



CITY OF CONCORD

New Hampshire's Main Street™
Community Development Department

REPORT TO THE PLANNING BOARD

Date: May 15, 2024
From: Timothy J. Thompson, AICP, Assistant Director of Community Development
Subject: **Proposed Amendment to Code of Ordinances Title IV, Zoning Code, Chapter 28, Article 28-2-4: Allowable Principal and Accessory Uses in Zoning Districts, Article 28-5: Supplemental Standards, and Glossary**

Recommendation:

1. Accept this report; and,
2. Provide a recommendation to the City Council regarding the proposed zoning amendments discussed herein.

Background:

At the direction of City Administration, staff developed Zoning Ordinance amendments to address the Ordinance's regulatory ambiguity regarding charitable gaming facilities, or "Casinos."

The proposed amendments were initially taken up by the City Council at their February 12, 2024 meeting, at which time the amendments were referred to the Planning Board and scheduled for a July 8, 2024 public hearing with the City Council. The currently posted amendments are attached along with the initial staff report to the City Council.

In the time that has passed since the Council's referral in February, staff has further refined the proposed amendment language, after receiving some preliminary feedback from the NH Lottery Commission regarding compliance with the charitable gaming law, particularly the limits on the number of "gaming" events permitted at a property. The attached updated ordinance language now tracks the requirements in the statute.

The current Zoning Ordinance has been interpreted to permit such facilities as "Commercial Indoor Recreational Facilities," which are permitted in six different zoning districts in the City. Because casinos/gaming facilities have substantially different development characteristics and impacts, the proposed amendments would create a new use and definition, such that the City can properly regulate the use as appropriate.

The ordinance amendment, as presented with this report, would prohibit casinos/gaming facilities from being located in any zoning district as a principal use, but would permit accessory charitable gaming on a property located in the Urban Commercial (CU), Civic Performance (CVP), Institutional (IS), Industrial (IN), and Urban Transitional (UT) Districts with new supplemental standards. These districts were chosen because they are the location of most of the City's religious buildings and

charitable organizations, where an accessory gaming use may be proposed in conjunction with the primary use of property. These supplemental standards are intended to allow for occasional events to take place, but not a full-time, stand-alone casino/gaming operation.

Staff believe such an approach would allow for the City staff and Planning Board to work toward development of appropriate and applicable development regulations for these unique uses in the future (particularly as the City looks to update the current Master Plan in accordance with City Council's 2024-2025 Priorities) while simultaneously providing some flexibility for these uses to continue during the interim on a limited basis.

Please note that these proposed amendments will have no impact on any existing or approved gaming facilities in existence at the time the ordinance amendments were posted for public hearing in February given their status as non-conforming uses per state law. Rather, the proposed amendment only applies to any new facilities proposed after the ordinance was posted.

Finally, the proposed amendments may better position the City to appropriately respond to the forthcoming findings and recommendations of the Commission to Study the Effect of Recent Changes Made to Charitable Gaming Law, which was enacted by NH RSA 284:6-c, as well as potential legislation which may result therefrom.

Discussion:

1. Article 28-10-4 of the Zoning Ordinance establishes criteria for Planning Board Review of Proposed Amendments. The same Article stipulates that the Planning Board shall provide to the City Council a report on each proposed ordinance amendment which is referred to the Board by the City Council. The report of the Planning Board shall include the Board's findings and recommendations on the following:

a) The consistency of the proposed amendment with the Master Plan:

Discussion: There are no mentions of casinos or charitable gaming facilities in the 2008 "2030" Master Plan.

Given the relative "newness" of charitable gaming being legalized in New Hampshire, it is not surprising that none of the City's master plans/studies contemplate these uses. Without specific guidance from long range planning documents, staff suggests that the best approach to determining the proposed amendments' consistency with the Master Plan would be an examination of Section II: "A Vision for Concord" from the 2008 Master Plan.

The relevant portions of the "Vision for Concord" are comprised of the following statements:

- *Concord maintains its essential character that is valued by its residents while accommodating growth and development in a way that maintains and is consistent with that essential character;*
- *New development maintains and reinforces the historical pattern of land use and development in Concord;*
- *Concord has a vibrant, growing economy that provides both jobs and goods and services to residents of the City and the larger region; and*
- *The City's residents and businesses continue to be adequately served by municipal facilities and services, as well as public utilities.*

Broadly speaking, the proposed amendments would be consistent with these vision statements, as the ordinance language would limit proliferation of gaming facilities by limiting them to being accessory uses in Zoning Districts that are established in the core urbanized areas of the city, minimizing the impact on public services and infrastructure. By allowing accessory gaming uses and not prohibiting them entirely, the City is attempting to strike a balance between the charitable fundraising these facilities provide for local organizations while keeping them at a scale that should not have any significant negative impacts on public safety and municipal services.

Lastly, these amendments are intended to be a preliminary step in the overall regulation of charitable gaming facilities. Staff believes that it is appropriate to adopt these proposed amendments as an interim step, and that following the completion of an updated Master Plan and resumption of an effort to fully revamp the Zoning Ordinance would be the appropriate time to develop fully researched and appropriate regulatory mechanisms for these types of facilities as principal uses (if deemed appropriate).

b) *The consistency of the proposed amendment with other plans, studies, or technical reports prepared by or for the Board and the City;*

Discussion: While there are multiple plan studies which pertain to the City's development beyond the City's 2008 "2030" Master Plan (including the 1997 Downtown Master Plan, 2020 Vision Plan, 2005 Economic Development Master Plan, and the 2005 Opportunity Corridor Master Plan), there are no mentions of casinos or charitable gaming facilities in any of these documents.

c) *The effect of the proposed amendment on the City's municipal services, capital facilities, and planned facilities as described in the Capital Improvements Program;*

Discussion: The proposed amendments will likely have little or no impact on these items, as the limitation of charitable gaming to accessory use in limited zoning districts is likely to take place at existing locations resulting in no additional construction.

There may be some additional staff time in Code Administration relative to permitting/licensing of the temporary events, but this is likely offset by what the impacts would be on staff time and regulatory review for new facilities (principal uses) that would no longer be permitted under the proposed ordinance language.

d) *The effect of the proposed amendment on the natural, environmental, and historic resources of the City;*

Discussion: Staff anticipates, as currently proposed, the proposed amendments would not result in any measurable impacts on any of these items. By only allowing charitable gaming as an accessory use, it is unlikely that any new structural improvements would be made at a property to accommodate 10 potential gaming events per year.

e) *The effect of the proposed amendment on neighborhoods, including the extent to which nonconformities will be created or eliminated;*

Discussion: Staff does not anticipate that the proposed amendment will result in any significant impact on residential neighborhoods, given the proposed districts the limited nature of both accessory uses and the limitation on number of events that can take place.

As mentioned in the background section of this memo, the proposed amendments will result in the creation of 2 nonconformities. The first non-conforming use would be the

Concord Casino at 67 South Main Street (currently closed due to licensure issues with the previous operator), and the second is the yet to be constructed facility on Break O' Day Drive (conditionally approved and subject to ongoing litigation).

f) The effect of the proposed amendment on the City's economy and fiscal resources;

Discussion: The proposed amendment will have minimal impact on the City's fiscal resources, given the limiting effect of the amendments on the potential gaming uses. The allowance of accessory use, however, will continue to allow for a means of charitable organizations to utilize the statutory authority to hold limited events to benefit their causes.

g) The recommendation of the Planning Board relative to whether the proposed amendment should be adopted or rejected, and any recommendations for conditions of adoption or modifications to the proposed amendment.

Discussion: Staff recommends that the Board recommend the proposed amendments, as revised by staff and presented as part of this report.

The amendments will provide for an interim regulatory process which allows for local charities to fundraise (under the requirements of state law) and also allows the City to prevent any additional larger free-standing facilities (as a principal use of land) until the completion of an updated Master Plan that provides appropriate direction for the community and the guidance to fully develop a comprehensive regulatory package to appropriately regulate casinos and charitable gaming facilities as principal uses of land.