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Uniform Land Use Review Procedure (ULURP) Application

GAMING FACILITY TEXT AMENDMENT – N240179ZRY

IN THE MATTER OF an application submitted by the NYC Department of City Planning to allow gaming facilities as a permitted use in certain commercial districts (Section 32-10) and manufacturing districts (Section 42-10) in the Zoning Resolution. This modification would allow a gaming facility licensed by the State and developed through a new State-defined siting process to be developed without regard to any potential conflict with the Zoning Resolution.

CITYWIDE TEXT AMENDMENT

RECOMMENDATION

☐ APPROVE
☒ APPROVE WITH MODIFICATIONS/CONDITIONS
☐ DISAPPROVE
☐ DISAPPROVE WITH MODIFICATIONS/CONDITIONS

RECOMMENDATION FOR: GAMING FACILITY TEXT AMENDMENT – N240179ZRY

In April 2022, New York State Legislators voted to allow up to three casino licenses in downstate New York, which includes New York City, Long Island, and Westchester. In January 2023, the New York State Gaming Facility Location Board (the Board) released a Request for Applications calling for proposals to build a casino with a minimum capital investment of $500 million. The Board received nine applications for downstate casinos, including one in Coney Island, Brooklyn. Each proposal will be evaluated by their own Community Advisory Committee (CAC), and the CACs for New York City proposals will consist of six members, one each appointed by the governor, mayor, applicable state senator, applicable state assemblymember, applicable borough president, and applicable city councilmember. The CACs will hold public hearings, solicit written comments, and will issue a finding, by a two-thirds vote, approving or disapproving the proposal. If approved, the proposal will be referred to the Board, who will select up the three licenses for downstate casinos.

The proposed zoning text amendment consists of four components. The amendment:

- Adds the State-defined term “gaming facility” to the Zoning Resolution, limited to the three downstate licenses approved by the State Legislature in 2022.
- Places gaming facilities in Use Group 8 – Recreation, entertainment, and assembly spaces, and lists it as a permitted use in C4-C8 districts and M1-M3 districts.

- Declares that gaming facilities may include both gaming facilities as well as "any other non-gaming uses related to gaming areas including, but not limited to, transient hotels, eating or drinking establishments, as well as other amenities."
- Establishes that any gaming facility that is granted a license by the Gaming Commission shall be considered compliant with the Zoning Resolution – in other words, waiving ULURP in favor of conducting all public and environmental review through the CAC process and State-led environmental review.

The Department of City Planning (DCP) has stated that if this zoning text amendment were not to be approved, the alternative course of action would be that all nine proposals would have to complete ULURP in order for their respective CAC processes to begin. DCP argues that it would be prohibitively inefficient and a burden on DCP staff to undertake nine separate environmental reviews and potentially substantial actions, such as zoning map changes or street de-mappings, when it is unclear how many proposals will be approved by CACs and ultimately only three licenses will be granted.

This zoning text amendment is unusual and speaks to the difficulty of making City and State-defined approval processes work in concert. The core question at hand in this application is procedural: when and how should ULURP factor into the State-defined approval process? However, because there is only one proposal currently submitted in Brooklyn, the Office of the Brooklyn Borough President is focused on the Brooklyn proposal, in which Thor Equities, with partners Saratoga Casino Holdings and the Chickasaw Nation, proposes a $3 billion casino project to be located at Surf and Stillwell Avenues adjacent to the Coney Island Boardwalk. The proposal includes the casino, as well as a hotel and convention center and a substantial retail and food/beverage component, with the developer promising a "community-friendly" venue that provides year-round entertainment and local jobs for the Coney Island community.

The Borough President held two community forums in Community District 13 on March 6, 2023, to gather feedback on a potential casino in Coney Island. More than 350 people participated in the two sessions, and the Borough President's Office received nearly 500 responses total to the three questions posed during the sessions. The full feedback report is available on the Borough President's website.

Borough President Reynoso held a public hearing on this zoning text amendment on January 16, 2024. Three members of the public testified in favor of this zoning text amendment, all citing the potential jobs that could come with a new gaming facility. Additionally, five members of the public submitted written testimony in favor of this application. All testimony in favor of this application used testimony as a venue to voice support for a specific casino project rather than speaking to the question of how much public review should occur through ULURP or the CAC process. This recommendation addresses the zoning text amendment, not a specific casino proposal. Borough President Reynoso will weigh in on the Coney Island proposal through the CAC process and any subsequent specific ULURP actions.

Community Board Position

As of February 5, the following Brooklyn Community Boards have taken action on this application:

- Community Board 1 held a public hearing on January 9, 2024
- Community Board 11 held a public hearing on January 9, 2024
- Community Board 13 provided an unfavorable vote on December 27, 2023

Approval Rationale

Borough President Reynoso understands that in order for the State to allow the CAC evaluation process to begin, gaming facilities need to be an approved use in the Zoning Resolution. The Borough President is committed to participating in the CAC process and wants to facilitate the

beginning of that process expeditiously. To that end, the Borough President conditionally supports the most minimal actions necessary to initiate the formation of CACs: adding gaming facilities as a defined use in the Zoning Resolution. However, the Borough President has significant concerns about the additional three components of this zoning text amendment.

First, Borough President Reynoso opposes listing gaming facilities as a permitted use in manufacturing districts as a matter of principle and precedent. As mentioned in his City of Yes for Economic Opportunity recommendations, the Borough President is concerned about the loss of manufacturing land across the city. Like nightlife, gaming facilities and their associated non-gaming structures such as hotels and restaurants introduce conflicts with manufacturing uses and have no special requirements that merit inclusion in a manufacturing district.

As such, the Borough President opposes the inclusion of M districts in the new proposed use, and requests that they be removed. The Borough President acknowledges that none of the nine pending applications are located within a manufacturing district and that any future licenses would require another amendment to the Zoning Resolution. Nonetheless, this zoning text amendment represents the first entry of "gaming facility" in the Zoning Resolution and the Borough President wants to reiterate that manufacturing districts are off limits for these types of uses.

Second, Borough President Reynoso believes provisions for other uses should be removed from the text. The State definition of gaming facilities referenced in the text amendment already includes non-gaming uses related to the gaming area. If the intent is to establish that gaming facilities as understood by the State are a permitted use in commercial districts, then the text that references the Racing, Pari-mutuel Wagering and Breeding Law should suffice. Borough President Reynoso believes that uses such as hotels, restaurants, and off-street parking connected to a casino fit the textbook definition of an accessory use: incidental to and customarily found in connection with the principal use. Borough President Reynoso requests that DCP consider such non-gaming facilities as accessory uses during any follow-up ULURP actions and the appropriate level of scrutiny and review be conducted.

Finally, Borough President Reynoso opposes waiving ULURP and consolidating all technical, environmental, and public review into the CAC process. The Borough President believes that the CAC process is a public forum for the public to debate the merits of a casino in a particular neighborhood. However, he does not believe this process is intended or fit to serve as the vehicle for conducting technical and environmental review for issues such as building bulk, appropriateness of off-street parking structures, compliance with citywide planning efforts such as the Waterfront Revitalization Plan, or the analysis conducted in the City Environmental Quality Review (CEQR), to name a few. The Borough President plans to participate in the CAC process but is concerned about the lack of public input and standardization of processes across CACs. This late into the process, several issues remain unclear: how many hearings will each CAC be required to hold, how long will CACs solicit feedback, and is there a minimum requirement for public feedback and participation?

Borough President Reynoso agrees with DCP that completing nine separate ULURP processes prior to the CAC process is overly burdensome, but he is unconvinced that the proposed text amendment is the only alternative course of action. Instead, the Borough President believes that only the proposals that receive CAC approval should undergo ULURP. In the Request for Applications (RFA) for this round of licenses, the State Gaming Facility Location Board stated that they will establish a timeline providing all applicants a "reasonable amount of time to obtain zoning approval for their proposed projects" before being considered by the Board. DCP has stated that several proposals – including the Thor Equities application at Coney Island – will require follow-up ULURP actions even if this zoning text amendment were passed as proposed. The reasonable timeline promised by the Board should include sufficient time for any of these major development proposals to undergo ULURP only after receiving CAC approval.

In summary, Borough President Reynoso recommends only approving the first component of this text amendment, adding gaming facilities to Use Group 8. He recommends removing gaming facilities as a permitted use in M1, M2, and M3 districts by removing all proposed amendments to Section 42-10, as there is no land use rationale for including gaming facilities in Use Group 8 and would provide no material benefit other than demonstrating consistency across this Use Group. The Borough President requests that the inclusion of non-gaming facilities and waiving of ULURP as articulated in second and third paragraphs in Sections 32-183(b) be removed. The Borough President has attached an edited version of the draft zoning text with these changes reflected by red strikethrough text.

Recommendation

Be it resolved that the Brooklyn Borough President, pursuant to Sections 197-c of the New York City Charter, recommends that the City Planning Commission and City Council approve this application with the following modifications:

1. Manufacturing districts (amendments to Section 42-10 of the Zoning Resolution) be removed from this application.
2. Other associated uses be removed (Section 32-181(b), second paragraph) from the text amendment.
3. The waiver of the ULURP process (Section 32-181(b), third paragraph) be removed from the text amendment.

Be it Further Resolved
The Department of City Planning clarify their role in the CAC process and the manner they anticipate providing technical and environmental review for each application.

February 1, 2024

BROOKLYN BOROUGH PRESIDENT

DATE

Gaming Facilities Text Amendment

Matter underlined is new, to be added;
Matter ~~struck out~~ is to be deleted;
Matter within # # is defined in Section 12-10;
* * * indicates where unchanged text appears in the Zoning Resolution.

ARTICLE III
COMMERCIAL DISTRICT REGULATIONS

Chapter 2
Use Regulations

* * *

32-10
USE ALLOWANCES

* * *

32-18
Use Group 8 – Recreation, Entertainment and Assembly Spaces

C1 C2 C3 C4 C5 C6 C7 C8

Use Group 8 consists of #uses# that provide recreation and entertainment opportunities, as well as other places of assembly. The provisions regulating #uses# classified in this Use Group are set forth as follows:

(a) Section 32-181 (Use Group 8 – general use allowances) which includes the compilation of #uses# in the Use Group table;

(b) Section 32-182 (Use Group 8 – uses subject to size restrictions) for size restrictions that apply to certain #uses#, as denoted with an "S" in the Use Group table;

(c) Section 32-183 (Use Group 8 – uses subject to additional conditions) for additional conditions that apply to certain #uses#, as denoted with a "P" in the Use Group table;

(d) Section 32-184 (Use Group 8 – uses subject to open use allowances) for open #use# allowances that apply to certain #uses#, as denoted with a "U" in the Use Group table;

(e) Section 32-185 (Use Group 8 – uses permitted by special permit) for #uses# permitted by special permit of the Board of Standards and Appeals or the City Planning Commission, as denoted with "○" in the Use Group table; and

(f) Section 32-186 (Use Group 8 – additional provisions for parking requirement category) for #uses# with more than one parking requirement category or other applicable parking provisions, as denoted with "*" in the Use Group table.

The provisions of Sections 32-182, 32-183 and 32-184, except as otherwise specified, may be modified by special permit of the Board of Standards and Appeals, in accordance with Section 73-181 (Recreation, entertainment and assembly space uses), or by special permit of the City Planning Commission, in accordance with Section 74-181 (Recreation, entertainment and assembly space uses).

32-181
Use Group 8 – general use allowances

The following table includes #uses# classified as Use Group 8 and sets forth their allowances by #Commercial District#. Notations found in the table are further described in Section 32-10 (USE ALLOWANCES).

USE GROUP 8 – RECREATION, ENTERTAINMENT AND ASSEMBLY SPACES

● = Permitted ♦ = Permitted with limitations ○ = Special permit required
– = Not permitted
S = Size restriction P = Additional conditions U = Open use allowances

Uses	C1	C2	C3	C4	C5	C6	C7	C8	PRC
Amusement and Recreation Facilities									
#Amusement or recreation facilities#	● S	● S	○	●	●	●	● U	● U	*
#Outdoor amusement parks#	–	–	–	–	–	–	● S U	● S U	C
Art Galleries and Studios									
Art galleries	●	●	–	●	●	●	●	●	*
Art, music, dancing or theatrical studios	●	●	–	●	●	●	●	●	A2
Production or entertainment studios	● S	● S	–	●	●	●	●	●	B1

Entertainment and Sporting Venues									
Arenas or auditoriums	–	–	–	● S	● S	● S	● S	● S	B1
Drive-in theaters	–	–	–	–	–	–	○	○	N/A
Racetracks	–	–	–	–	–	–	–	○	B1
Stadiums	–	–	–	● S U	● S U	● S U	● S U	● S U	B1
Theaters	● P	● P	–	● P	● P	● P	●	● P	B1
Other Assembly Spaces									
Banquet, function or reception halls	●	●	–	●	●	●	●	●	B1
Gaming facilities	–	–	–	● P	● P	● P	● P	● P	B1
Historical exhibits	●	●	–	●	●	●	●	●	B1
Meeting halls	●	●	–	●	●	●	●	●	B1
Non-commercial clubs	●	●	●	●	●	●	●	●	*
Observation decks	● U	● U	–	● U	● U	● U	● U	● U	B1
Outdoor day camps	○	○	○	○	○	○	○	● U	G
Publicly accessible spaces	● U	● U	–	● U	● U	● U	● U	● U	N/A
Riding academies or stables	○	○	○	○	○	○	○	● P U	A4
Trade expositions	–	–	–	● S	● S	● S	● S	● S	B1

* * *

32-183
Use Group 8 – uses subject to additional conditions

For #uses# denoted with a "P" in Section 32-181 (Use Group 8 – general use allowances), the following provisions shall apply:

(a) Motion picture theaters, in a new or existing #building# in C1-5, C1-6, C1-7, C1-8, C1-9, C2-5, C2-6, C2-7, C2-8, C4-5, C4-6, C4-7, C5, C6 and C8-4 Districts, shall provide a minimum of four square feet of waiting area within the #zoning lot# for each seat in such theater in order to prevent obstruction of #street# areas. The required waiting space shall be either in an enclosed lobby or open area that is covered or protected during inclement weather and shall not include space occupied by stairs or space within 10 feet of a refreshment stand or of an entrance to a public toilet. Such requirements shall not apply to any additional motion picture theater created by the subdivision of an existing motion picture theater.

(b) Gaming facilities shall be limited to those operating under a gaming license issued by the New York State Gaming Commission pursuant to Section 1306 of the Racing, Pari-Mutuel Wagering and Breeding Law, as such law existed on [date of text amendment referral]. No other gaming facilities shall be permitted.

~~Gaming facilities may include gaming areas and any other non-gaming #uses# related to the gaming areas including, but not limited to, #transient hotels#, eating or drinking establishments, as well as other amenities.~~

~~Gaming facilities, as approved by the Gaming Commission at the time of their initial licensure, shall be deemed to have satisfied all other applicable regulations of this Resolution.~~

(~~b~~c) Riding academies or stables in C8 Districts shall conform to the performance standards for M1 Districts as set forth in Section 42-40 (PERFORMANCE STANDARDS) through 42-48 (Performance Standards Regulating Humidity, Heat or Glare), inclusive.

* * *

ARTICLE IV
MANUFACTURING DISTRICT REGULATIONS

Chapter 2
Use Regulations

* * *

42-10
USE ALLOWANCES

* * *

42-18
Use Group 8 – Recreation, Entertainment and Assembly Spaces

M1 M2 M3

Use Group 8 consists of #uses# that provide recreation and entertainment opportunities, as well as other places of assembly. The provisions regulating #uses# classified in this Use Group are set forth as follows:

(a) Section 42-181 (Use Group 8 – general use allowances) which includes the compilation of #uses# in the Use Group table;

(b) Section 42-182 (Use Group 8 – uses subject to size restrictions) for size restrictions that apply to certain #uses#, as denoted with an "S" in the Use Group table;

(c) Section 42-183 (Use Group 8 – uses subject to additional conditions) for additional conditions that apply to certain #uses#, as denoted with a "P" in the Use Group table;

(d) Section 42-184 (Use Group 8 – uses subject to open use allowances) for open #use# allowances that apply to certain #uses#, as denoted with a "U" in the Use Group table;

(e) Section 42-185 (Use Group 8 – uses permitted by special permit) for #uses# permitted by special permit of the City Planning Commission, as denoted with "○" in the Use Group table; and

(f) Section 42-186 (Use Group 8 – additional provisions for parking requirement category) for #uses# with more than one parking requirement category or other applicable parking provisions, as denoted with "*" in the Use Group table.

The provisions of Sections 42-182, 42-183 and 42-184, except as otherwise specified, may be modified by special permit of the Board of Standards and Appeals, in accordance with Section 73-181 (Recreation, entertainment and assembly space uses), or by special permit of the City Planning Commission, in accordance with Section 74-181 (Recreation, entertainment and assembly space uses).

42-181
Use Group 8 – general use allowances

The following table includes #uses# classified as Use Group 8 and sets forth their allowances by #Manufacturing District#. Notations found in the table are further described in Section 42-10 (USE ALLOWANCES).

USE GROUP 8 – RECREATION, ENTERTAINMENT AND ASSEMBLY SPACES

● = Permitted ♦ = Permitted with limitations ○ = Special permit required
– = Not permitted
S = Size restriction P = Additional conditions U = Open use allowances

Uses	M1	M2	M3	PRC
Amusement and Recreation Facilities				
#Amusement or recreation facilities#	● U	● U	● U	*
#Outdoor amusement parks#	● S U	● S U	● S U	C
Art Galleries and Studios				
Art galleries	●	●	●	*
Art, music, dancing or theatrical studios	●	●	●	A2
Production or entertainment studios	●	●	●	B1
Entertainment and Sporting Venues				
Arenas or auditoriums	● S	● S	● S	B1
Drive-in theaters	○	○	○	N/A
Racetracks	○	○	○	B1
Stadiums	● S U	● S U	● S U	B1
Theaters	●	●	●	B1
Other Assembly Spaces				
Banquet, function or reception halls	●	–	–	B1
Gaming facilities	~~●~~ P	~~●~~ P	~~●~~ P	B1
Historical exhibits	●	●	●	B1
Meeting halls	●	●	●	B1
Non-commercial clubs	●	●	●	*

Observation decks	● U	● U	● U	B1
Outdoor day camps	● U	● U	● U	G
Publicly accessible spaces	● U	● U	● U	N/A
Riding academies or stables	● P U	● P U	● P U	A4
Trade expositions	● S	● S	● S	B1

* * *

42-183
Use Group 8 – uses subject to additional conditions

~~For #uses# denoted with a "P" in Section 42-181 (Use Group 8 – general use allowances), the provisions of this Section shall apply.~~

For #uses# denoted with a "P" in Section 42-181 (Use Group 8 – general use allowances), the following provisions shall apply:

(a) ~~Gaming facilities shall be limited to those operating under a gaming license issued by the New York State Gaming Commission pursuant to Section 1306 of the Racing, Pari-Mutuel Wagering and Breeding Law, as such law existed on [date of text amendment referral]. No other gaming facilities shall be permitted.~~

~~Gaming facilities may include gaming areas and any other non-gaming #uses# related to the gaming areas including, but not limited to, #transient hotels#, eating or drinking establishments, as well as other amenities.~~

~~Gaming facilities, as approved by the Gaming Commission at the time of their initial licensure, shall be deemed to have satisfied all other applicable regulations of this Resolution..~~

(b) In all #Manufacturing Districts#, riding academies or stables shall conform to the performance standards set forth in Sections 42-40 (PERFORMANCE STANDARDS) through 42-48 (Performance Standards Regulating Humidity, Heat or Glare), inclusive.