not be located within three hundred feet (300') of any R-1, R-2, R-3, R-4 or R-O zoning district measured in a straight line distance from the closest exterior edge of the licensed premises to the closest boundary of the applicable residential zoning district. (Ord. 3104, 11-3-2008)

11-40-4: EXEMPTIONS:

A. The location prohibition defined in subsection [11-40-3A3](#) of this chapter does not apply to:

1. An existing licensed premises. Exempted existing licensed premises are not subject to the provisions of [chapter 6](#) of this title as nonconforming uses.
2. A licensed premises that is in a location allowed by this chapter, but which subsequently becomes prohibited solely because of the acquisition, creation or expansion of school property.

- B. The location prohibition defined in subsection [11-40-3B](#) of this chapter does not apply to an existing casino. Exempted existing casinos are not subject to the provisions of [chapter 6](#) of this title as nonconforming uses. If the structure housing an existing casino becomes damaged or destroyed by any cause, the structure may be replaced or reconstructed. An existing gambling operation may change the type and quantity of gambling activity without the requirement of a conditional use permit for that change. (Ord. 3097, 4-7-2008)

11-40-5: CONDITIONAL USE:

Licensed premises that are not permitted in a location because of subsection [11-40-3A3](#) of this chapter may be permitted as a conditional use in accordance with the provisions of [chapter 3](#) of this title, provided the use is otherwise permitted by this zoning ordinance. (Ord. 3149, 12-19-2011)

Whitefish

11-3-7: CASINOS:

- A. The city council may amend the zoning jurisdiction regulations and create within the WB-2 district a specific geographic area defined as casino overlay zone.
- B. A new casino may only be located within a WB-2 district in a location specifically designated casino overlay zone on the official zoning jurisdiction map.
- C. Those casinos that exist outside of a designated casino overlay zone shall be considered nonconforming and shall be regulated according to section [11-7-11](#) of this title. The addition of any gambling machines or gambling devices or increase in number of gambling machines or gambling devices shall be considered an expansion of use under subsection [11-7-11D](#) of this title. (Ord. 00-06, 4-3-2000; amd. Ord. 05-25, 11-21-2005)
- D. A nonprofit entity which holds appropriate state alcoholic beverage and gambling licenses and which is a legal nonconforming use not located within the casino overlay, as described in this section, may operate up to four (4) gambling machines subject to the following restrictions:
1. No signs or advertising of any type can be used to publicize the existence of gambling machines, gambling opportunities, or a casino; and
 2. Use of gambling machines must be primarily by members of the nonprofit entity. (Ord. 06-06, 4-3-2006)

CASINO: Any establishment licensed by the Montana department of justice for one or more video gambling machines or gambling devices, or is licensed for and conducts the following types of gambling: Calcutta pools, live card games, live card tournaments and live keno.

Bozeman

- **Sec. 38.18.010. - Intent.**

The intent of the casino overlay district is to provide suitable locations for casinos, as defined in this chapter, based on review for impacts to neighboring uses and to minimize adverse effects on the community in the best interests of the public health, safety and general welfare.

(Ord. No. 1645, § 18.32.010, 8-15-2005)

- **Sec. 38.18.020. - Application for zoning designation.**

Any person wishing to establish a casino must make application as per [article 37](#) of this chapter, Zoning Map Amendments, for a casino overlay district.

(Ord. No. 1645, § 18.32.020, 8-15-2005)

- **Sec. 38.18.030. - Authorized uses.**

A. Authorized uses in the casino overlay district are as follows:

1. *Principal uses.*

- a. All principal uses permitted in the M-1 district if the underlying zoning is M-1.
- b. All principal uses permitted in the M-2 district if the underlying zoning is M-2.

2. *Conditional uses.*

- a. Casinos.
- b. All conditional uses permitted in the M-1 district if the underlying zoning is M-1.
- c. All conditional uses permitted in the M-2 district if the underlying zoning is M-2.

3. *Accessory uses.*

- a. All accessory uses permitted in the M-1 district if the underlying zoning is M-1.
- b. All accessory uses permitted in the M-2 district if the underlying zoning is M-2.

(Ord. No. 1645, § 18.32.030, 8-15-2005)

- **Sec. 38.18.040. - Restrictions.**

- A. Casino overlay districts shall be permissible zoning only in areas zoned M-1 light manufacturing district, or M-2 manufacturing and industrial district.
- B. Casino overlay districts shall not be located within an entryway corridor overlay district except for the Interstate 90 entryway overlay corridor. Casino overlay districts shall not be located in areas where the Interstate 90 entryway corridor overlaps other entryway corridor overlay districts.
- C. Casino overlay district lots shall not be located within 600 feet, in any direction, of lots used for schools, churches, residences, public parks or other casinos.
- D. Sale for on-premises consumption of beer, wine and liquor is permissible only for casino and restaurant establishments.
- E. Casinos granted approval for sales for on-premises consumption of alcohol may not also sell automotive fuels.

(Ord. No. 1645, § 18.32.040, 8-15-2005)

- **Sec. 38.18.050. - Lot area and width.**

There shall be no minimum lot area, however no lot width shall be less than 100 feet and the lot area shall be sufficient to provide all required yard areas and off-street parking.

(Ord. No. 1645, § 18.32.050, 8-15-2005)

- **Sec. 38.18.060. - Lot coverage.**

The entire lot, exclusive of required yards, landscaping and parking may be occupied by the principal and accessory buildings.

(Ord. No. 1645, § 18.32.060, 8-15-2005)

- **Sec. 38.18.070. - Yards.**

- A. Every lot within a casino overlay district shall have the following minimum yards:
 - 1. Front yard: 25 feet.
 - 2. Rear yard: ten feet.
 - 3. Side yards: eight feet each side.

Note—(All yards shall be subject to the provisions of sections [38.16.060](#), [38.22.100](#) and [38.23.100](#), when applicable.)

(Ord. No. 1645, § 18.32.070, 8-15-2005)

- **Sec. 38.18.080. - Building height.**

A. Maximum building height in a casino overlay district shall be:

1. Roof pitches of less than 3:12: 32 feet.
2. Roof pitches of 3:12 or greater: 38 feet.

(Ord. No. 1645, § 18.32.080, 8-15-2005)

• **Sec. 38.42.500. - Casino.**

A. An establishment whose primary use or activity is gambling, either in the form of gambling machines (video poker, keno, etc.), card games or other licensed gambling activity. A casino will normally have beverage and restaurant facilities as accessory uses. In all instances, an establishment will be considered a casino for the purpose of these regulations if any of the following characteristics apply:

1. The establishment is referenced as a casino by signage, advertisement or by name;
2. More than one card table is on the premises; and/or
3. 15 or more gambling machines are on the premises.

B. An applicant for a casino establishment must obtain a state license to sell alcoholic beverages for consumption on the premises.

(Ord. No. 1645, § 18.80.470, 8-15-2005; Ord. No. 1693, § 29(18.80.470), 2-20-2007; Ord. No. 1761, exh. R(18.80.470), 7-6-2009)

- “Casino” means an establishment whose primary use or activity is gambling, either in the form of gambling machines, card games, or other licensed gambling activity. In all instances, an establishment will be considered a casino for the purpose of this article if any of the following characteristics apply:
 - a. The establishment is referenced as a casino by signage or by name;
 - b. More than one card table is on the premises;
 - c. 15 or more gambling machines are on the premises.

City of Kalispell Casinos

