

April 27, 2017

Town of East Windsor  
Special Town Meeting  
April 27, 2017

A Special Town Meeting of the Town of East Windsor was held at the Town Hall, 11 Rye Street, Broad Brook, CT on April 27, 2017. The meeting was called to order by First Selectmen, Robert Maynard at 7:30 P.M. Robert Maynard apologized to the voters that the room was not big enough, so we would need to move the meeting to the Broad Brook Elementary School, 14 Rye Street, Broad Brook, Ct. Marie DeSousa made the motion to recess this meeting to move the meeting to the Broad Brook Elementary School, 14 Rye Street, Broad Brook, Ct. The motion was seconded by Steve Dearborn. All in favor of moving the meeting. The meeting reconvened at the Broad Brook Elementary School at 8:06 PM. Motion was made by Marie DeSousa and seconded by Nichole DeSousa to nominate Jason Bowsza to preside as Moderator. A vote was taken and Jason Bowsza was elected Moderator for this meeting. The Town Clerk read the Town Meeting Public Notice.

**Moderator, Jason Bowsza read the following:**

Pursuant to Town Charter Section 10-5(B) the petition for a Town Meeting that is under consideration tonight was submitted to the Town Counsel for a legal opinion to answer the following question: "whether the petition submitted by Brianna Stronk on April 13, 2017, regarding an ordinance to regulate a casino gaming facility in the Town of East Windsor is proper in its form and in conformity with the law, and if the petition is not proper in its form or is not in conformity with the law, the Town Counsel shall instruct the Town Meeting on how to consider said petition."

Jason Bowsza, Moderator then introduced the Town Counsel, Joshua Hawks-Ladds, to explain his legal opinion to the Town Meeting.

**Joshua Hawks-Ladds, Town Attorney** stated that his opinion tonight is based on review of the ordinance, research, interpretation of the State Statutes, case law and his understanding of the ordinance as presented. The Town Charter, which is the towns governing document, section 10-5(B) requires that the Town Attorney provide a legal opinion to the town meeting. The legal opinion has to give guidance on whether the town attorney believes that the ordinance that's being presently be considered, conforms with affable laws and is proper. The ordinance that has been presented is premature. There is a bill pending in the legislature, Senate bill 957 that requires action. Gambling is illegal in the municipality at this time. It's only legal on Indian Reservations or permitted by State law. If the legislation passes, that specifically states that the Department of Consumer Protection will issue regulations regarding the casino governing how the casino will be regulated. Between the time that the bill becomes a law and the Commissioner of the Consumer Protection issues the regulations, the Statute says that the casino may be governed under its standard operating procedures like the two Indian Tribes are doing at Foxwoods & Mohegan. This proposed ordinance would violate that bill, if it became law. If you pass this ordinance in its present form you give MMCT Ventures the opportunity to challenge it. It's improper to consider at this time. This is not the normal way that this town passes ordinances. The normal way that this town passes ordinances is to provide to the selectmen an ordinance and they give it to the Town Attorney to review for its legality and whether it's proper in form and in conformance with the law. If it's not, the Town Attorney will edit it and give it back to the Selectmen for consideration. There is a back & forth to make sure that a proper ordinance is brought to Town Meeting. That didn't happen here. This ordinance was placed in the towns hand by 20 persons that signed the petition. If the petitioners really want to regulate a casino, they may be able to do it. There is law that supports reasonable regulations that don't

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interfere with state law. The way to do that is to wait until Senate Bill 957 passes, the Governor to sign it and for the regulations to be issued by Department of Consumer Protection. If there's a desire to regulate a casino in town, that does not interfere with the state law, that can be done. This proposed ordinance has one provision that interferes with the town's agreement with MMCT. It's that a casino can't be located within 2500 feet of a State run residential treatment facility. If the casino is built and that provision is approved, even if that facility that currently exists is not within 2500 feet, the State could order a different facility to be built within the 2500 feet and you will have a million dollar empty building on your hands. The ordinance interferes with MMCT's rights. They spent \$250,000 deposit on that property. His advice to the Town Meeting, which is based on his review, interpretation of the law & analyze of the ordinance is that the Town Meeting should vote to reject the petition as submitted for all the reasons stated in his formal opinion and tonight.

Moderator, Jason Bowsza stated that everyone should keep their comments tonight to 2 minutes each and to not repeat what others have already stated. The moderator read the eligibility to vote.

**Richard P. Pippin, Jr. made the following motion, 2<sup>nd</sup> by Elzear Rodrigue:**

To reject the petition presently before the Town Meeting seeking the adoption by the Town of an "Ordinance providing for the Licensing of Gaming Facilities in the Town of East Windsor" And to not send the petition to referendum.

There was a point of order from Robert Kuehnel, 154 Tromley Road. He stated that prior to voting, he would like to hear an opposing opinion. Moderator, Jason Bowsza, Moderator stated that a motion has been put on the floor and seconded. This is now the time for discussion. There is a sign up pad for anyone wishing to talk tonight.

**The following discussion followed:**

**Steve Dearborn, 144 East Rd.:**

This is a historical night. In Hartford they are talking about giving the town the power to tax you on 100% instead of 70%. This whole thing is about money. He has nothing to gain except saving money on taxes. We are getting 8 ½ million dollars. Even if they build the casino, and put their stuff inside and don't get one person in there, it's still 8 ½ million dollars. The State is talking about having the town take 30% of the peoples taxes, the state always took care of that. That's another burden on the town. We are in a good position to get this thing going and if this works there might be more money for us and we won't get hit as hard as some of these other towns. The State is in big trouble and they are not going to get this solved in one, two or three years.

**Brianna Stronk, 6 Gardner St.:**

She stated that she is one of the proponents of the proposed adoption of the town ordinance regulating the licensing of gaming facilities in EW. Most people agree they should have had the opportunity to debate before now with the Town Attorney but they still have the opportunity to control this licensing of the gaming facility. The proposed ordinance is about something the town already does plenty of, regulating what, where, and how certain private and businesses can be carried out in our neighborhoods; every shed, deck, swimming pool, wood stove, plumbing, electrical you need a permit, if you operate a business you need to file a trade name. The town regulates and governs businesses in town, it regulates adult entertainment businesses, nuclear

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waste businesses, liquor sales & we protect the right to farm. There are no local ordinances that apply to operating a commercial gaming/gambling establishment. There are no specific requirements for gaming licenses, background checks on the applicant or employees, health and public safety inspections, suspensions or revocations of the right to operate, locations of operations or hours of operation. That's what the proposed ordinance is designed to address.

**Steve Wandzy, 6 Gardner St.:** This meeting isn't about showing up to vote for or against the casino, the town has already signed an agreement with MMCT. The proposed ordinance is not about whether it was a good idea or if we got a good deal. There are three separate laws before the legislature. The proposed ordinance isn't about which law would be best for the town or for Connecticut. The final decision about building a casino is out of our hands, the Connecticut legislature will decide that. But you get to decide if any gaming facility is built in East Windsor, that it is regulated like any other business is regulated. They are not trying to regulate small businesses or charities that get a small part of their revenue from games of chance. They are addressing the operation of a professional gaming establishment. He rejected the Town Attorney's opinion that the ordinance was illegal and must be rejected.

**Rev. Denise Terry, 2309 Canyon Ridge Dr.:** Questioned whether we really want a gaming facility within a ten minute walk from a facility that currently provides mental health & addiction treatment support. Referenced the Town Attorney's comment that the proposed site may not meet that distance requirement yet there are many ordinances in town that require businesses to change their plans and renegotiate their commitments to fit the legitimate town ordinances. She then quoted from the MMCT agreement which cited it would comply with town requirements regarding the site. Specification within the MMCT agreement put to rest the Town Attorney's comment that the ordinance would rescind the Town's contract with MMCT, and the ordinance would have to account for MMCT's vested interest with the town. MMCT knowingly took on the risks of the agreement because the state had not yet agreed that it was a legal establishment at this site. Questioned that if gambling is illegal for this site, or in the town, then how did the Selectmen have the legal authority to enter into a development agreement with MMCT that is specifically illegal by the Town Attorney's mention.

**Neil Parlos, 64 Prospect Hill Dr.:** The people in town should have the right to adopt an ordinance regarding the licensing of a casino. There are no nuclear facilities proposed in town, yet we have a nuclear free ordinance. He also referenced the comments about the lack of format or form of the proposed ordinance as a reason to reject it. His suggestion is to adopt the ordinance presented and then send it to the Town Attorney for clarification or consistency with other existing ordinances. We're all here to discuss the wisdom of a commercial gaming facility in town, but the selectmen have already done that, and the state is still considering it. That was all the more reason to adopt a common-sense ordinance to be ready if a facility comes to town.

**Paul Anderson, 89 Main St.:** He addressed the substance of the proposed ordinance. Regarding page 1 of the proposed ordinance, ( Section: Purpose and Intent, Town of East Windsor, sub-paragraph b) "based on evidence of the adverse secondary effects of gaming facilities..." he didn't believe the town has put this forward to date. In (section: Definitions, sub-paragraph 3 licensed premises)"includes the entire structure of premises..."", he said the Town Attorney has said no, it does not. He stated that on page 3, the proposed ordinance specifies the Director of Health and Social Services. No such person or position exists in the

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Town of East Windsor. Page 4 of the proposed ordinance refers to a Director. We don't have such a Director. On page 7 of the proposed ordinance (section Appeals, sub-section e) it states that the decision of the Board of Selectmen may be appealed to the Superior Court within 20 days of the receipt of the written notice, etc.... He is not clear whether 20 days is the appropriate timeframe according to the General Statutes.

**Carl Crane, 100 Prospect Hill Rd.:** Discussed the signs, which were posted by Steve Dearborn. He state that all the things Steve said about business, money & what's going on down in Hartford, makes sense. People don't like to drink but we have package stores. He feels it would be good for the Town, The State and town are in trouble. This could help us. If you don't like your taxes now you're going to hate them later.

**Lisa Madsen, 30 Barber Hill Rd.:** She stated that she is a married mother, long term resident of East Windsor and she's done about 50 hours of research on gambling. No child should see a casino on the way to school or from their nursing home, in East Windsor, Glastonbury, or Essex. The \$8 million buys East Windsor a lot of traffic, drunk driving, and a police force that's stuck trying to manage all that traffic. 10,000 cars a day will be coming off that highway. People won't be going to local businesses; they'll just be trying to get to the casino. She compared it to going to the Big E. She felt it's going to be a lot of problems. She stated that people are throwing this town away for 64 jobs.

**Wendy Parker, 171 Green Wood Lane:** She is not a lawyer or a politician, she is just a Mom. She runs the Youth Center in town. She cares about her kids, her friend's kids and the town's kids. She cares about the future of East Windsor. She supports the casino coming here. If you weigh the positives and the negatives the positives far outweigh the negatives. She urged people to make sure they understand what they're voting for. Understand you're voting about any business not coming to town, not just the casino. You're voting for the future of the town. She reiterated the need to clarify what people will be voting on, and suggested people should be nicer to other speakers. Everyone deserves respect and the right to be heard.

**Matt Schmitt, North Main St.:** He believes the motion on the floor is to keep the ordinance from going to referendum. He noted the size of the crowd present to vote but also noted there are many other people who aren't here tonight. They might be working or be homebound, etc.... He suggested we should be fair and give everyone an opportunity to vote and send this to referendum.

**Elzear Rodrigue, 6 Mahoney Rd.:** He is opposed to the ordinance in its entirety. He cited the Town Attorney's 15 pages of comments, stating that the ordinance is full of fill in the blanks. He felt the people against the casino are being less than truthful. He felt they were being supported by MGM. He urged people to vote no against the ordinance.

**Kathleen Bilodeau, 343 Scantic Rd.:** She questioned about what happens if the people present tonight vote to have the ordinance passed. She also questioned whether the people who voted for the ordinance or the whole town will be held responsible for the financial obligations of a lawsuit that would result. Moderator, Jason Bowsza deferred to the Town Attorney, Joshua Hawkes-Ladd to answer Kathy Bilodeau's questions.

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**Joshua Hawks-Ladd, Town Attorney:** The Town Attorney indicated that if the petition is passed it will go to a referendum and there could be litigation at any stage. The referendum must be set in 2 weeks, by 5/11/17. If everyone votes no, it will go to referendum on the 11<sup>th</sup>, or possibly the 9<sup>th</sup>. In between, any citizen who doesn't like that decision, including MMCT, as long as they are an aggrieved citizen, can file a lawsuit to prevent a referendum from going forward. Regarding who pays for it, it depends what the lawsuit says. If the town feels it can defend itself the town would have to pay.

**Kathleen Bilodeau, 343 Scantic Rd.:** She stated that the town would be paying to defend itself against an ordinance, which the Town Attorney has stated is probably illegal.

**Kathy Bilodeau made a motion to call the question, 2<sup>nd</sup> Nichole DeSousa.** Moderator, Jason Bowsza then clarified her motion, which he noted was actually to "call the question", noting that's a parliamentary process which ends debate and calls for a vote of 2/3 of the assembled membership here tonight to pass. Discussion continued regarding parliamentary procedure regarding Kathy Bilodeau's motion, and options for the voting process to call the question. Moderator, Jason Bowsza advised people that in order to vote, people need to be a registered voter or own \$1,000 in property. He suggested it would be better to allow people to make their comments. There are only about 15 more people to speak. Jason suggested that they could limit the time to close debate, like until 10 o'clock, or until the people on the list have been heard. Town Meeting had to end by midnight by charter. **Marie DeSousa made an amendment to the motion with the consent of Kathy Bilodeau, 2<sup>nd</sup> by Nichole DeSousa to cut off by this number of people that signed up to speak and/or 10 o'clock, whichever is earlier. Amended motion passed by consensus of the meeting, per Moderator, Jason Bowsza.**

**Angelo Sevarino, 26 Barber Hill Rd.:** He noted the Town is having its 250<sup>th</sup> anniversary coming up. He questioned when was the last time you saw this many people attending to express an interest in the Town. He stated that he's a lawyer. He said that the proposed ordinance presupposes the casino is an evil thing. This ordinance is based upon the adverse secondary effect on us. That's the intent. He stated that he's lived in town since 2001. He has nine grandchildren, six of which live in town and go to school here. He has a vested interest here. He is sick and tired of looking at this vacant property where the cinema used to be. There are two tribes that have a history with this state. They have a track record we can rely on. He is in favor of having the casino go in, not just because of the money. It will generate \$8.5 million and yes, it will generate jobs, but better yet it will generate hope for the community. He encourages people to not vote for this ordinance because he doesn't think it's in the best interest of the community.

**Mary Walters, 63 Prospect Hill Rd.:** She questioned why MMCT would want this to go to a referendum when in 2016 they said they didn't want to go to a town that had a referendum. She then referenced the Town Attorney's opinion, page 12, regarding paragraph D. "The Proposed Ordinance Fails to Address Vested Interests Created by the Town's Development Agreement with MMMCT Venture, LLC.", and further cited his reference to a similarity in the case of "Windham Taxpayers Ass'n v. Bd. Of Selectmen of Town of Willington" regarding referendums held. She stated that her comments are a counter argument to the discussion regarding the cost of referendum.

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**Keith Yagaloff, 125 Depot St.:** He stated that he is an attorney, and has served as a Town Attorney, and has written municipal ordinances such as this. He stated that while he is attending this meeting because of his interest regarding the casino, he understands the concerns regarding gambling addictions. He stated that East Windsor's governing body is the Town Meeting, which has been in existence in New England for 300 years. He indicated the statutory requirement for convening a Town Meeting is for a lawful purpose. The ordinance submitted tonight is unlawful. It suggests spot zoning, targets a specific business and violates the State Statutes and the Town charter. While the petitioners might believe the end justifies the means we should all be concerned about the improper use of a Town Meeting. He hopes that none of us will consider allowing a Town Meeting to pass the following ordinances: banning the ownership of a firearm, banning free speech, banning the sale of alcohol, prohibiting the construction or renovation of a synagogue or a mosque, banning the hiring of gay or lesbian people, banning farming activities, banning books, banning how we dress, who we socialize with, or where we travel. It's our responsibility to protect this democratic form of government. In his view this Town Meeting has been convened for an unlawful purpose. If people are opposed to gambling they should turn to education, advocacy, and persuasion rather than an attempt to use our legislative body, the town meeting, to try to put into effect an illegal ordinance. It not only puts us on a slippery slope it violates the fundamental principles on which East Windsor is governed. He urged rejection of the ordinance.

**Raymond Jones, 50 Harrington Rd.:** He is a lifelong resident, and has been a taxpayer since his 20s. The referendum, in his view, and as the Town Attorney has said, would be illegal. We would use money going back and forth on legal issues & fees. The \$8.5 million in the Town pocket, from the casino, is a lot of money. We can use that on the school system, the Town highway department, and other things. Everyone is saying we will have more thefts and more drunk drivers; we already have those issues. He cited the recent car thefts on Scantic Road. The convenience stores are being robbed. Those issues can't be blamed on the casinos, because they're not here yet. He stated we should take the money and use it wisely.

**Michael Sevenu, 49 Highland Ave.:** He had two questions for the Town Attorney. He questioned that one of the arguments from a legal position is that because gambling isn't currently allowed at the State level outside Indian Reservation land, therefore making a Town ordinance against gambling is premature or not right? He stated that we have other instances similar to that throughout law. He didn't know if the State has a law against hate crimes. He assumed they do. If the Town were to further add on a Town ordinance to a hate crimes law we wouldn't be against that. Similarly, at the Federal level marijuana isn't legal but the State could exercise its power of the vote and voted at the State level to vote to legalize marijuana. There are all kinds of instances like that. He questioned if this is really something that's that out of order. He also questioned, shouldn't all the people that couldn't be here tonight have their voice heard when it goes to referendum.

**Joshua Hawks-Ladd, Town Attorney:** Regarding the first question about gambling not being allowed, the Development Agreement is contingent on the State law being passed. The ordinance is in conflict with State law and when an ordinance is in conflict with State law, and when State law "occupies the field of something, like gambling" then the ordinance can't be contradictory to that. See his opinion letter and its reference to the Greater New Haven Taxpayers Association regarding the reason for his position statement. Regarding the second question that the State of Massachusetts legalizes medical marijuana and the Federal government

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outlaws it. The Federal government can come in and arrest anyone they want. Obama issued an Executive Order to take a hands off approach, but there are no guarantees. He stated that the first example Michael Sevenu gave is a better example. If the law passes and regulations are issued then we'll know what we can do, and perhaps an ordinance might be appropriate at that time.

**Marie DeSousa, 10 Rice Rd.:** Whether she agrees or disagrees on the casino isn't important tonight. What is important is that our Board of Selectmen signed a contract that she believes is a valid contract. We voted for the Board of Selectmen to do what they felt was in the best interest of us as a community. She appreciates that everyone is being respectful of each other. She respects Kathy Bilodeau for her actions to close debate, and understands because there is so much debate. She also believes everyone has a right to speak. She stated various boards & commissions she has served on. She mentioned as a past Board of Finance member, that those volunteers put in hours and hours and hours on the budget. They cut out services that are really needed. Minute amounts of money were cut from the Youth Center & the Broad Brook Library. She stated that the casino, if you agree or disagree, will help the Town move forward, not only with the projects we haven't been able to fund but will also help to bring in other business.

**Nancy Masters, 312 Rye St.:** She has lived in town for 40 years and this is the first time she feels she is having something rammed down her throat and she hasn't had a chance to give an opinion. Maybe the ordinance isn't properly written but she feels we should have a referendum to hear from everyone in this town on whether we have a casino or don't have a casino.

**Joe Steirer, Main St.:** There are a lot of people who live in town who are members of the trades. They build and a casino will have a lot more jobs than 64 jobs. There will be the people who drive the sand trucks and the people who do the steel, the re-bars, the carpenters and a lot of things that go into the whole building trades. They are taxpayers and they do own property and they bought that property on the money they got from their trades. Let's keep the money in East Windsor and take care of everybody.

**James Richards, 27 Pleasant St.:** He found it interesting that the Nuclear Free Zone was mentioned. Nobody ever knew there was a small zone at the edge of town. The truth is when that ordinance first came out that was as flawed as this one. That ordinance would have eliminated a business operating in the industrial park that made ball bearings for the reactors in the nuclear subs and the way it was written that business would have been illegal. This is his concern about this ordinance. He is concerned about this affecting other businesses. We don't have a lot of money, ask the school system, ask the CIP Committee. We don't have any money, the State has deserted us. If we had this many people at the Board of Finance Meeting we might have a better solution to what's on the table. If we don't have 2% we won't make payroll without cutting services. The Warehouse Point Fire District recently split from the Town because they couldn't get enough money to fund what they need to do. The Board of Finance is worried about public safety, infrastructure, and the Board of Education.

**Robert Maynard, 7 Blue Heron Way:** He wanted to make it clear what we're voting on. The motion before us is to reject the ordinance. If you want to reject the ordinance you have to vote YES. It's an illegal ordinance. If you want to have a casino vote yes, reject the ordinance. When you come up here to vote you'll have a ballot, tear off the yes, put it in the box, and throw away the no. If you want a casino vote yes. Vote yes to reject the ordinance.

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**Rick Leborious, 16 Church St.:** He was worried that it wasn't clear how we were voting and what a yes vote meant. The ordinance isn't designed to regulate, it's designed to kill, so vote yes.

**Robert Kuehnel, 154 Tromley Rd.:** He stated that we are talking tonight about whether to pass this ordinance or not, but regardless of how we vote there is still the issue of the casino. There are 11,000 people living in East Windsor. Everyone should have a vote. He urges the Board of Selectmen, and Christopher Davis, if he has any influence here, to step up and get a referendum. If the casino passes that's fine. If it doesn't pass that's fine too but let the town decide.

Jason Bowsza, Moderator explained that the motion on the floor is to reject the petition presently before the Town Meeting seeking the adoption by the Town of the ordinance providing for the licensing of gaming facilities in East Windsor, and to not send the petition to referendum. A yes vote is to reject the ordinance which is a vote for the casino. A no vote means you accept the proposed ordinance and are against the casino. Yes is for the casino and no is against the casino. He then explained the process for voting.

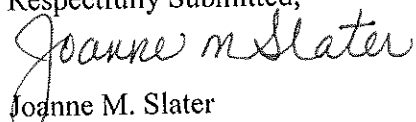
A vote was taken by paper ballot. The Town Clerk stated the following:  
As Town Clerk of the Town of East Windsor, I certify the following results of the Town Meeting to the Moderator votes in favor of rejecting the petition for Town Ordinance and referendum is 198 votes. The following votes are for acceptance of the petition for the ordinance and town referendum 112 votes.

Jason Bowsza, Moderator stated that the motion to reject the petition presently before the Town Meeting seeking the adoption by the Town of an "Ordinance providing for the Licensing of Gaming Facilities in the Town of East Windsor" And to not send the petition to referendum passed.

Marie DeSousa made a motion to adjourn, seconded by Rebecca Talamini. Meeting adjourned at 11:06 PM.

Town Attorney, Joshua Hawks-Ladds 15 page written legal opinion is attached to these minutes as attachment 1. A copy of the proposed ordinance is attached to these minutes as attachment 2.

Respectfully Submitted,



Joanne M. Slater  
Town Clerk



**PULLMAN  
& COMLEY LLC**  
ATTORNEYS

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Board of Selectmen, Town of East Windsor  
c/o First Selectman Robert Maynard  
Town of East Windsor  
11 Rye Street  
P.O. Box 389  
Broad Brook, CT 06016

**Re: Legal Opinion on the Petition for Town Meeting and Referendum  
Regarding Proposed Casino Ordinance**

Dear Board of Selectmen:

I am writing in accordance with my responsibilities as the Town of East Windsor's Town Counsel, pursuant to the Town of East Windsor Town Charter, Section 10-5(B), to provide a legal opinion for the Town Meeting scheduled to meet on April 27, 2017 at 7:30 PM, regarding whether the petition for Town Meeting certified by the Town Clerk on April 13, 2017, and the proposed ordinance attached thereto, is appropriate in its form and in conformity with the law. For the reasons explained more fully herein, it is my opinion as the Town's Town Counsel that the form of the proposed ordinance is not proper, nor is it in conformity with existing laws. Therefore, the Town Meeting should vote on April 27, 2017 to reject said petition.

**I. Background**

***Petition and Proposed Ordinance***

The petition presently before the Town Meeting seeks the adoption by the Town of an "Ordinance Providing for the Licensing of Gaming Facilities in the Town of East Windsor." A copy of the proposed ordinance was attached to the petition. The petition was filed with the Town Clerk by Brianna Stronk on April 13, 2017, and on that day the Town Clerk certified to the Board of Selectmen that the petition contained twenty valid signatures of persons entitled to vote in the Town of East Windsor. The form of that petition is therefore proper.

Thereafter, on April 21, 2017, pursuant to its duty under Section 10-5(A) of the Charter, the East Windsor Board of Selectmen reviewed the petition, and duly warned a Town Meeting to be held at Town Hall on April 27, 2017 at 7:30 PM with the following motion: "Motion pursuant to Town Charter Section 10-5(A) to have the petition for a Town Meeting submitted to the Town

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Clerk on April 13, 2017 by Brianna Stronk relating to an ordinance to regulate casino gambling in town be submitted to Town Meeting for consideration.”

The Board of Selectmen also requested this legal opinion via the following motion: “Motion to request that the Town of East Windsor's Town Counsel issue a legal opinion in accordance with Town Charter Section 10-5(B) for the Town Meeting to consider whether the petition submitted by Brianna Stronk on April 13, 2017 regarding an ordinance to regulate a casino gaming facility in the Town of East Windsor is proper in its form and in conformity with the law, and if the petition is not proper in its form or is not in conformity with the law, the Town Counsel shall instruct the Town Meeting on how to consider said petition.”

#### *The Town Charter*

Section 10-1(A) of the Charter provides that “[t]he legislative power of the Town shall be vested in the Town Meeting, with all powers conferred by (Connecticut statutes) and by this Charter.” Additionally, Section 10-8 enumerates actions requiring a Town Meeting and provides in subsection (G) that “[t]he Town Meeting shall have the sole power to enact and repeal ordinances consistent with this Charter and (Connecticut statutes).”

Section 10-5 of the East Windsor Town Charter governs the procedures under which petitions for Special Town Meeting may be considered. As set forth in Section 10-5(A), to be valid a petition must be filed with the Town Clerk and must be signed by at least twenty persons entitled to vote at Town Meetings. “Said petition may propose consideration of any proper matter to come before a Town Meeting.” *Id.*

A proper petition must petition for the warning and convening of a Special Town Meeting and must contain “the matter or text of the proposed ordinance or resolution to be considered at said Special Town Meeting.” *Id.* Within ten days of receipt of such a petition the Town Clerk must determine if the petition contains twenty valid signatures of persons entitled to vote at Town Meetings, and if so the Town Clerk must certify the petition to the Board of Selectmen. *Id.*

Upon receipt of certification from the Town Clerk, the Board of Selectmen is required to cause a Special Town Meeting to be convened. *Id.* The Charter provides that the Special Town Meeting may be adjourned from time to time as the interest of the Town requires, and further specifies that the only matters that may be considered at the Special Town Meeting are those matters set forth in the petition. *Id.*

Subsection (B) of Section 10-5 mandates that any ordinance or resolution proposed via petition “be examined by the Town Counsel prior to submission to the Town Meeting; and prior

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to or at said Town Meeting, Town Counsel shall give his opinion, orally or in writing, with respect to the form of the proposal and its conformity to and relationship with existing constitution, statutes, special acts, ordinances and regulations." Charter, Section 10-5(B). Subsection (C) of Section 10-5 of the Charter provides that provision for referendum shall be in accordance with the Connecticut General Statutes and requires a referendum upon two hundred signatures of qualified electors of the Town submitted via a proper petition in accordance with said statutes.<sup>1</sup>

## **II. Legal Opinion of Town Counsel**

As set forth above, Section 10-5(B) of the Town Charter requires that the East Windsor Town Counsel examine the "form of the proposal and its conformity to and relationship with existing constitution, statutes, special acts, ordinances and regulations." In accordance with this duty, I have examined the proposed ordinance entitled an "Ordinance Providing for the Licensing of Gaming Facilities in the Town of East Windsor" (hereinafter the "proposed ordinance"), and it is my opinion that the proposed ordinance is legally defective in form and is not in conformity with existing law. Accordingly, as Town Counsel I must advise the Town Meeting to reject the proposed ordinance.

The proposed ordinance does not seek to rescind the Town's fully executed development agreement with MMCT Venture, LLC to develop a casino in East Windsor. Rather, most of the proposed ordinance merely seeks to regulate the casino once it is constructed. However, as discussed in greater detail below, one section of the proposed ordinance – limiting the location of the structure – would effectively destroy the current development agreement. Also as discussed below, due to that section alone, the proposed ordinance must be rejected by the Town Meeting. Nevertheless, in case the petitioner removes that section and resubmits a new proposed ordinance in substantially the same form, I provide an opinion on the other flaws in the proposed ordinance that make it unworkable and not in conformity with law.

My opinion as to the illegality of the proposed ordinance is based on a number of considerations as explained in detail below. In summary, however, my opinion rests on the following conclusions:

1. Existing laws make gambling illegal in the Town of East Windsor and therefore the proposed ordinance is not in conformity with existing law;

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<sup>1</sup> With respect to referendums, Connecticut General Statutes § 7-7 provides that at least twenty-four hours before any Town Meeting, two hundred or more persons may petition the Town Clerk "requesting" that "any item or items" on the call of the Town Meeting be submitted in the form of a referendum to voters eligible to vote at the town meeting. On April 24, 2017, a petition was submitted to the Town Clerk with over 200 signatures petitioning that the Town Meeting be submitted to the town's voters in the form of a referendum.

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2. If enacted, Substitute Senate Bill No. 957 ("SB 957") would preempt the proposed ordinance as the Bill provides for a licensure and regulatory scheme to be created by the Commissioner of the Department of Consumer Protection and, until those regulations are promulgated, the Bill would permit MMCT to operate an approved casino "pursuant to its own standards of operations."

3. In substance, the proposed ordinance suffers from numerous deficiencies which, if enacted, would expose the proposed ordinance to constitutional due process challenge under the Due Process Clause's "void for vagueness" doctrine; and

4. The proposed ordinance fails to address vested interests created by the Town's development agreement with MMCT Venture, LLC.

**A. The Proposed Ordinance is Not in Conformity with Existing Laws.**

The proposed ordinance is in conflict with existing law because it purports to regulate a subject which it cannot. At the present time,<sup>2</sup> gambling is illegal within the territorial boundaries of the Town of East Windsor pursuant to both state and federal law. In particular, Conn. Gen. Stat. § 53-278b(a) provides that "[a]ny person who engages in gambling,<sup>3</sup> or solicits or induces

<sup>2</sup> The possible application of SB 957, which likewise makes the proposed ordinance nonconforming, is discussed later in this opinion.

<sup>3</sup> "Gambling" is defined pursuant to Conn. Gen. Stat. § 53-278a to mean:

risking any money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance or the operation of a gambling device, including the playing of a casino gambling game such as blackjack, poker, craps, roulette or a slot machine, but does not include: Legal contests of skill, speed, strength or endurance in which awards are made only to entrants or the owners of entries; legal business transactions which are valid under the law of contracts; activity legal under the provisions of sections 7-169 to 7-186, inclusive; any lottery or contest conducted by or under the authority of any state of the United States, Commonwealth of Puerto Rico or any possession or territory of the United States; and other acts or transactions expressly authorized by law on or after October 1, 1973.

Conn. Gen. Stat. § 53-278g goes on to identify certain other exempt activities including:

the publication of an advertisement of, or the operation of, or participation in, a state lottery, pari-mutuel betting at race tracks licensed by the state, off-track betting conducted by the state or a licensee authorized to operate the off-track betting system, a promotional drawing for a prize or prizes, conducted for advertising purposes by any person, firm or corporation other than a retail grocer or retail grocery chain, wherein members of the general public may participate without making any purchase or otherwise paying or risking credit, money, or any other tangible thing of value or a sweepstakes conducted pursuant to sections 42-295 to 42-301, inclusive.

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another to engage in gambling, or is present when another person or persons are engaged in gambling, shall be guilty of a class B misdemeanor." The statute further provides that any person who engages in professional gambling shall be guilty of a class A misdemeanor. Conn. Gen. Stat. § 53-278b(b). Likewise, federal law subjects any person who "conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business" to criminal penalties. 18 U.S.C. § 1955.<sup>4</sup>

While Congress, through passage of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2710, et seq., has established a framework for the regulation of gambling on federally recognized Indian reservations, the law is only applicable to recognized Indian reservations and as such has no direct applicability to gambling activities in the Town of East Windsor.

The proposed ordinance must be examined within this context. Gambling is illegal within East Windsor, but the proposed ordinance, by its own terms, seeks to "regulate gaming facilities and like businesses in order to promote the health, safety, and general welfare of the citizens of the Town of East Windsor..." Proposed Ordinance, Purpose and Intent, p.1. The ordinance purports to establish a local application and licensing system for gambling or like businesses, along with general gambling facility operating requirements. At the same time, the ordinance seeks to incorporate the definitions of "gambling," "gambling device" and "gambling premise" contained within the General Statutes.

With these points in mind, the proposed ordinance is clearly not in conformity with existing state or federal law. State and federal law currently prohibit gambling within the Town of East Windsor, yet the ordinance would require the First Selectman or his/her designee, the Chief of Police, the Fire Marshal, the Director of Health and Social Services and the Zoning Enforcement Officer all to play an active role in the regulation of local gambling facilities. Were the ordinance to be enacted this would be a matter of significant legal concern given the fact that state law, as discussed above, imposes criminal penalties on those who "induce" others to engage

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<sup>4</sup> 18 U.S.C. § 1955 defines an "illegal gambling business" as a "gambling" business which:

- (i) is a violation of the law of a State or political subdivision in which it is conducted;
- (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
- (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

*Id.* The statute goes on to define "gambling" as including but not limited to "pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein."

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in gambling, Conn. Gen. Stat. § 53-278b(a), while federal law similarly subjects persons who “direct” illegal gambling businesses to federal criminal penalties. 18 U.S.C. § 1955. Gambling in Connecticut may only occur when authorized by the Connecticut General Assembly; municipalities on their own do not have the authority to otherwise permit or prescribe such gambling facilities and operations.

While SB 957, which is now pending before the General Assembly, would effectively legalize gambling in East Windsor, this legislation has not yet passed either house of the General Assembly nor has it been signed by the Governor. Accordingly, the proposed ordinance, to the extent that it is reliant on the passage of SB 957, must be deemed premature. In this respect, review of the proposed ordinance at this juncture is analogous to the judicial doctrine of ripeness. As the United States Supreme Court has summarized, “[r]ipeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” *Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 807–08, 123 S. Ct. 2026, 2030, 155 L. Ed. 2d 1017 (2003) (Internal quotation marks omitted, emphasis added).

By the same token, it would be a premature, abstract exercise for the Town Meeting to act on a petition to regulate casino gaming within the Town based on a proposed ordinance *premised on the assumption* that SB 957 will pass.<sup>5</sup> It is unclear whether SB 957 will pass at all or if it will remain in its current form without amendment. It is likewise unknown what authority the legislation will give to the Town to regulate a casino or whether the state will occupy the field in that regard and not permit the Town to issue licensure and other regulations as proposed in the ordinance. It is possible, as discussed in greater detail below, that regulations promulgated pursuant to SB 957 will occupy the field of regulating casino gambling within municipal borders and that this proposed ordinance would be void under that regulatory scheme. But that is unknown at this time. In sum, if the Town Meeting were to pass the petition and authorize the creation of the proposed ordinance, it could create a conflict with the state’s legislation on the matter and be subject to legal challenge. Until the state acts on the gaming legislation it is simply premature to consider the proposed ordinance and it is best for the Town not to entangle itself “in abstract disagreements over administrative policies,” and also to protect itself from expensive litigation and “judicial interference until an administrative decision has been formalized and its effects felt in a concrete way.” *Nat’l Park Hosp. Ass’n*, 538 U.S. at 807–08.

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<sup>5</sup> Passing the matter on to referendum would also unnecessarily cost the town thousands of dollars in election administration and publication expenses.

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Since gambling, at the present time, is not legal within East Windsor it must be concluded that the proposed ordinance is not in conformity with existing state and federal laws and therefore may not be legally enacted by the Town Meeting. Moreover, the proposed ordinance is not ripe for consideration by the Town Meeting and, if enacted, could conflict with the state's legislation on the matter. The Town Meeting should therefore reject the petition.

**B. Should SB 957 be Enacted in its Current Form it Could Supersede the Proposed Ordinance with which it may Conflict.**

As discussed above, SB 957 is pending before the General Assembly. The legislation is obviously not existing law and, as discussed above, the proposed ordinance is premature. However, it is useful to analyze the impact the proposed legislation in its current form would have on the proposed ordinance in order to provide the Town Meeting with an explanation of how the proposed ordinance conflicts with the proposed legislation (if enacted) and therefore would be subject to legal challenge. Moreover, should the petitioner resubmit this proposed ordinance after SB 957 passes, the Town Meeting should be aware of these flaws in the ordinance as currently proposed in order to properly consider any new petition on the subject of casino gambling in town.

If enacted, SB 957 would expressly permit MMCT to construct a casino at a facility at 171 Bridge Street, East Windsor, Connecticut so long as certain conditions are met. SB 957, Section 13(b).<sup>6</sup> However, as discussed in greater detail below, one section of the proposed ordinance would stand in direct conflict with SB 957's authorization and effectively prohibit the casino from being located at the 171 Bridge Street, East Windsor, Connecticut location. Accordingly, should SB 957 be passed in its current form the proposed ordinance would effectively become preempted by SB 957's explicit authorization of MMCT's operation of a casino facility at 171 Bridge Street in East Windsor. Thus, at least that section of the ordinance which would limit the location of the casino would be of in conflict with the state law.

In this regard, "[a] local ordinance is preempted by a state statute whenever the legislature has demonstrated an intent to occupy the entire field of regulation on the matter ... or ... whenever the local ordinance irreconcilably conflicts with the statute..." *Town of Rocky Hill v. SecureCare Realty, LLC*, 315 Conn. 265, 295 (2015). Here, the proposed ordinance's restriction on the location of a gaming facility within 2,500 feet of a state-run treatment center would be unenforceable against MMCT – even if MMCT failed to comply with the ordinance's provisions. While Connecticut law is very clear that a municipality may properly exercise all

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<sup>6</sup> According to this section of the proposed law, SB 957's authorization of MMCT's operation of a casino facility in East Windsor becomes unequivocal once the necessary conditions for the authorization have been met (approval by the United States Department of the Interior, amendment of tribal memorandum of understanding and compact, etc.)

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powers delegated to it by the state and may enact “higher standards than a statute on the same subject [if such standards are not] necessarily inconsistent with the state law,” there are limits to this authority. *Greater New Haven Prop. Owners Ass’n v. City of New Haven*, 288 Conn. 181, 191 (2008). If and when an “ordinance permits or licenses that which the statute forbids, or prohibits that which the statute authorizes” then the statute preempts the local ordinance. *Id.* (Emphasis added). Since, if enacted, SB 957 would directly authorize MMCT to run a casino facility in East Windsor at the location that is expressly permitted in the legislation, then the proposed ordinance is without legal effect to the extent that it might frustrate the state’s purpose.<sup>7</sup>

**C. The Proposed Ordinance is Unconstitutionally Vague.**

“As one of the most fundamental protections of the Due Process Clause, the void-for-vagueness doctrine requires that laws be crafted with sufficient clarity to give the person of ordinary intelligence a reasonable opportunity to know what is prohibited and to provide explicit standards for those who apply them.” *VIP of Berlin, LLC v. Town of Berlin*, 593 F.3d 179, 186 (2d Cir. 2010). Thus, to be valid, an ordinance must “give an individual of ordinary intelligence sufficient notice of what the law is so that the individual has a reasonable opportunity to comply with it.” *Campion v. Bd. of Aldermen of New Haven*, 278 Conn. 500, 524 (2006). “To demonstrate that [an ordinance] is unconstitutionally vague as applied to [a party], [that party] therefore must . . . demonstrate beyond a reasonable doubt that [it] had inadequate notice of what was prohibited or that [it was] the victim of arbitrary and discriminatory enforcement.” *Sweetman v. State Elections Enforcement Comm’n*, 249 Conn. 296, 322 (1999) (citations omitted; internal quotation marks omitted). “[T]he void for vagueness doctrine embodies two central precepts: the right to fair warning of the effect of a governing statute . . . and the guarantee against standardless . . . enforcement.” *Ferreira v. Pringle*, 255 Conn. 330, 355 (2001) (citations omitted; internal quotation marks omitted). Here the proposed ordinance suffers from a number of deficiencies that suggest that if enacted the ordinance would be unconstitutionally vague. For a number of reasons, the proposed ordinance is structurally flawed and must be rejected by the Town Meeting.

The draft ordinance includes numerous internal cross-references to other sections, but the section citations in the cross-references are all blank.<sup>8</sup> These blank section cross-references make the proposed ordinance as a whole unintelligible since in many instances it is impossible to discern which particular section of the ordinance is being referenced. In and of itself this

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<sup>7</sup> However, should SB 957 be enacted into law, a reasonable ordinance regulating the MMCT casino that does not conflict with the state law or regulations promulgated thereunder, may be considered at Town Meeting. See, e.g., *Greater New Haven Prop. Owners Ass’n*, 288 Conn. at 191. However the currently proposed ordinance is not in conformity with the law and should not be approved.

<sup>8</sup> There are well over fifty blank cross-references in the eight-page proposed ordinance.



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deficiency deprives the public of “sufficient notice of what the law is,” *Campion* at 524, thus rendering the proposed ordinance impermissibly vague.

Additionally, numerous portions of the proposed ordinance raise significant vagueness concerns. The following provisions are most notable:

- Purpose clause: Subsection (b) of the Purpose and Intent clause references “evidence of the adverse secondary effects of gaming facilities and like businesses presented in reports and studies.” However, no reports or studies are referenced supporting the conclusory statement.<sup>9</sup> Regulations must be supported by some valid purpose. While health, safety and general welfare of a town’s citizens are valid purposes for creating an ordinance,<sup>10</sup> there should be some stated evidence of the adverse secondary effects of gaming facilities to support the ordinance’s purpose. *See, e.g., Encino Motorcars, LLC v. Navarro*, 136 S.Ct. 2117 (2016)(Public agencies are free to change their existing policies as long as they provide a reasoned explanation for the change and show that there are good reasons for the new policy.)
- Definitions: Subsection (b)(2) of the Definitions section defines “employee” to include “any person who performs any service on the licensed premises...”. This definition is overbroad and could include municipal or state contractors including law enforcement personnel and medical technicians who may be stationed on the premises through a contract or agreement.

Subsection (b)(3) of the Definitions section defines “licensed premises” to include vague and overbroad terms that are not defined, including “like business”, “area Adjacent to such building...”, and “other areas under the ownership, control or supervision of the licensee.” These terms require clarification in order to be understood.

- Penalties for Violation: Subsection (a) of the Penalties for Violation section (page 2) references additional “fines or penalties for violation of section \_\_” (sic), but no fines or penalties are otherwise referenced in the proposed ordinance making it unclear *what initial fines or penalties* may be assessed or *the circumstances under which such fines or penalties would be assessed*. This is unconstitutionally vague. A person cannot be

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<sup>9</sup> It should be noted that the State of Connecticut has permitted numerous gaming enterprises including the State Lottery, Jai Alai, dog racing, and off-track betting, thereby indicating that the state does not necessarily find gaming to be against public policy. And, as discussed above, while towns may regulate gaming within their borders, the regulations cannot conflict with state laws and regulations. The petitioner, therefore, should state what evidence she has to support the stated purpose of the ordinance.

<sup>10</sup> *See, e.g., Greater New Haven Prop. Owners Ass’n*, 288 Conn. at 191.

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subjected to unspecified fines and penalties if they have no notice of what those fines and penalties are.

Subsection (b) of this section states that unspecified portions of the draft ordinance “shall not preclude any additional enforcement action taken by any appropriate town, state or federal official conducted pursuant to any applicable ordinance, regulation or law of the town or state of the United States of America.” It is unclear if the reference to “additional enforcement action” is meant to refer to the Town’s initiation of a legal action in Superior Court for injunctive and equitable relief as set forth in subsection (a) or if some other form of enforcement action is contemplated. Moreover, it is unclear if the proposed ordinance contemplates that an enforcement action *of the terms of the proposed ordinance* may be taken by another town, the state or the federal government or if a different form of enforcement action on another subject is contemplated.

Subsection (c) of this section also provides that the “remedies and penalties for violation of the provisions of this section” shall be cumulative. Once again the penalties in question are not specified. Furthermore, it is unclear what “remedies” are contemplated for a violation of the terms of the proposed ordinance and whether the Town or some other entity or person would be entitled to such remedies. Lastly, the word “cumulative” is not defined and it is unclear how the term applies in this context.

- License Required: Subsection (b) of this section states that “[n]o person shall . . . knowingly perform any service directly related to the operation of any gambling facility or like business without obtaining a proper license . . .” This language raises significant vagueness concerns because the phrase “service directly related to the operation of any gambling business or like business” is undefined. Virtually any service connected to a gaming facility or like business could constitute “service directly related to the operation of any gambling business or like business.” Accordingly, such language fails to fairly apprise the public of what services supporting or otherwise related to a gaming facility requires proper local licensing as set forth in the ordinance, and is therefore impermissibly vague.
- Licensing Procedure: Subsections (c), (d) and (e) of this section are vague in so far as they appear to vest the First Selectmen or his/her designee with the authority to approve or deny gaming facility licenses, but then also reference the authority of the “Director”<sup>11</sup> to approve or deny license applications. These provisions are in apparent conflict. A proposed licensing ordinance that fails to clearly designate which town official holds the ultimate authority to approve or deny a license application is vague on its face.

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<sup>11</sup> “Director” as referenced in the ordinance is an undefined term.

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Subsection (c) is also defective in so far as it gives virtually unfettered discretion to the First Selectman to “render a decision approving or denying” a license without any standards, guidelines or parameters stated for the approval. The bases for the approval or denial of the license should be reasonably delineated in order not to subvert procedural due process mandates.

Subsection (d) is also defective in so far as it appears to include an incomplete or mis-numbered list of permissible reasons for the denial of a license application. Five grounds for license denial are listed but the numbering for the list goes to number eleven.

Subsection (g) purports to provide an applicant the opportunity to bring an otherwise defective application into compliance, but the internal cross-references to other sections of the ordinance are blank and therefore it is unclear when an otherwise defective application may be cured. This is vague.

- Expiration and Renewal: Subsections (b) and (c) of this section are impermissibly vague because the failure to appropriately cross-reference applicable sections of the ordinance with respect to license renewal would deprive license holders of notice of the conditions upon which a license renewal application may be denied.
- Suspension and Revocation: As with the Expiration and Renewal section, the Suspension and Revocation section is impermissibly vague because the internal cross-references included in the section are blank, and it is therefore unclear what specific activities or conditions may result in a license suspension or revocation. As such, applicants and license holders are deprived of appropriate notice of the law.
- Appeal: The Appeal section of the ordinance provides that a person who has had their application denied or a license-holder who has had a license non-renewed, suspended or revoked may appeal the denial, non-renewal suspension or revocation to the Board of Selectmen. Subsection (c) states that the Board of Selectmen shall conduct the hearing in accordance with Chapter 54 of the Connecticut General Statutes. This provision of the proposed ordinance is far too broad. Chapter 54 of the Connecticut General Statutes sets forth the rules of criminal procedure in Connecticut’s courts which are inapplicable to an administrative appeal. Title 54 includes hundreds of statutes and entire treatises have been written on the subject of Connecticut criminal procedure. *See, e.g.,* Hon. David M. Borden and David P. Gold, Criminal Procedure, The Connecticut Practice Series, 4<sup>th</sup> Ed., 2016. Accordingly, it would be impossible for either denied applicants and license holders or the Board of Selectmen to know which rules of procedure would actually govern the conduct of appeal hearings. This vagueness would not only lead to

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administrative difficulties it would potentially deprive denied applicants and licensed holders of necessary notice of the rules of procedure that would govern appeal hearings.

Subsection (e) references 42 U.S.C. Sec. 1983 with no explanation of how this civil rights statute would apply to the administrative appeal. The reference seems unnecessary and superfluous.

Subsection (e) requires the Town to provide a transcript of the hearing before the Board, and apparently bear the cost of the transcript (the section is silent as to who bears the cost of the transcript). This seems unnecessary and costly. Audio or video recordings are typically utilized to make a record of the proceedings.

- Location: The proposed ordinance requires that “gambling facilities or like businesses shall be at least two thousand five hundred feet from the property line of any property on which residential treatment facility operated by the State of Connecticut is located,” Proposed Ordinance, p. 7. This provision is discussed in greater detail below. However, for purposes of the analysis of the vagueness of the proposed ordinance, it is important to note that there does not appear to be any rational basis for this limitation, as the petitioner has not provided any evidence that prohibiting a casino from being located within a half of a mile of a residential treatment facility has any rational reason. As such the provision is impermissibly vague and should not be approved. Moreover, even if the proposed casino location is not currently within 2,500 feet of a residential treatment facility operated by the State of Connecticut,<sup>12</sup> the State may order that such a residential treatment facility be located within that parameter after the casino is built, thereby putting in jeopardy the continued viability of the already constructed casino. As discussed below, such a limitation appears to be arbitrary and capricious and lacks material evidence to support it.

**D. The Proposed Ordinance Fails to Address Vested Interests Created by the Town’s Development Agreement with MMCT Venture, LLC.**

The Town of East Windsor executed a development agreement with MMCT Venture LLC (“MMCT”) for the development of a casino at 171 Bridge Street, East Windsor, Connecticut (“Development Agreement”). Based on the Town’s commitment to the casino

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<sup>12</sup> The only current residential treatment facility in the area is the Albert J. Solnit Children’s Center which is about 1.3 miles away according to Google Maps. The center “serve(s) as a Psychiatric Residential Treatment Facility effective December 1, 2013, providing treatment to adolescent males between the ages of 13 and 17 with complex psychiatric needs.” <http://www.ct.gov/dcf/cwp/view.asp?a=2557&Q=420446>. It is unlikely that any legislation or regulation will permit any minor to enter a casino to gamble.

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project, MMCT paid National Amusements, Inc. a nonrefundable deposit of \$250,000.00 for the option to purchase its property at the former National Amusements' Showcase Cinema location. MMCT's substantial expenditure of funds in reliance upon the Town's agreement, as well as its other expenses incurred<sup>13</sup> after executing the Development Agreement, has given rise to vested interests.

The proposed ordinance, especially the requirement that "gambling facilities or like businesses shall be at least two thousand five hundred feet from the property line of any property on which residential treatment facility operated by the State of Connecticut is located" (Proposed Ordinance, p. 7), would impossibly frustrate the Town and MMCT's development agreement since the property in question might be located within 2,500 feet of a state-run residential treatment facility.<sup>14</sup> Inclusion of such a provision invalidates the proposed ordinance.<sup>15</sup>

This matter is similar to the Town of Windham's situation in *Windham Taxpayers Ass'n v. Bd. of Selectmen of Town of Windham*, No. CV 94 0049807 S, 1995 WL 118748 (Conn. Super. Ct. Mar. 13, 1995).<sup>16</sup> In that case, the Town of Windham passed a referendum (by a four-vote majority) to appropriate \$24,500,000 on the design and construction of a new middle school. *Id.* at \*2. Prior to the referendum vote the Town, through its first selectmen, entered into a \$20,000 contract with an architectural firm for the planning and construction of the proposed school. *Id.* at \*1. Following the initial referendum vote, a group of citizens filed a petition with the town clerk requesting that the town's board of selectmen call a special meeting to set the time and place for a special referendum to rescind the prior referendum vote. *Id.* at \*2. Windham's board of selectmen, which was vested with general legislative power under the town's charter and the specific authority under the charter to enact and repeal ordinances, refused to call a special meeting for purposes of warning the special referendum.<sup>17</sup> *Id.* at \*3. The board of

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<sup>13</sup> It is likely that MMCT has also expended significant resources on other aspects of the project, including legal fees, design fees, lobbying costs and other expenses.

<sup>14</sup> As discussed above, the proposed casino location does not appear to currently be within 2,500 feet of a state-run residential treatment facility, however, it is possible that such a facility could be authorized by the state in the future.

<sup>15</sup> While this reason alone is sufficient to require the Town Meeting to reject the proposed ordinance, it is useful to comment on the many other reasons that the proposed ordinance is invalid in case the petitioner resubmits the proposed ordinance with the invalid provision removed from the proposal.

<sup>16</sup> The Superior Court's decision in *Windham* was appealed to the Connecticut Supreme Court which affirmed the Superior Court's decision without reaching the issue of whether vested interests prohibited a second referendum to consider the school construction referendum. *Windham Taxpayers Ass'n v. Bd. of Selectmen of Town of Windham*, 234 Conn. 513, 528 (1995). In particular, and as discussed herein, the Supreme Court found that since Windham's charter vested legislative power with the board of selectmen the board of selectmen had discretion to decide whether to call a town meeting. *Id.*

<sup>17</sup> As referenced earlier, the legislative body of the Town of East Windsor is the Town Meeting, not the Board of Selectmen Charter Sec. 10-1. The East Windsor Town Meeting is the authorized body to enact or repeal Town

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selectmen based its decision refusing to call a special town meeting on the advice of its town counsel who advised that "the architect, by virtue of its contract and its post-referendum services performed in reliance thereon, has acquired a vested interest in the project and its fee for services provided. I believe, therefore, that the referendum question cannot now be reconsidered." *Id.* at \*2.

The Windham Board of Selectmen's refusal to call a special town meeting was then challenged in Superior Court. The Superior Court reviewed applicable precedent addressing vested interests created by municipal action and determined that "it is proper for the (town's legislative body) to reject a proposed initiative that fails to protect persons who have acted upon the faith of the prior vote and fails to provide for payment of legal obligations of the municipality arising from contracts already made and entered into by the municipality prior to such rescission." *Id.* at \*11 (emphasis added). The plaintiffs' proposed initiative in that case "failed to make such provisions for payment of legally incurred expenditures and accordingly, was not a proper petition." *Id.*

The Connecticut Supreme Court affirmed the decision. *Windham Taxpayers Ass'n v. Bd. of Selectmen of Town of Windham*, 234 Conn. 513 (1995). In that decision, the Supreme Court made it clear that a town's "legislative body" is empowered to decide if a referendum petition is for a legitimate and proper purpose. *Windham Taxpayers Ass'n*, 234 Conn. at 522. The Supreme Court said that "the primary legislative body ... had the discretion to decide whether to call a town meeting for a ... referendum." *Id.* at 528 (emphasis added). The Court confirmed that a town's primary legislative body could not be compelled to hold a referendum on the petition of the town's voters. *Id.* at 536.

The same reasoning applies in this context. The Town's contract with MMCT has created a vested interest that has been effectively secured by MMCT's expenditure of resources in advancement of the development project. The proposed ordinance would, for all intents and purposes, effectively rescind the agreement between the Town and MMCT, because it would subject MMCT to a panoply of new requirements that, at least in some instances, would be irreconcilable with the terms of the Town and MMCT's agreement. Not the least of these requirements is the proposed ordinance's requirement that "gambling facilities or like businesses shall be at least two thousand five hundred feet from the property line of any property on which residential treatment facility operated by the State of Connecticut is located" (Proposed Ordinance, p. 7), which would impossibly frustrate the Town and MMCT's development deal since the proposed casino is apparently located within 2,500 feet of a state-run residential

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ordinances. Charter Sec. 10-8(G). Therefore, it is the Town Meeting's responsibility to act on the proposed ordinance, and reject it as legally impermissible.

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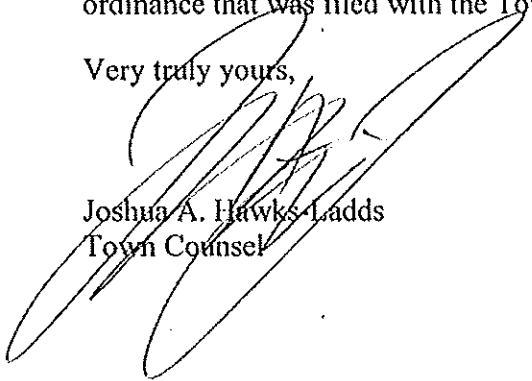
treatment facility, or the provision might unduly interfere with the Casino if such a treatment facility is created in the future within 2500 feet of the constructed casino.

The proposed ordinance is silent as to the Town's Development Agreement with MMCT and thus makes no provisions to account for the vested interests of MMCT that are provided for in the Development Agreement. As the above-described case law demonstrates, in order to be valid, by seeking to rescind a prior municipal action, the proposed ordinance must account for the vested rights of contracting parties. The proposed ordinance does not do so and therefore is defective in form and substance and not in conformity with existing law.

**III. Conclusion**

For the forgoing reasons, it is my recommendation that the Town Meeting reject the proposed ordinance that was filed with the Town Clerk by Brianna Stronk on April 13, 2017.

Very truly yours,



Joshua A. Hawks-Ladds  
Town Counsel

Ordinance Providing for the Licensing of Gaming Facilities in the Town of East Windsor

ARTICLE \_\_, GAMING FACILITIES.

Purpose and Intent. Town Of East Windsor

(a) It is the purpose of these sections to regulate gaming facilities and like businesses in order to promote the health, safety, and general welfare of the citizens of the Town of East Windsor, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of gaming facilities and like businesses within the town.

(b) Based on evidence of the adverse secondary effects of gaming facilities and like businesses presented in reports and studies, the town has determined that it is necessary and desirable to appropriately regulate the carrying on of the business of gaming facilities and like businesses.

Section \_\_\_\_

Definitions.

(a) Gambling, Gambling Device, Gambling Premise and all other definitions set forth in Connecticut General Statute Section 53-278a et seq. are adopted herein by reference.

(b) As used in this Article:

(1) "applicant" means a person signing an application for a license to be issued pursuant to section \_\_\_\_;

(2) "employee" means any person who performs any service on the licensed premises on a full time, part time or contractual basis, whether or not such person is denominated an employee, independent contractor or agent. Employee does not include a person exclusively on the licensed premises for regular maintenance of the licensed premises or for the delivery of goods to the licensed premises;

(3) "licensed premises" means the entire building or structure used for a gambling premises or like business and the area adjacent to such building or structure, including areas designated for the parking of motor vehicles by patrons of a gambling premise or like business and other areas under the ownership, control or supervision of the licensee;

(4) "licensee" means any person granted a license pursuant to section \_\_\_\_;

(5) "manager" means a person with authority to formulate policy for a gambling premises or like business, to supervise employees of such business, or with overall responsibility of the operation of such business, including the on-site manager and all officers, directors, members or partners of the applicant;

(6) "significant interest" means any share or equity interest in a partnership, limited liability company, corporation, or other commercial entity, equal to ten percent or greater of the equity or voting control of such entity.

(7) "Gaming facility or like business" means any facility or business in which gaming or gambling is conducted.



Sec. \_\_\_\_\_. Penalties for Violation of Article.

(a) In addition to any fines or penalties for violation of the provisions of section \_\_\_\_ through section \_\_\_\_\_, inclusive, the town may apply to the superior court for injunctive and equitable relief including reasonable attorney's fees and costs expended by the town in enforcing the provisions of these sections.

(b) The provisions of section \_\_\_\_ through section \_\_\_\_\_, inclusive, shall not preclude any additional enforcement action taken by any appropriate town, state or federal official conducted pursuant to any applicable ordinance, regulation or law of the town or state or the United States of America.

(c) All remedies and penalties for violation of the provisions of section \_\_\_\_ through section \_\_\_\_\_, inclusive shall be cumulative.

Sec. \_\_\_\_\_. License Required.

(a) On and after the effective date of this ordinance, no person shall engage in, conduct or carry on or permit to be engaged in, conducted or carried on, in or upon any premises in the town, the operation of gaming facility or like business without a license pursuant to section \_\_\_\_\_.

A license may be issued for only one gambling or like business at each fixed location. Any person who operates more than one gambling or like business must have a license for each such business.

(b) No person shall operate, or knowingly perform any service directly related to the operation of any gambling facility or like business without obtaining a proper license pursuant to section -----.

(c) No license issued pursuant to section \_\_\_\_\_ shall be sold, assigned or transferred in any way, including, but not limited to: (1) the sale, lease or sublease of the gambling or like business; (2) the transfer of shares, securities or interests that constitute a significant interest in such business, whether by sale, exchange or similar means; or (3) the establishment of a trust, gift or other similar legal device that transfers ownership or control of such business..

Sec. \_\_\_\_\_. Application.

(a) Any person may submit an application on a form prepared by the town for a license to operate a gambling or like business to the First Selectman or his/her designee, or designate, together with an application fee as set forth in the Fee Schedule prior to the commencement of the operation of such business. The First Selectman or his/her designee, or designate, shall date stamp the application.

(b) The application shall be signed and filed by the owner of such proposed gambling or like business and shall also be signed by the owner of the building and property on which such business will be located. In instances where an applicant is a partnership, limited liability company or corporation, the application shall be signed and filed by each individual who holds a significant interest in the applicant. The application shall be sworn to be true and correct by all persons signing the application a violation of which shall constitute perjury or false statement.

(c) In addition to any other information requested by the First Selectman or his/her designee, or designate, the applicant for a license shall furnish the following information: (1) Name, business address and primary residence address of each person with a significant interest in the gambling or like business,

including any partnership, corporation, limited liability company, corporation or other legal entity. Where an interest in a partnership, limited liability company or corporation is owned by an entity rather than an individual, the application shall include the name of that entity and all individuals with a significant interest in that entity must be disclosed, regardless of how many levels of ownership, or how many levels of parent, subsidiary or affiliate relationships; (2) The location of the gambling or like business to be operated under such license, including the street address, legal description of the property, and telephone number, if any; (3) The current name, and any other name previously used by such person, and address of all employees and managers of the gambling business at the time of application; (4) If the person with a significant interest is: (A) A partnership, the application shall be accompanied by the partnership agreement, if any; (B) A limited partnership, the application shall specify the name of the partnership, the date and state of the filing of its certificate of limited partnership, and the name and address of its statutory agent for service of process, and shall be accompanied by a copy of the partnership agreement, if any, and by evidence that such partnership is in good standing under the laws of the state; (C) A limited liability company, the application shall specify the name of the company, the date and state of the filing of its articles of organization, and the name and address of its statutory agent for service of process, and shall be accompanied by a copy of the operating agreement, if any, and by evidence that such company is in good standing under the laws of the state; (D) A corporation, the application shall specify the name of the corporation, the date and state of incorporation, and the name and address of its statutory agent for service of process, and shall be accompanied by a copy of its bylaws, if any, and by evidence that such corporation is in good standing under the laws of the state; (E) Operating under a fictitious name, the application shall be accompanied by a copy of the applicant's recorded trade name certificate;

(5) A statement that each applicant is familiar with the provisions of this article, is in compliance with them, and consents to the authority of the Town in licensing and regulating the proposed gambling or like business.

(d) If a license to operate a gambling facility or like business is granted, the applicant shall provide the First Selectman or his/her designee, or designate, any material change in information contained in the application, including but not limited to changes in significant interests, within thirty days of such change.

#### Sec. \_\_\_\_\_. Licensing Procedure.

(a) Upon receipt of an application pursuant to section \_\_\_\_: (1) the First Selectman or his/her designee, or designate, shall determine compliance of the proposed licensed premises with all applicable building codes and laws; (2) the Chief of Police shall determine the criminal history of each applicant; (3) the Fire Marshal shall determine compliance of the proposed licensed premises with all applicable fire codes and laws; (4) the Director of Health and Social Services shall determine compliance of the proposed licensed premises with all applicable public health codes and laws; and (5) the Zoning Enforcement Officer shall determine compliance of the proposed licensed premises with all applicable zoning regulations and laws and also compliance with all distance requirements set forth in section \_\_\_\_.

(b) Within thirty days of the date the application was filed, all determinations performed pursuant to subsection (a) of this section shall be completed. Each town official shall indicate a recommendation for approval or disapproval of the application, state the reasons for any disapproval, date it, sign it, and return such determination to the First Selectman or his/her designee, or designate. A town official shall

disapprove an application if such official finds that the proposed gambling facility or like business will be in violation of any provision of any statute, code, article, regulation or other law under such official's enforcement authority.

(c) Within forty-five days of the date the application was filed, the First Selectman or his/her designee, or designate, shall render a decision approving or denying such application and shall file such decision with the town clerk and mail such decision to the applicant by certified mail, return receipt requested. If the First Selectman or his/her designee, or designate, denies the application, the Director shall state in writing the reasons for such denial. All copies of the determinations pursuant to subsection (b) of this section shall be attached to the decision.

(d) The First Selectman or his/her designee, or designate, shall issue to the applicant a license to operate a gambling facility or like business if all requirements for a gambling facility or like business described in section \_\_\_\_ through section \_\_\_\_, inclusive are met, unless the Director finds that: (1) the business as proposed in the application, if permitted, would not have complied with all applicable statutes, codes, ordinances, laws and regulations including, but not limited to, the fire, building, health, and zoning codes of the town, and the provisions of section \_\_\_\_ through section \_\_\_\_, inclusive. If the premises are not in compliance, the applicant shall be advised of the reasons in writing and any measures the applicant must take to bring the premises into compliance for a license to issue; (8) the applicant has failed to complete the license application as specified in subsection (\_\_\_\_) of section \_\_\_\_, or has provided materially false or misleading information in the application; (9) the application fee has not been paid; (10) the granting of the application would violate a statute, ordinance or court order; or (11) the business described in the application, if a limited partnership, limited liability company or corporation, is not in good standing under the laws of the state

(e) Any failure of the Director to approve or deny an application for license within forty-five days of the date on which the application was filed shall constitute a denial subject to appeal. (f) If the gambling facility or like business application is denied except pursuant to subsection (\_\_\_\_), the town shall retain fifty percent of the permit fee as payment for expenses incurred in the investigation of the application and shall return the remainder to the applicant.

(g) When an application is denied solely for reasons stated in subdivision (\_\_\_\_) of subsection (\_\_\_\_) of this section and such violation is correctable, the applicant shall be given an additional thirty days from the date of such notification of denial to bring the licensed premises into compliance. Upon verification by the First Selectman or his/her designee, or designate, that the correction has been made, which shall be determined no later than forty-eight hours after receipt by the First Selectman or his/her designee, or designate, of written notice of such correction, a license shall be issued unless no new violations or other disqualifying factors have occurred within such thirty days.

(h) As a condition of the license, the entire licensed premises shall be open to random physical inspections for compliance with the provisions of section \_\_\_\_ through section \_\_\_\_, inclusive, by any Town official or employee in the discharge of such official or employee's duties during all hours when the licensed premises are open for business. Any refusal to allow such an inspection shall constitute a violation of this article.

(i) The license, if granted, shall state the name, business and residence address of the applicant, the expiration date, the address of the gambling facility or like business, and the department or public

official and telephone number to whom to report any violation of the provisions of section \_\_\_\_ through section \_\_\_\_, inclusive. The license shall also include a notice that the subject premises are subject to random inspections by town official or employees of the town for compliance with the provisions of section \_\_\_\_ through section \_\_\_\_, inclusive. (j) The license shall be posted in a conspicuous place at or near the entrance to the gambling facility or like business so that it may be easily read by the public at all times.

Sec. \_\_\_\_\_. Expiration and Renewal. (a) Each license issued pursuant to section \_\_\_\_ shall expire one year from the date it is issued, unless it is renewed upon application, pursuant to section \_\_\_\_, accompanied by payment of a renewal fee as set forth in the Fee Schedule. Such application and application fee shall be submitted to the First Selectman or his/her designee, or designate, at least thirty days before the expiration date of the license, but not more than ninety days. If the application is filed within such time and the renewal fee paid, the First Selectman or his/her designee, or designate, shall, prior to the expiration of the previous license, renew the license for an additional one year, unless the First Selectman or his/her designee, or designate, finds any grounds for denial of the original application pursuant to subsection (\_\_\_\_) of section \_\_\_\_\_. If renewed, the First Selectman or his/her designee, or designate, shall mail the renewed license to the applicant prior to the expiration date of the previous license. If not renewed, the First Selectman or his/her designee, or designate, shall mail a notice of non-renewal to the applicant by certified mail, return receipt requested, prior to the expiration date of the previous license, stating the reasons for such non-renewal.

(b) If there are uncorrected violations of section \_\_\_\_ through section \_\_\_\_, inclusive or uncorrected violations of any fire, building, health or zoning codes or regulations, of which the applicant has received written notice, the current license shall be extended for a maximum of thirty days beyond the original expiration date in order for all corrections to be completed and inspections done to determine compliance. If the applicant does not make such corrections of violations within such thirty days, no license renewal shall be issued. The First Selectman or his/her designee, or designate, shall mail a notice of non-renewal to the applicant by certified mail, return receipt requested, within five days after the extended thirty-day period, stating the reasons for such non-renewal.

(c) Notwithstanding the provisions in subsection (a) and subsection (b) of this section, in no instance shall a renewal be issued if within the one-year period of the previous license, such gambling facility or like business has had two or more material violations of section \_\_\_\_ through section \_\_\_\_, inclusive, to which the manager has received written notice, or has had one or more uncorrected material violations of section \_\_\_\_ through section \_\_\_\_, inclusive, pending for more than thirty days. As used in this section, "material violation" means any violation of the provisions of section \_\_\_\_ through section \_\_\_\_, inclusive, unless such violation is of a technical nature. (d) Should a license not be renewed for any violation of section \_\_\_\_ through section \_\_\_\_, inclusive, no license shall be issued for five years from the expiration of the previous license.

Sec. \_\_\_\_\_. Suspension and Revocation. (a) The First Selectman or his/her designee, or designate, may suspend a gambling facility or like business license for a period not to exceed thirty days if there are uncorrected violations of any fire, building, health or zoning codes or regulations, of which the manager has received written notice, or any condition under subsection (d) of section \_\_\_\_ that constitutes grounds for denial of such license. The First Selectman or his/her designee, or designate, shall issue such

suspension in writing stating the reasons therefore and shall notify the applicant by certified mail, return receipt requested, or by service at such address or at the licensed premises. If a suspension is issued for a correctable violation, the First Selectman or his/her designee, or designate, within forty-eight hours of receipt of written notice that the correction has been made, shall verify the correction or failure to correct and shall terminate such suspension upon verification of such correction. No gambling facility or like business shall continue to operate while under suspension.

(b) The First Selectman or his/her designee, or designate, shall revoke any license if the Director finds: (1) any grounds for denial of such license application under subsection (d) of section \_\_\_\_; (2) that materially false or misleading information or data was given on, or material facts were omitted from, any application for a gambling facility or like business license; (3) within a one-year period there have been two or more material violations of this article, to which the manager has received written notice; (4) there have been one or more uncorrected material violations of this article pending for over thirty days, to which the manager has received written notice; (5) there has been a failure to correct within thirty days any violation for which the license was suspended pursuant to subsection (a) of this section; (6) there has been a violation of subsection (c) of section \_\_\_\_; (7) the applicant or any other person disclosed under subdivision (1) and subdivision (3) of subsection (c) of section \_\_\_\_, or any manager has knowingly allowed any illegal activity to occur on the licensed premises including, but not limited to, prostitution, or the possession, use or sale of controlled substances; or (8) the applicant or any other person disclosed under subdivision (1) and subdivision (3) of subsection (c) of section \_\_\_\_, or any manager has knowingly operated the gambling facility or like business while the business's license was under suspension;

(c) At least ten days prior to the revocation of any license, the First Selectman or his/her designee, or designate, shall issue such revocation in writing stating the reasons therefore and shall notify the applicant by certified mail, return receipt requested, or by service at such address or at the licensed premises.

(d) Subject to subsection (\_\_) of section \_\_\_\_, no gambling facility or like business shall continue operations after its license has been revoked and no new license shall be issued for the same applicant for five years from the date of revocation.

(e) As used in this section, "material violation" means any violation of the provisions of section \_\_\_\_ through section \_\_\_\_, inclusive, unless such violation is of a technical nature.

Sec. \_\_\_\_ Appeal. (a) Within ten days of receipt of notification of a denial, non-renewal, suspension or revocation of a license, the applicant may appeal such decision by submitting a written appeal to the town clerk requesting an appeal hearing before the Board of Selectmen.

(b) Such hearing shall be scheduled no later than twenty days from the date of the appeal filed in accordance with subsection (a). Not less than ten days before the date of such hearing, a notice of hearing shall be sent to the applicant by certified mail, return receipt requested, or by service at such address or at the licensed premises, and shall be posted in a conspicuous place on the proposed or licensed premises.

(c) At such hearing, the applicant shall have the opportunity to present evidence on its behalf and shall have the right to cross-examine town officials and other witnesses. The Board of Selectmen shall

conduct the hearing in accordance with the provisions of Chapter 54 of the Connecticut General Statutes.

(d) Within ten days of the close of such hearing, the Board of Selectmen shall either sustain or overrule the denial, non-renewal, suspension or revocation and shall issue written notice of its final decision, stating the reasons therefore, and shall forward such decision to the applicant by certified mail, return receipt requested. If the denial, non-renewal, suspension or revocation is overruled, the First Selectman or his/her designee, or designate, shall immediately issue such license or renewal of license, terminate the suspension or rescind the revocation, as the case may be.

(e) The decision of the Board of Selectmen may be appealed to the superior court within twenty days receipt of written notice of such decision or the applicant may challenge such decision in any court of competent jurisdiction by any available procedure, including a writ of certiorari, a writ of mandamus, a petition for temporary injunction or an action for declaratory or injunctive relief pursuant to 42 U.S.C. § 1983. If any court action challenging the Board of Selectmen's decision is initiated, the Board of Selectmen shall prepare and transmit to the court a transcript of the hearing within ten days of receipt of written notice of such action. The Town shall consent to an expedited briefing or disposition of the action, shall comply with any expedited schedule set by the court and shall facilitate prompt judicial review of the proceedings.

(f) During the pendency of any appeal of a non-renewal, suspension or revocation, the gambling facility or like business may operate, unless otherwise ordered by the superior court.

Section \_\_\_\_\_. Location. (a) The provisions of section \_\_\_\_\_ of the town zoning regulations, as may be amended from time to time, are hereby incorporated by reference, and any violation of such regulations shall be deemed a violation of the provisions of section \_\_\_\_\_ through section \_\_\_\_\_, inclusive.

(b) The licensed premises of a gambling facility or like business shall be at least two thousand five hundred feet from the property line of any property on which residential treatment facility operated by the State of Connecticut is located.

Sec. \_\_\_\_\_. Operating Requirements. (a) The following requirements shall apply to each gambling facility or like business within the town: (1) No alcoholic beverage or other intoxicant shall be displayed, served, ingested or sold on the premises of any gambling facility or like business unless permitted by the state and unless the same are allowed under the zoning regulations of the Town of East Windsor. No employee shall be under the influence of any alcoholic beverage or other intoxicant while working at a gambling facility or like business. No patron, who is impaired to the extent it would be illegal to serve alcoholic liquor to such patron, shall be allowed to enter the gambling facility or like premises; (2) No one under eighteen years of age, except if such business serves alcoholic beverages, then no applicant or individual shall be under the age of twenty-one years old, shall be allowed on the licensed premises; (3) The manager shall be responsible for the conduct of all employees while on the licensed premises. Any act or omission of any employee constituting a violation of the provisions of section \_\_\_\_\_ through section \_\_\_\_\_, inclusive, shall be deemed the act or omission of the manager when such manager knew of such act or omission, for purposes of determining whether the operating license shall be renewed, suspended or revoked and whether the manager shall be subject to the penalties imposed under the provisions of section \_\_\_\_\_ through section \_\_\_\_\_, inclusive; (5) No gambling facility or like business shall

open for business before 9:00 a.m., Monday through Sunday, nor shall it remain open after 1:00 a.m.;

(6)