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## **BUSINESS IMPACT STATEMENT**

The following business impact statement (BIS) was prepared pursuant to NRS 237.090 to address the proposed impact of amendments to Sparks Municipal Code (SMC) Title 5, Chapter 5.24 "Gambling Establishments" to add definitions and create the requirements of bars or bar-restaurants with restricted gaming.

### **NRS 237.090(1)(a): A Description of the Manner in which Comment was Solicited from Affected Businesses:**

Notice of the proposed change, a copy of the draft amendment, and a request for comments were provided to potentially affected businesses via direct mailing to every business that holds any type of gaming license issued by the City, the Nevada Resort Association, and the Reno Sparks Convention and Visitors Authority on January 27, 2017.<sup>1</sup> For the same period, notice of the proposed amendment was included as a prominent banner on the City's webpage along with a solicitation for comments regarding the amendment (<http://cityofsparks.us/resources/resource/atty-rgc-2017/>) and a link to the proposed amendment (<http://cityofsparks.us/wp-content/uploads/2017/01/atty-sparks-gaming-ord-draft-jan2017.pdf>). All notices included a deadline of February 17, 2017 for the provision of comments on the proposal and indicated that any such comments should be directed to:

### **NRS 237.090(1)(a): A Summary of the Responses Collected as a Result of Noticing and a Description of how the Summary may be Obtained:**

The primary inquiry generated by the noticing effort was for simple clarification that the proposal applies only to a defined class of restricted licensee.<sup>2</sup> Only one

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- <sup>1</sup> There are 88 licensed gaming locations in the City of Sparks. Of the 90 requests for comment mailed, seven were returned as undeliverable as addressed, apparently due to a failure of the licensee to maintain an updated address on file with the City.
  - <sup>2</sup> The City Attorney's Office received one phone call and one email from non-restricted licensees clarifying that the proposed changes only apply restricted gaming locations.

substantive response was generated during the entire comment period, and it is attached in its entirety as “**Exhibit A.**”

Nevada Restaurant Services, Inc. (dba Dotty's) expresses four substantive concerns in its letter commenting on the proposed amendment. First, that the amendment applies only to bars and bar-restaurants rather than to all businesses that might have a restricted gaming component (i.e. grocery stores, drug stores, convenience stores and liquor stores). Second, that the proposed amendment precludes bars and bar-restaurants from selling package liquor for off-premises consumption without imposing a similar restriction on grocery stores, drug stores, convenience stores and liquor stores. Third, that the amendment imposes a financial burden on bars and bar-restaurants that is not also assessed against grocery stores, drug stores, convenience stores and liquor stores by requiring the submission of a facilities diagram. And fourth, that the City should leave the regulation of restricted gaming to the State Gaming Control Board.

Dotty's proposes that SMC Title 5, Chapter 5.24 be amended to define restricted gaming in a manner that affords gaming control complete and unilateral authority over the licensing of a restricted gaming operation.

This summary may be obtained from the City's website as an archived document associated with the February 27, 2017 meeting of the Sparks City Council or by request to the City Clerk.

**NRS 237.090(1)(b)(1) - The Estimated Adverse Economic Effect on Businesses Regulated by the Proposed Amendment:**

The adverse effects anticipated as a result of this amendment are that certain businesses may be limited in the manner in which they update their facilities or may otherwise require remodeling in order to conform to the new ordinance. This impact should be minimized by the robust “grandfathering” provision included in the amendment that allows all presently established businesses to remain in operation without change so long as they continue to operate in a substantially similar manner to their present fashion.

**NRS 237.090(1)(b)(1) - The Estimated Beneficial Economic Effect on Businesses Regulated by the Proposed Amendment:**

The amendment to SMC Title 5, Chapter 5.24 is expected to benefit local businesses by providing additional definitions and explicit parameters that will ensure that all instances of restricted gaming exist as incidental to the primary use of the business as required by state and local law.



**NRS 237.090(1)(b)(2) - The Estimated Direct Economic Impact on Businesses Regulated by the Proposed Amendment:**

Some existing businesses may be directly affected by the proposal by choosing to submit a diagram of their current floorplan and an affidavit of compliance on an annual basis rather than proof that the gaming use is incidental to a primary business. The amendment may also preclude some existing businesses from expanding under their current business model.

**NRS 237.090(1)(b)(2) - The Estimated Indirect Economic Impact on Businesses Regulated by the Proposed Amendment:**

Indirect effects of the proposed change cannot be quantified beyond the possibility of some existing business owners requiring a change of business model before expanding operations in order to show that any restricted gaming component is incidental to a primary use.

**NRS 237.090(1)(c) - A Description of the Methods Considered by the Governing Body or its Designee to Reduce the Impact of the Proposed Amendment on Businesses:**

The proposed amendment was initiated based on direction from the Sparks City Council to address concerns related to restricted gaming operations. The primary issue was how a restricted gaming operation (fifteen or fewer slot machines) in bars and bar-restaurants is maintained as incidental to the primary use of the business. The ordinance is intended to provide explicit parameters to ensure that the primary and incidental nature of the respective uses are maintained in accordance with state and local law. To reduce the impact on businesses, the proposed ordinance parallels similar measures in Clark County and the City of Reno, but includes a comprehensive "grandfathering" provision which allows the continued operation of all presently existing restricted gaming locations. Additionally, bars and bar-restaurants that operate seven or fewer slot machines are exempted from the requirements proposed in the amendment and there are exceptions designed to ensure compliance with the Americans with Disabilities Act. Finally, this amendment allows certain businesses that might not otherwise meet the City's accessory use standards contained in SMC 20.03.02 to remain open.

**NRS 237.090(1)(d) - The Estimated Cost to the Local Government to Enforce the Proposed Amendment:**

The additional cost to the City for enforcement of the proposed rule change is anticipated to be *de minimis*. The primary tool for enforcement is the new obligation of those existing licensees who may be unable to show that the restricted gaming use is incidental to a primary business to file a diagram of the operation and a statement of compliance along with their annual business license renewal.

**NRS 237.090(1)(f) – An Explanation as to Why More Stringent Local Standards are Necessary:**

There have been concerns regarding how to determine the relationship between the primary and incidental business use as it relates to restricted gaming operations. This has resulted in changes to State Gaming Regulations and significant changes to local rules in other jurisdictions. These changes primarily define terms and delineate clear requirements with respect to the minimum acceptable licensing and operational requirements of restricted gaming operations consistent with the state law directive that a restricted gaming use be incidental in nature. As the local regulator, the City is in the best position to determine whether a use is truly incidental in practice because its conclusions may be drawn from licensing returns and day-to-day operations rather than a *pro forma* attached to a pre-operational application.

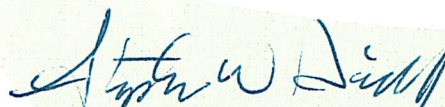
**NRS 237.090(1)(g) – The Reason for the Conclusions Regarding the Impact of the Proposed Amendment on Businesses:**

Restricted gaming is an allowed accessory use regulated by NRS Chapter 463, SMC Title 5, Chapter 5.24, and SMC Title 20, Chapter 20.03. Businesses with restricted gaming operations are required to be incidental to the primary use of the business. The adoption of this change ensures an even playing field for businesses with restricted gaming licenses by providing explicit parameters for determining whether a restricted gaming operation is incidental to the primary use of a business.

**NRS 237.090(2) CERTIFICATION**

I, Stephen Driscoll, as City Manager for the City of Sparks, hereby certify that, to the best of my knowledge and belief, the information contained in this Business Impact Statement was prepared properly and accurately.

Dated this 21<sup>st</sup> day of February, 2017:



Stephen W. Driscoll, ICMA-CM  
City Manager

## **Exhibit A**



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ATTORNEYS AT LAW

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February 17, 2017

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***Re: Comments in Response to Proposed Restricted Gaming Ordinance***

Dear Mr. Thornley:

This Firm represents Nevada Restaurant Services, Inc. dba Dotty's ("NRSI"). Please accept this letter as NRSI's response to the City of Sparks' request for comments and concerns regarding the potential adoption of an ordinance to amend Chapter 5.24 of the Sparks Municipal Code ("SMC") governing the licensure and operation of gambling establishments in Sparks. NRSI maintains its Northern Nevada headquarters, as well as operates one non-restricted casino and four bars with restricted gaming in Sparks, employing in excess of 50 people in Sparks and over 250 people in Northern Nevada.

Preliminarily, it is important to ask, what public concern is driving the proposed ordinance? There is no public health, welfare, or safety concern that supports the proposed changes – it is pure politics being driven by NRSI's competitors. The proposed ordinance solely affects NRSI and is specifically aimed at attacking NRSI's business model.<sup>1</sup>

It is important to note the City of Sparks' stated background on the proposed ordinance, as set forth in the Background for Item Number 3 on the Sparks City Council Meeting backup materials for February 13, 2017, which reads:

“Under Nevada law, restricted gaming is required to be “incidental to the primary business of the establishment.” NRS 463.0189. In Sparks, restricted gaming is an ‘accessory use,’ which means that the gaming element of any business so licensed may not occupy more than ten percent of the building footprint associated with the principle use to which the restricted gaming

<sup>1</sup> In all likelihood, the City of Sparks will not hear from other establishments engaged in restricted gaming, including other bars, restaurants, grocery stores, drug stores, convenience stores, or liquor stores, because the proposed ordinance has been drafted narrowly to only impact NRSI and not attract the attention of other restricted gaming establishments whose business models and customers are not impacted by the proposed ordinance.

operation is attached. SMC 20.03.002. With respect to restricted gaming, concerns related to the relationship between primary and incidental or accessory uses have surfaced over the past several years, resulting in significant changes to state and local gaming regulations.”

Based upon information and belief, Sparks is home to approximately 10 non-restricted gaming establishments and more than 80 restricted gaming establishments. The over 80 restricted gaming establishments include bars, bar restaurants, grocery stores, drug stores, convenience stores, and liquor stores. Despite the broad “Background” language set forth in the back-up materials for the February 13 City Council Meeting, the proposed ordinance, however, only contains language relating to two types of establishments that may engage in restricted gaming – bars and bar restaurants. The proposed ordinance does not address restricted gaming as it relates to convenience stores, grocery stores, drug stores, or liquor stores, which are all recognized under state regulation, as establishments suitable for the conduct of restricted gaming under Nevada Gaming Regulation 3. This begs the question, if “[w]ith respect to restricted gaming, concerns related to the relationship between primary and incidental or accessory uses have surfaced over the past several years...” why does the proposed ordinance not address restricted gaming in all of its forms? The failure to address these other establishments that may engage in restricted gaming is illustrative that the proposed ordinance is designed to impact only one business – that of NRSI.

First, the proposed ordinance sets standards requiring “bartop machines” in “bartops” for restricted gaming taking place in bars and bar restaurants, but sets no standards for restricted gaming taking place in grocery stores, drug stores, convenience stores, or liquor stores.

“Traditional” bars as they may exist today or come about in the future; to the extent they maintain “bartop machines” in a bartop that is at least forty-two inches in height will always be deemed to be incidental or ancillary to the business. If, however, a bar wishes to deviate from the “traditional” bar with “bartop machines” in a bartop, whether to meet market demand or to accommodate customers with disabilities, beyond the minimum standards set forth by the Americans with Disabilities Act of 1990, as amended, or other applicable law, by providing customers access to 15 or fewer slot machines which are either not “bartop machines” or not in a bartop that is at least forty-two inches in height, will be deemed to be a restricted gaming establishment that is not incidental or ancillary to the primary business and will be subject to penalties under the proposed ordinance.

What is the purpose of passing a definition of “bartop” that prevents a licensee from operating a bar that is 100% ADA accessible? The proposed ordinance is openly in opposition to the promotion of accessibility for the disabled and elderly resulting in fewer options for the consumer. What sort of reasonable public policy supports limiting the amount of accessibility a business may offer to patrons? The required height inhibits accessibility for older and disabled



guests, raises compliance concerns under the Americans with Disabilities Act, and is inconsistent with the business plans of many locations (like those operated by NRSI) to make all aspects of their operations accessible to older and disabled guests. There is no rational basis for the minimum bar height of 42 inches, it is meant to do nothing but harm NSRI's business model. It should not be law in Sparks or anywhere in the United States frankly, to require businesses to build facilities that are by law limited in the amount of ADA compliance and accessibility to older and disabled customers and employees they may offer.

Further, why would Sparks define "bartop machine" when it is an industry standard? Every business needs to be able to evolve with and embrace technology to be successful. The proposed definition of "bartop machine" is unnecessary and highly restrictive of future business development. Bartop slot machines have a very specific meaning in the gaming industry. It is a truly black or white issue, either a machine is a bartop machine or it isn't, there is no grey area. The manufacturer of any slot machine can provide a definitive answer as to whether one of their slot machines is a bartop or not. There is no legitimate need to define the term in the Sparks municipal code.

Additionally, the way that the term is implemented in the proposed ordinance is extremely short sighted. It's clear from the fact that there is only one manufacturer currently making bartop machines for sale that the technology is on its way out. By locking restricted licensees into bartop machines and nothing else, they will fall behind the times as gaming technology moves past the bartop machine.

If the bar industry is not allowed to evolve with gaming technology, it will become an obsolete industry. Legislating bars to operate only bartop machines is like forcing everyone who lives in Sparks to throw away their cell phones and use only beepers. There is no legitimate reason to force people to use obsolete technology. The definition and requirement of "bartop machine" in the proposed ordinance is fundamentally flawed, bad policy, and contradictory to the gaming policies of the State of Nevada, which encourage the implementation of competing technologies.

Second, at least one "traditional" bar in Sparks which also engages in restricted gaming is afforded the right to apply for, hold or renew an alcoholic beverage package license that allows the holder to sell alcoholic beverages in packages for consumption outside the bar because that bar holds a state "supplier's license" or operates a "brew pub." Other bars or bar restaurants are treated differently. Not surprisingly to NRSI, its business model is excluded.

Additionally, other restricted gaming establishments, such as grocery stores, drug stores, convenience stores, and liquor stores are not prohibited from selling package liquor for off



premises consumption, because only two types of the 80 plus restricted gaming licenses in Sparks are being targeted by the proposed ordinance – bars and bar restaurants.

Third, the proposed ordinance imposes an additional financial burden on bars and bar restaurants, but not other restricted gaming operations in Sparks, by mandating the submission of diagrams of the establishments' premises, as well as the submission of annual reports setting forth the establishment's compliance. Despite the proposed ordinance being brought to address "...concerns related to the relationship between primary and incidental or accessory uses..." related to restricted gaming, the proposed ordinance does not burden grocery stores, drug stores, convenience stores, or liquor stores that may be engaging in restricted gaming, with these additional regulatory requirements.

Despite these specific concerns, it is important to point out that what is actually happening in Sparks is the culmination of the Nevada Resort Association's ("NRA") sustained attempt to destroy restricted gaming over the past 25 years, which is discussed in greater detail below. The effort has been invigorated over the last 5 years by a few particular entities that own "local" casinos in the Las Vegas valley, who have directed their focus at NRSI. One of those entities, Station Casinos, made an unsuccessful attempt to purchase NRSI in the recent past, which appears to have changed their intentions from curbing competition to something more. The real purpose of the proposed ordinance is nothing more than an attempt to reduce competition and will only result in the reduction of choices for consumers.

It's plain that the primary purpose of the proposed ordinance is to destroy perceived competition, which falls in line with the NRA's push to insulate nonrestricted licensees from additional competition via 1997's Senate Bill 208. Given that gaming revenues at resort casinos have been surpassed by nongaming revenues since that time, it seems they should've probably focused more on promoting gaming generally than meaninglessly trying to stomp out competition. It should be noted that in addition to its restricted licenses, NRSI holds nearly 40 nonrestricted gaming licenses for locations throughout Nevada, two of which operate as resorts, which it understands is the most of any Nevada licensee.

As would seem proper, NRSI attempted to join the NRA since the group supposedly promotes the interest of nonrestricted gaming and resorts in Nevada, but were not allowed membership. Presumably, the NRA's interest in destroying NRSI is too vested to allow them into an organization that they otherwise should have the right to join. Unfortunately, NRSI is not part of the good old boys' club.

Proponents of the proposed change, one of whom is the NRA, will tell the City of Sparks that this amendment is necessary because of the confusion that surrounds the term "incidental." What Sparks won't be told by the proponents of these changes is that the only reason there is any sort of confusion about what "incidental" means with respect to its use in Nevada gaming is because of the NRA. It is an entirely manufactured issue. The City of Sparks will be told that the



word is undefined by the Nevada Gaming Commission (“NGC”) and Nevada Gaming Control Board (“GCB”) Regulations, and therefore it must be determined by the local jurisdiction. That is untrue, and by following that direction the City would only cause additional confusion. The truth is that the GCB conducts a 7-factor analysis of each and every application for a restricted gaming license for the express purpose of determining whether the gaming at a location is incidental to the primary business there. The NRA is absolutely aware of the regulation obligating the GCB to make such an analysis, as it was the main proponents of its original passage and its modification over the past 25 years.

Why is this being brought to Sparks now? Because the proponents of the proposed ordinance cannot push their anti-competitive agenda any further at the state level. Bringing this battle to the local governments is the final leg of the race, since the State at all levels, has declined to make further changes that would actually destroy restricted gaming and NRSI. The tactic in Sparks is not new. The strategy will involve creating confusion around the term “incidental” for the purpose of hurting the restricted gaming industry. The fact that the GCB conducts an individual 7-factor analysis of every applicant will be conveniently ignored by the proponents of this change. Instead, their focus will be on revenue, which is but one of the 7 factors the GCB looks at. The determination as to whether gaming is incidental has never been based solely on revenue. Although, the notion that the determination should be based solely on revenue has been fully examined and rightfully rejected by the NGC and GCB, as it would destroy the restricted gaming industry in its entirety, an industry that has pre-existed every casino in the state.

The NGC and GCB are bound to operate from within their Regulations, and Regulation 3 makes it a prerequisite that an applicant’s operation of slot machines be incidental to their primary business in order for them to be approved for a restricted gaming license. Therefore, especially since the term’s usage in gaming was literally invented by the NGC and GCB (i.e., it’s their term of art), the grant of a restricted license to an applicant means that the gaming at their establishment is incidental to the primary business under Nevada law. If the gaming wasn’t incidental, a restricted license could not be approved under Regulation 3.

The GCB conducts a thorough investigation of an applicant’s proposed business and then walks through a 7-factor analysis to determine if gaming would be incidental to the primary business there. Under the proposed ordinance, Sparks’ code would say that incidental to the primary business of a bar means all of the slot machines in the business are antiquated bartop machines and would discourage innovation or businesses attempting to meet market demand for an alternative to a “traditional” bar.

What is the best thing to do for Sparks and its residents? There is no reason for Sparks to change any ordinances. There is no public outcry for change and Sparks’ code is not broken. However, if something must be passed to solve what is being presented to the City of Sparks as a



dilemma, Sparks should rely on the GCB's expertise of its own regulations.

There is no reason to increase the size of Sparks' gaming code. In fact, there is no need to change Sparks' code whatsoever. The manufactured dilemma that is being presented to the City of Sparks as needing an immediate solution can most easily be solved by relying on the expertise and means of the GCB. The GCB's investigation of a gaming application is very in-depth because the GCB has the means to do so. The City of Sparks does not have the same means and should not spend money to try to duplicate what the GCB is world renowned for. Because of that, if there must be a change to the Sparks code, the best solution for Sparks and its residents would be to add only the following section to Chapter 5.24:

Restricted Gaming means a gaming operation consisting of the operation of fifteen (15) or fewer slot machines, and no other games or gaming devices, when the machines are operated as incidental to the business of the primary or principal commercial use. A restricted gaming operation is authorized to operate by the Nevada Gaming Commission under the terms of a restricted license, as defined by NRS 463.0189. Gaming is incidental to the business of the primary or principal use if the Nevada Gaming Commission approves an applicant's application for a restricted gaming license.

This solution is appropriate because the NGC cannot approve an application for a restricted license without a determination from the GCB that the gaming there is incidental to the primary business. It follows that gaming at a licensed restricted gaming operation must be incidental to the primary business; since the location could not have been licensed by the state if that weren't the case. This would also allow for the use of advantaged technology and offering customers an alternative to a "traditional" bar which is not conducive to all customers based on age, disability, or simply atmospheric taste. If the law must be changed, Sparks should rely on what is internationally known as the world's preeminent gaming regulatory authority for making this determination instead of advancing anti-competitive legislation.

Cordially,

KAEMPFER CROWELL



Severin A. Carlson

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