



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Urbana Plan Commission

FROM: Christopher Marx, Planner I

DATE: February 27, 2015

SUBJECT: Plan Case 2250-T-15: An amendment to Article II, Article V, and Article VII of the Urbana Zoning Ordinance to establish definitions, use provisions, and special use permissions for “Gaming Halls”, Urbana Zoning Administrator, applicant.

Introduction and Discussion

On February 19, 2015, the Urbana Plan Commission held a public hearing on Plan Case 2250-T-15, regarding the addition of Gaming Halls as a permitted use in the Urbana Zoning Ordinance. The Commission continued the case to the March 5, 2015 meeting and asked staff to address additional issues regarding location restrictions and increased specificity in the definition of Gaming Hall. The Plan Commission also had questions regarding limits on ownership and economic concentration.

Definition

At the last Plan Commission meeting, there was concern expressed about the definition of Gaming Hall not being specific enough to effectively identify establishments that use video gaming as a principal use. The commission also raised concerns about the definition of Gaming Halls not accommodating potential changes to state law in the future. Based on these concerns, staff has added more specific criteria to the proposed definition of Gaming Hall. The more specific criteria include the presence of a seating area for video gaming that is greater than the seating area for food and beverage service or general merchandise, an estimated net revenue of at least 40% or more derived from video gaming terminals, an overall size of 1,500 square feet or less, and the absence of a full service kitchen for any food service. The proposed amendment continues to define Veterans Establishments and Fraternal Establishments and provides exemptions for them from the definition of Gaming Hall.

Use Category Restrictions

Plan Commission members asked if Gaming Halls could be defined and then excluded from all zoning districts in the Zoning Ordinance. The City Attorney has indicated that such a regulation would not stand legal challenge and advises against it. Plan Commission members also asked if permitting Gaming Halls by special use was appropriate in all of the proposed districts of B-3, General Business, B-4, Central Business, and B-4E, Central Business Expansion. In response to

this concern, staff has changed the proposed amendment permissions in B3, B-4, and B-4E from a required conditional use permit to a special use permit. The approval of any Special Use Permit would require an expressed authorization from the City Council after recommendation for or against by the Plan Commission as specified in the Special Use Procedures of Article VII-4 of the Zoning Ordinance. Gaming Halls would still be restricted to strictly commercial zones and insulated from any mixed-use or university oriented districts. Approval of a Special Use Permit requires the applicant to show that the use is not detrimental to the public welfare. Standard conditions for Gaming Halls as a special use are proposed to be added to Section VII-5 of the Zoning Ordinance. These standard conditions would include the state-required minimum 100-foot distance between Gaming Halls and schools or places of worship. City Council could increase these distance requirements if needed on a case-by-case basis.

Gradual Accessory to Principal Use Conversion

Plan Commission members expressed concern about gradual conversion of an establishment, such as a tavern or restaurant, from having video gaming as an accessory use to principal use. Any change in use would be addressed as a zoning use violation. In response to complaints on field inspections, staff would investigate the premises, make a determination as to the principal use, and issue a citation for abatement. Should the violation not be abated through either a change in the use or subsequent obtainment of a Special Use Permit, the complaint could be prosecuted in Court, with fines, penalties, and Court orders. An establishment with a documented zoning use violation and would receive a call for abatement and subsequent court complaint in the event of noncompliance.

Gaming Hall Ownership Restrictions

The Plan Commission had concerns about ownership of Gaming Halls and asked if restrictions could be put on how many facilities one entity may own and if the City could require the owner to reside in Urbana. The City Attorney's office has determined that such restrictions cannot be placed in the Zoning Ordinance and would not withstand legal challenges. However, requirements to limit economic concentration of Video Gaming licenses may be permissible in the City Code.

Attached: Exhibit B (Revised Text Amendment)

Prohibition in Other Illinois Municipalities

The Plan Commission inquired about how other Illinois municipalities entirely prohibited Gaming Halls or similar establishments with video gaming as a principal use. Some communities have enacted very recent regulations that disallowed such a use through city code or license ordinances. These prohibitions are not found in zoning ordinances. The government of Lake County inserted a provision in its municipal code relating to liquor licensing that required any every establishment to provide a statement on its intent to pursue a state video gaming license and subsequent documentation that either 60% or more of its revenue comes from food and beverage sales or that no more than 10% of its overall space is devoted to video gaming. The City of Bloomington also established limitations through the liquor licensing provisions of its city code. The language of their provisions explicitly states the prohibition of a license for an establishment with video gaming as its principal use. The provisions also use several qualitative

criteria such as the establishment layout, customer seating capacity, square footage of space, and probable revenue related to video gaming.

Summary of Staff Findings

1. The Zoning Administrator is proposing a revised text amendment to the Zoning Ordinance in order to add definitions and establish use provisions for gaming halls after input from the Plan Commission.
2. Video gaming machines in establishments with a liquor license are legal in Illinois as of January 1, 2010 and their usage is regulated by the Illinois Video Gaming Act (230 ILCS 40/1).
3. Video gaming machines in establishments with a liquor license are legal in Urbana and their usage is regulated in Section 3.7-15 of the City of Urbana Municipal Code.
4. The proposed amendment will modify Articles II, V, and VII of the Urbana Zoning Ordinance to distinguish establishments with liquor licenses that exist for the primary purpose of video gaming as “Gaming Halls” and establish definitions and use permissions.
5. The proposed amendment would allow Gaming Halls in the B-3, General Business District, B-4, Central Business District and B-4E, Central Business-Expansion District as a Special use.
6. The proposed amendment is consistent with the goals and objectives of the 2005 Urbana Comprehensive Plan to minimize incompatible land uses, develop a diversified and stable tax base, and to develop a focused approach to economic development.
7. The proposed amendment conforms to notification and other requirements for the Zoning Ordinances as required by the State Zoning Act (65 ILCS 5/11-13-14).

Options

The Plan Commission has the following options for recommendation to the Urbana City Council regarding Plan Case 2250-T-15:

- a. forward the proposed Zoning Ordinance amendment to City Council with a recommendation for approval as presented herein;
- b. forward the proposed Zoning Ordinance amendment to City Council with a recommendation for approval as modified by specific suggested changes;

- c. forward the proposed Zoning Ordinance amendment to City Council with a recommendation for approval as modified by specific suggested changes and with recommendations for changes to City Code regarding Video Gaming Licenses; or
- d. forward this case to City Council with a recommendation to deny the proposed amendment.

Staff Recommendation

Based on the evidence presented in the discussion above, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommends that the Plan Commission make a recommendation to City Council to **APPROVE** the proposed text amendment as presented herein.

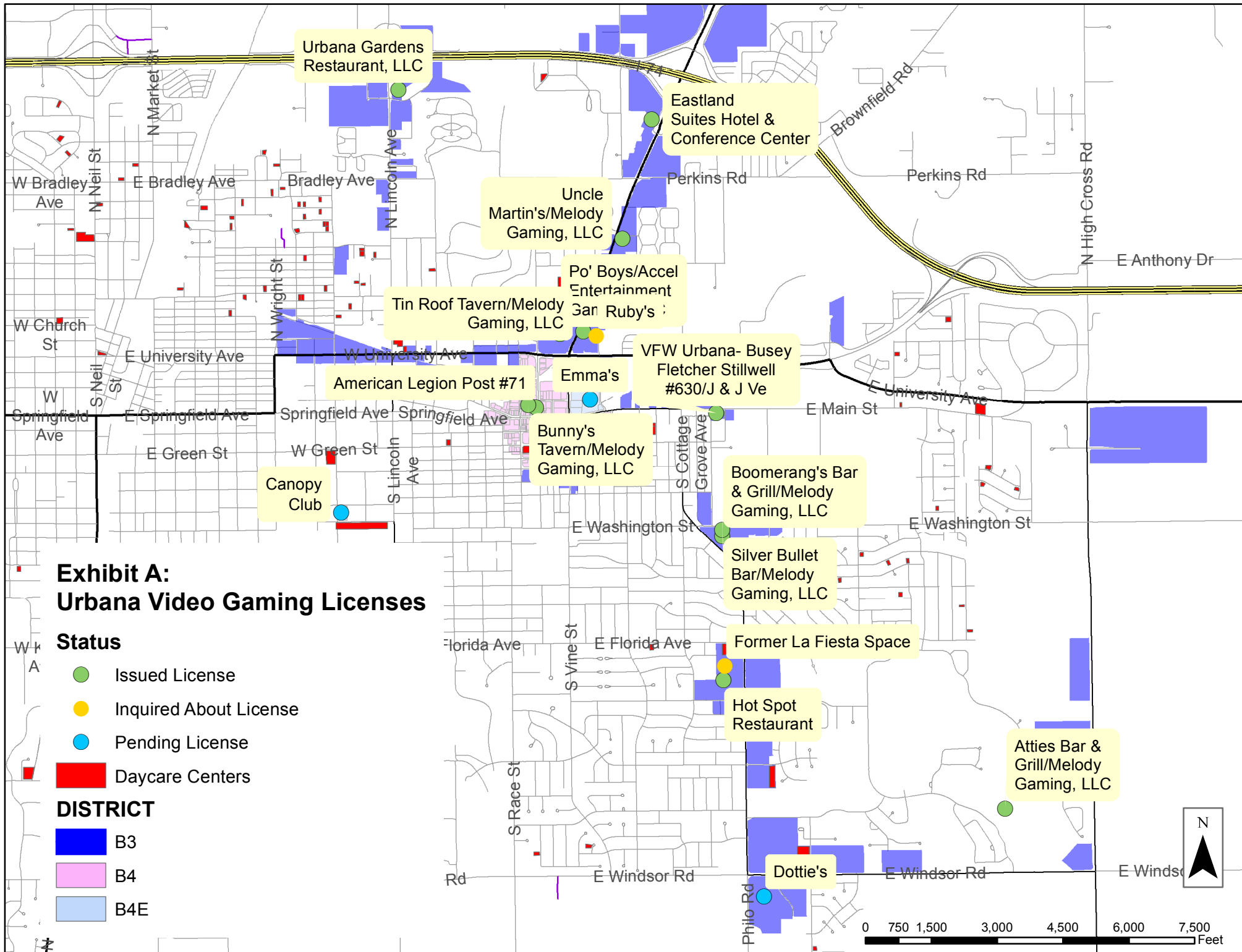
Attachments:

Exhibit A: Map – Locations of Existing and Potential Video Gaming Establishment

Exhibit B: Gaming Halls Text Amendment

Exhibit C: Illinois Video Gaming Law Exert – Specifications of Video Gaming Terminals

Exhibit D: Letter from American Legion Post 71



**Exhibit A:
Urbana Video Gaming Licenses**

Status

- Issued License
- Inquired About License
- Pending License

■ Daycare Centers

DISTRICT

- B3
- B4
- B4E

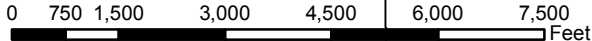


Exhibit B:

The proposed changes are listed below, using a strikethrough and underline notation system. A strikethrough is used to indicate ~~deleted language~~, while an underline is used to indicate added language. Commentary on the proposed changes are listed *in italics*.

Section II-3. Definitions

Gaming Hall: An establishment whose primary purpose is to operate video gaming terminals as defined under the Illinois Video Gaming Act (230 ILCS 40/5) and in which the sale of food or alcoholic beverages are subsidiary to the operation of the video gaming terminals. In determining whether an establishment's primary purpose is video gaming, the considerations include but are not limited to:

- A. *a seating area for video gaming terminals being greater than the seating area for food and beverage service or merchandise sales,*
- B. *the absence of a full service kitchen,*
- C. *an estimated net revenue of at least 40% or more derived from video gaming terminals, and*
- D. *an overall size of 1500 square feet or less.*

Fraternal establishments and veteran establishments as defined by the Illinois Video Gaming Act (230 ILCS 40/5) are exempt from this definition.

Fraternal Establishment: The location where a qualified fraternal organization that derives its charter from a national fraternal organization regularly meets.

Veterans Establishment: The location where a qualified veterans organization that derives its charter from a national veterans organization regularly meets.

Table V-1. Table of Uses

Principal Uses	R-1	R-2	R-3	R-4	R-5	R-6	R-6B	R-7	AG	B-1	B-2	B-3	B-3U	B-4	B-4E	CCD	CRE	MOR	IN-1	IN-2
Gaming Hall												S		S	S					

(Note: Gaming Hall will be placed under the "Business" section of the use table.)

Section VII-5. Special Terms and Conditions

F. The following conditions shall apply to any Gaming Hall:

1. An establishment requesting a license for video gaming terminals shall be a minimum of one hundred feet from a preexisting Day Care Facility, School, or place of worship as defined under the Religious Corporation Act (805 ILCS 110/0.01 et seq.). An establishment shall also be a minimum of one hundred feet away from any existing licensed Gaming Halls. City Council may increase the minimum distance between Gaming Halls and other Gaming Halls or preexisting Day Care Facilities, Schools, or Places of Worship where necessary to maintain the public welfare.

2.

Exhibit C: Illinois Video Gaming Act. (230 ILCS 40/)

(230 ILCS 40/Art. 5 heading)

ARTICLE 5.

(Source: P.A. 96-34, eff. 7-13-09.)

(230 ILCS 40/1)

Sec. 1. Short title. This Article may be cited as the Video Gaming Act. Any references in this Article to "this Act" mean this Article.

(Source: P.A. 96-34, eff. 7-13-09.)

(230 ILCS 40/5)

Sec. 5. Definitions. As used in this Act:

"Video gaming terminal" means any electronic video game machine that, upon insertion of cash, electronic cards or vouchers, or any combination thereof, is available to play or simulate the play of a video game, including but not limited to video poker, line up, and blackjack, as authorized by the Board utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, or tokens or is for amusement purposes only.

...

(230 ILCS 40/15)

Sec. 15. Minimum requirements for licensing and registration. Every video gaming terminal offered for play shall first be tested and approved pursuant to the rules of the Board, and each video gaming terminal offered in this State for play shall conform to an approved model. For the examination of video gaming machines and associated equipment as required by this Section, the Board may utilize the services of one or more independent outside testing laboratories that have been accredited by a national accreditation body and that, in the judgment of the Board, are qualified to perform such examinations. Every video gaming terminal offered in this State for play must meet minimum standards set by an independent outside testing laboratory approved by the Board. Each approved model shall, at a minimum, meet the following criteria:

(1) It must conform to all requirements of federal law and regulations, including FCC Class A Emissions Standards.

(2) It must theoretically pay out a mathematically demonstrable percentage during the expected lifetime of the machine of all amounts played, which must not be less than 80%. The

Board shall establish a maximum payout percentage for approved models by rule. Video gaming terminals that may be affected by skill must meet this standard when using a method of play that will provide the greatest return to the player over a period of continuous play.

(3) It must use a random selection process to determine the outcome of each play of a game. The random selection process must meet 99% confidence limits using a standard chi-squared test for (randomness) goodness of fit.

(4) It must display an accurate representation of the game outcome.

(5) It must not automatically alter pay tables or any function of the video gaming terminal based on internal computation of hold percentage or have any means of manipulation that affects the random selection process or probabilities of winning a game.

(6) It must not be adversely affected by static discharge or other electromagnetic interference.

(7) It must be capable of detecting and displaying the following conditions during idle states or on demand: power reset; door open; and door just closed.

(8) It must have the capacity to display complete play history (outcome, intermediate play steps, credits available, bets placed, credits paid, and credits cashed out) for the most recent game played and 10 games prior thereto.

(9) The theoretical payback percentage of a video gaming terminal must not be capable of being changed without making a hardware or software change in the video gaming terminal, either on site or via the central communications system.

(10) Video gaming terminals must be designed so that replacement of parts or modules required for normal maintenance does not necessitate replacement of the electromechanical meters.

(11) It must have nonresettable meters housed in a locked area of the terminal that keep a permanent record of all cash inserted into the machine, all winnings made by the terminal printer, credits played in for video gaming terminals, and credits won by video gaming players. The video gaming terminal must provide the means for on-demand display of stored information as determined by the Board.

(12) Electronically stored meter information required by this Section must be preserved for a minimum of 180 days after a power loss to the service.

(13) It must have one or more mechanisms that accept cash in the form of bills. The mechanisms shall be designed to prevent obtaining credits without paying by stringing, slamming, drilling, or other means. If such attempts at physical tampering are made, the video gaming terminal shall suspend itself from operating until reset.

(14) It shall have accounting software that keeps an electronic record which includes, but is not limited to, the following: total cash inserted into the video gaming terminal; the value of winning tickets claimed by players; the total credits played; the total credits awarded by a video gaming terminal; and pay back percentage credited to players of each video game.

(15) It shall be linked by a central communications system to provide auditing program information as approved by the Board. The central communications system shall use a standard industry protocol, as defined by the Gaming Standards Association, and shall have the functionality to enable the Board or its designee to activate or deactivate individual gaming devices from the central communications system. In no event may the communications system approved by the Board limit participation to only one manufacturer of video gaming terminals by either the cost in implementing the necessary program modifications to communicate or the inability to communicate with the central communications system.

(16) The Board, in its discretion, may require video gaming terminals to display Amber Alert messages if the Board makes a finding that it would be economically and technically feasible and pose no risk to the integrity and security of the central communications system and video gaming terminals.

The Board may adopt rules to establish additional criteria to preserve the integrity and security of video gaming in this State. The central communications system vendor may be licensed as a video gaming terminal manufacturer or a video gaming terminal distributor, or both, but in no event shall the central communications system vendor be licensed as a video gaming terminal operator.

The Board shall not permit the development of information or the use by any licensee of gaming device or individual game performance data.

Nothing in this Act shall inhibit or prohibit the Board from the use of gaming device or individual game performance data in its regulatory duties. The Board shall adopt rules to ensure that all licensees are treated and all licensees act in a non-discriminatory manner and develop processes and penalties to enforce those rules.
(Source: P.A. 98-31, eff. 6-24-13; 98-377, eff. 1-1-14; 98-582, eff. 8-27-13; 98-756, eff. 7-16-14.)

(230 ILCS 40/20)

Sec. 20. Direct dispensing of receipt tickets only. A video gaming terminal may not directly dispense coins, cash, tokens, or any other article of exchange or value except for receipt tickets. Tickets shall be dispensed by pressing the ticket dispensing button on the video gaming terminal at the end of one's turn or play. The ticket shall indicate the total amount of credits and the cash award, the time of day in a 24-hour format showing hours and minutes, the date, the terminal serial number, the sequential number of the ticket, and an encrypted validation number from which the validity of the prize may be determined. The player shall turn in this ticket to the appropriate person at the licensed establishment, licensed truck stop establishment, licensed fraternal establishment, or licensed veterans establishment to receive the cash award. The cost of the credit shall be one cent, 5 cents, 10 cents, or 25 cents, and the maximum wager played per hand shall not exceed \$2. No cash award for the maximum wager on any individual hand shall exceed \$500.



URBANA AMERICAN LEGION

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VETERANS STILL SERVING AMERICA

FEBRUARY 18, 2015

URBANA COMMUNITY DEVELOPMENT SERVICES,

I RECEIVED OUR NOTICE FOR MEMBERSHIP WITH THE URBANA BUSINESS ASSOCIATION. UNFORTUNATLY WE WILL NOT BE ABLE TO CONTRIBUTE THIS YEAR. OUR VIDEO POKER MACHINE REVENUE HAS DROPPED \$56,000 FROM LAST YEAR. WITH THE CITY ALLOWING THESE SO CALLED RESTAURANTS I.E. EMMAS EATERY, HOT SPOT RESTAURANT, LACEY'S PLACE, THAT DONATE VERY LITTLE TO THE COMMUNITY. THEY HAVE CUT INTO OUR PROFIT. RIGHT NOW WE ARE JUST MAKING EXPENSES. IT DOESN'T HELP THAT URBANA'S LIQUOR LICENSE IS \$5,200 A YEAR.

FOR GOD AND COUNTRY,

BRUCE A. BROWN SR

COMANDER

URBANA AMERICAN LEGION

POST 71

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URBANA, IL 61801