

## Planning Commission

### Staff Report

July 11, 2024



<b>Case No:</b>	24-LDC-0008
<b>Project Name:</b>	Gaming Facility Uses
<b>Location:</b>	n/a
<b>Applicant:</b>	n/a
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	All Council Districts
<b>Case Manager:</b>	Joseph Haberman, AICP, Planning & Design Manager

### REQUEST

- An amendment to the Land Development Code (LDC) concerning Gaming Facility Uses.

### SUMMARY/BACKGROUND

On April 11, 2024, the Planning Commission passed a resolution directing Office of Planning staff to review the regulations related to gaming facilities and provide recommendations to improve the existing requirements.

A gaming facility, charitable or otherwise, is not a defined or specific use in the LDC. Such establishments are interpreted to be Game Rooms and permitted by right in several commercial zoning districts.

While a listed permitted use type, the term Game Room is also not defined. It is a broad use classification that allows for other establishments beyond gaming facilities and generally regulated along with other entertainment-oriented uses.

The term Game Room does not include bingo halls. The Bingo Hall/Parlor use is specifically regulated in the LDC, in a manner similar to the Game Room use. Bingo halls are often licensed by the state as charitable gaming facilities.

Following changes to state law and regulations concerning charitable gaming facilities and other gaming/wagering activities, the LDC could be amended to specifically distinguish gaming facilities independently. Such an amendment would resolve the need for the Game Room interpretation and allow for specific consideration of where such uses may be permitted. In addition, the Bingo Hall and Parlor use can be consolidated with new gaming facility use types to bring more consistency with state law and regulations.

The proposed amendments were reviewed by the Planning Commission's Planning Committee on June 12, 2024.

*Currently, the Louisville Metro LDC:*

- Provides a definition of Entertainment Activity (this term does not include Adult Entertainment Activities, which are regulated separately)
- Does not provide definitions of the following existing permitted uses: Entertainment Use, Game Room, and Bingo Hall and Parlor
- Allows “Billiard parlors, game rooms and similar entertainment uses” in C-2, C-3, C-M, EZ-1, and Old Louisville/Limerick TNZD (Neighborhood Center, Neighborhood Transition-Center, and Neighborhood General/Corner Lot Commercial)
- Allows “Bingo halls and parlors” in C-2, C-3, C-M, and EZ-1
- Prohibits a restaurant or delicatessen from having an Entertainment Activity in C-N and C-R
- Requires a conditional use permit for a restaurant having an Entertainment Activity in C-1
- Addresses parking requirements for “Entertainment uses such as bowling alleys, game rooms, bingo halls, miniature golf, go-cart facilities” (requirements are determined by the Planning Director case by case)
- Requires loading areas for “entertainment facilities” that have gross floor areas of 100,000 square feet or more

## **STAFF ANALYSIS**

State law allows for and regulates charitable gaming. In addition, state law now allows for historic horse racing machines and sports wagering. The Game Room use was established before historical horse racing machines and sports wagering were legalized by the state and was likely established before the first charitable gaming statutes and administrative regulations. In light of these changes, the LDC can be updated to be more consistent with state provisions and specifically acknowledge and regulate these uses/activities.

Several gaming facilities, both charitable and for-profit, are lawfully in operation in C-2, C-3, C-M, and EZ-1 districts under the Game Room use classification. Creating a new use type with special standards or a conditional use permit requirement would result in these established uses becoming nonconforming. As staff has not received any feedback related to adverse impacts of these establishments in these districts, there is not a need to add such additional restrictions at this time.

There are some smaller gaming facilities that have opened in C-1 districts. These facilities are in violation as Game Rooms and Bingo Halls/Parlors are not permitted in C-1. However, a charitable gaming facility may be appropriate in a low intensity commercial district if its size and intensity are restricted. Larger gaming facilities that accommodate more guests should continue to be restricted to medium and high intensity commercial districts.

The draft recommendations attached to this report continue to allow gaming facilities in commercial areas and would not result in any nonconformities if adopted. In addition, the recommendations improve the definitions to better distinguish the use type and bring consistency with state law definitions.

### *Charitable Gaming Facilities:*

Charitable gaming can be viewed as a form of incentivized giving where a charity, rather than a for profit private entity, oversees gaming activities and uses the proceeds to further its charitable

aims. Charitable gaming is regulated by state law (KRS 238). Pursuant to KRS 238.500, the General Assembly declares that charitable gaming conducted by charitable organizations is an important method of raising funds for legitimate charitable purposes and is in the public interest. KRS 238 provides a mechanism for regulating charitable gaming which includes defining the scope of charitable gaming activities, setting standards for the conduct of charitable gaming which insure honesty and integrity, providing for means of accounting for all moneys generated through the conduct of charitable gaming, and providing for suitable penalties for violations of laws and administrative regulations. The intent of KRS 238 is to prevent the commercialization of charitable gaming, to prevent participation in charitable gaming by criminal and other undesirable elements, and to prevent the diversion of funds from legitimate charitable purposes.

As defined in KRS 238.505, a "Charitable gaming facility" is the premises on which charitable gaming is conducted. "Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of KRS 238. Charitable gaming does not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races.

This administrative regulations in 820 KAR establish the requirements, fees, and procedures for licensure of a qualifying charitable organization, distributor, manufacturer, or charitable gaming facility.

Kentucky Administrative Regulations related to Charitable Gaming:

<https://apps.legislature.ky.gov/law/kar/titles/820/001/>

Currently, the Kentucky Department of Charitable Gaming provides a regulatory framework allowing charitable gaming to thrive as a viable fundraising mechanism. The department helps to ensure the productivity of charitable gaming through appropriate regulation, oversight, and education. More information on state requirements related to charitable gaming:

<https://dcg.ky.gov/>

As a note, Senate Bill 299, which passed the Kentucky legislature earlier this year, eliminates the Kentucky Horse Racing Commission and the Department of Charitable Gaming and replaces it with a new, combined committee called the Kentucky Horse Racing and Gaming Corporation.

As charitable gaming facilities are considered uniquely under state law, it makes sense to distinguish from and regulate differently than non-charitable gaming facilities in the LDC.

Smaller gaming facilities may be appropriate in C-1. Limiting to 5,000 square feet or less of gaming floor area will limit their size and impact. Smaller, and thereby less intense, facilities should be compatible with other C-1 permitted uses. A 5,000 square feet limitation is common in zoning codes and a similar limitation is used in the LDC in relation to micro-breweries, micro-distilleries, and commercial/retail uses on corner properties in TNZD. Allowing in C-1 can resolve enforcement cases without requiring the owners to seek rezonings to higher zoning classifications (however floor area may need to be reduced).

Staff is recommending the following changes to the LDC:

- Create a definition consistent with the definition in state law
- Partially consolidate the bingo hall use type into the new charitable gaming facility use type (this only applies to bingo halls licensed as charitable gaming facilities)

- Allow smaller establishments in C-1 (less than 5,000 square feet of gaming area)
- Continue to allow by right in C-2, C-3, C-M, EZ-1, TNZD-Neighborhood Center, TNZD-Neighborhood Transition-Center, and TNZD-Neighborhood General/Corner Lot Commercial (no direct square footage limitation)

*Gaming Facilities (not licensed as Charitable):*

The term “gaming facility” is not defined in KRS.

These facilities are locations that accommodate for profit, lawful gaming activities, such as bingo not licensed as charitable gaming, poker, historical horse racing machines, and sports wagering. The aforementioned activities are permitted in C-2, C-3, C-M, and EZ-1 as Game Rooms and Bingo Halls/Parlors (in some cases only after state law permitted). In 2021, Senate Bill 120 was passed and signed into law, which changed the definition of pari-mutuel wagering in KRS to include historical horse racing machines. In 2023, House Bill 551 was passed and signed into law, which legalized sports wagering.

The Game Room interpretation does not include live horseracing, or accessory gaming activities associated with live horseracing (such as accessory historical house racing machines). This use is already specifically regulated in the LDC as an Animal Racetrack.

Currently, the Kentucky Horse Racing Commission (KHRC) is an independent agency of state government charged with regulating horse racing, pari-mutuel wagering, and sports wagering. <https://khrc.ky.gov/>

As a note, Senate Bill 299, which passes the Kentucky legislature earlier this year, eliminates the Kentucky Horse Racing Commission and the Department of Charitable Gaming and replaces it with a new, combined committee called the Kentucky Horse Racing and Gaming Corporation.

Staff is recommending the following changes to the LDC:

- Create a definition that is more specific to the use
- Partially consolidate the bingo hall use type into the new gaming facility use type (this only applies to bingo halls not licensed as charitable gaming facilities)
- Continue to allow by right in C-2, C-3, C-M, EZ-1, TNZD-Neighborhood Center, TNZD-Neighborhood Transition-Center, and TNZD-Neighborhood General/Corner Lot Commercial

*Bingo Halls and Parlors:*

Bingo operations are largely regulated by state law under the charitable gaming facility provisions. As charitable gaming can include bingo, it may be a contradiction to include as its own use type. Further, with the introduction of the gaming facility use types, there is no need to separately regulate bingo halls.

Staff is recommending the following changes to the LDC:

- Consolidate the existing bingo hall use type into the new gaming facility use types

### *Temporary Activities and Fundraising Events:*

The proposed amendments do not affect temporary activities. Events that are allowed by state law and qualify as temporary activities in LDC 4.3.7 may continue to operate with temporary activity permits.

### *Gray Machines:*

The proposed amendments do not address “gray machines”. Such machines are typically accessory to principal uses such as stores, gas stations, restaurants, and bars. House Bill 594, passed and signed into law in 2023, bans such machines, also referred to as skill games or gray games.

## **INTERESTED PARTY COMMENTS**

No formal interested party comments have been submitted as of the date of this report related to the specific amendments. However, staff has discussed the ordinance with several members of the public. This feedback has influenced many of the suggestions.

## **ATTACHMENTS**

None.

## **PROPOSED AMENDMENTS**

The Planning Commission must make a recommendation to Metro Council and the legislative bodies of cities with zoning authority to approve, approve with modifications, or deny the LDC text amendments. This section shows specific amendments to the Louisville Metro version of the LDC. The cities with zoning authority in Louisville Metro have different versions. If any of the cities consider incorporating the amendments into its LDC, staff will assist the city in preparing specific amendments that reflect the nature of the changes recommended in this report.

## **PROPOSED FINDINGS**

**WHEREAS**, Louisville Metro’s current comprehensive plan, known as Plan 2040, became effective on January 1, 2019;

**WHEREAS**, Plan 2040 sets a framework for growth by using five guiding principles – Connected, Healthy, Authentic, Sustainable, and Equitable (CHASE) – to strategically manage all the benefits and challenges that come from adding more people;

**WHEREAS**, Community Form Goal 2, Policy 2 of Plan 2040 states: Encourage development of non-residential and mixed uses in designated activity centers provided proposed uses, density and design are compatible with adjacent uses and meets Form District guidelines.

## **LOUISVILLE METRO LAND DEVELOPMENT CODE**

***The following changes are staff recommendations and preliminary. They are subject to change upon public input and further review. To be effective, any changes must be approved by Metro Council.***

### **1.2.2 Definitions**

For the purposes of Chapters 1 through 11 the following terms, phrases, words and their derivations shall have the meaning contained herein, except where the context clearly requires otherwise.

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**Charitable Gaming Facility** – See “Gaming Facility, Charitable.”

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**Entertainment Activity** – An activity not considered accessory to the primary use that includes but is not limited to dancing, karaoke, DJ related activities, live performances, games (video, mechanical, etc.), and other similar activities. This term does not include gaming activities that are further defined in the definitions of Charitable Gaming Facility or Gaming Facility.

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**Game Room** – A commercial facility used for entertainment and amusement, including arcades and venues having video games, table games, darts, and other similar uses that are not accessory activities to a broader principal use. This use does not include any Animal Racetrack, Charitable Gaming Facility, or Gaming Facility.

**Gaming Facility** – A commercial facility in which gaming is conducted, including bingo not regulated under KRS 238, poker, use of historical horse racing machines as permitted in KRS 230, sports wagering as permitted in KRS 230, and other similar activities permitted under Kentucky law. This term does not include any gaming facility further defined and licensed as a Animal Racetrack, Charitable Gaming Facility, or a Game Room.

**Gaming Facility, Charitable** – A facility in which charitable gaming is conducted and licensed as such under KRS 238. Charitable gaming means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations. Charitable gaming shall not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races.

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### **2.4.3 C-1 Commercial District**

The following provisions shall apply in the C-1 Commercial District unless otherwise provided in these regulations.

A. Permitted Uses:

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Charitable gaming facilities with 5,000 square feet or less of indoor gaming floor area.

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### **2.4.4 C-2 Commercial District**

The following provisions shall apply in the C-2 Commercial District unless otherwise provided in these regulations.

A. Permitted Uses:

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Billiard parlors, charitable gaming facilities, gaming facilities, game rooms and similar entertainment uses  
~~Bingo halls and parlors~~

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**Table 4 Old Louisville/Limerick TNZD - Uses Permitted Where Mapped in the Neighborhood General**

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<i>Commercial Uses</i>	
<b>Corner Lot Commercial</b>	11. Billiard parlors, <u>charitable gaming facilities</u> , <u>gaming facilities</u> , game rooms and similar entertainment uses

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**Table 9.1.3B Minimum and Maximum Motor Vehicle Parking Based on Use**

<b>GENERAL ACTIVITIES (LBCS Code)</b>	<b>SPECIFIC ACTIVITIES (LBCS Code)</b>	<b>MINIMUM REQUIREMENT</b>	<b>MAXIMUM REQUIREMENT</b>
*****			
<b>Shopping, business, or trade (2000)</b>			
*****			
	Entertainment uses such as bowling alleys, <u>charitable gaming facilities</u> , <u>gaming facilities</u> , game rooms, <del>bingo halls</del> , miniature golf, go-cart facilities	To be determined by Director or designee	No more than 25% above minimum requirement

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