



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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To: Ande Banks, City Manager
From: Adam Fletcher, Director, Department of Community Development and Harrisonburg Planning Commission
Date: June 11, 2024 (Regular Meeting)
Re: Zoning Ordinance Amendments – To Define and Regulate the Location of Skill Games

Summary:

Zoning Ordinance Amendment	Sections 10-3-24, 10-3-25, 10-3-25.1, 10-3-84, 10-3-87, 10-3-90, 10-3-93, 10-3-97, and 10-3-99
Purpose	Amend several sections of the Zoning Ordinance that would, among other things, define “skill game” and “skill game location” and prohibit the location of these uses on property within 1,000 feet of any property containing a public or private school or child day care center.
Applicant	City of Harrisonburg
Staff Recommendation	Approval
Planning Commission Recommendation	May 8, 2024 (Public Hearing) Approval (6-0)
City Council	June 11, 2024 (First Reading/Public Hearing) Anticipated June 25, 2024 (Second Reading)

Background:

In 2020, the Virginia General Assembly criminalized most playing and operating of “skill games,” with an effective date of July 1, 2021. On December 6, 2021, a Virginia circuit court issued an injunction ceasing enforcement of that law. On October 13, 2023, the Supreme Court of Virginia vacated that injunction. At this time, the operation and playing of skill games in Virginia is generally unlawful.

During its 2024 Regular Session, the General Assembly passed SB 212, which addresses skill games. Governor Youngkin proposed amendments, which the General Assembly did not accept. For more information, visit Virginia’s Legislative Information System (LIS) – 2024 Session - SB 212 Virginia Small Business Economic Development Act; established at <https://lis.virginia.gov/cgi-bin/legp604.exe?241+sum+SB212>.

Key Issues:

The City’s Zoning Ordinance (ZO) does not directly address skill games, which were previously treated as accessory to otherwise permitted uses. City staff is proposing to amend the Zoning Ordinance (ZO) Sections 10-3-24, 10-3-25, 10-3-25.1, 10-3-84, 10-3-87, 10-3-90, 10-3-93, 10-3-97, and 10-3-99. The

proposed amendments would define “skill game” and “skill game location” and establish that a skill game location is a principal use allowed by right in the B-1 and the B-2 districts while also allowing them with an approved special use permit (SUP) in the M-1, General Industrial District. In all three districts, skill game locations would be prohibited on property within 1,000 feet of any property containing a public or private school or child day care center. The proposed amendments would also create off-street vehicle and bicycle parking requirements for the use. (NOTE: In a separate staff report, staff is simultaneously proposing similar ZO amendments associated with “tobacco, smoke, or vape shops.” Refer to the other staff report for specifics associated with those amendments.)

If SB 212 is enacted into law, then beginning July 1, 2024, skill games would become legal in many locations. The schedule of these proposed ZO amendments is intended to allow Planning Commission to offer its recommendation and provide City Council the option of adopting amendments to the ZO addressing skill game locations prior to the effective date of any potential state legislation. If City Council adopts amendments at its second reading on June 25, 2024, it could prevent skill game locations from being established on properties that are within 1,000 feet of a public or private school or child day care center.

The entirety of the proposed ZO amendments are provided within the attached document titled “Proposed Zoning Ordinance Amendments Regarding Tobacco, Smoke, or Vape Shops and Skill Game Locations.” For ease of reference, the proposed definitions for “skill game” and “skill game location” are shown below:

Skill game (including skill game machine): An electronic, computerized, or mechanical contrivance, terminal, machine, or other device that requires the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game, the outcome of which is determined by the predominant skill of the player and that may deliver or entitle the person playing or operating the device to receive cash or cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash or cash equivalents whether the payoff is made automatically from the device or manually.

Skill game location: Any establishment that provides for the use of any number of skill games or skill game machines.

If the amendments are approved as currently drafted, should the State Code be amended to legalize skill games, then skill game locations could operate by right on property zoned B-1 or B-2, or with an SUP on M-1 property, but only if the property is not located within 1,000 feet of a public or private school (excluding colleges and universities) or a child day care center. Because skill games are currently not permitted, if the amendments are approved as presented, properties that might have previously operated skill games, might not be permitted to be a skill game location. Again, it will depend on the site’s vicinity to a public or private school or child day care center.

Note that child day care centers differ from minor and major family day homes. The ZO defines “child day care center” as:

A regularly operating service arrangement for two (2) or more children under the age of thirteen (13), where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision and well-being of a child for less

than a twenty-four-hour period, in a facility that is not the residence of the provider or of any of the children in care. A nursery school shall be considered to be a child day care center.

Examples of child day care centers include the Harrisonburg-Rockingham Child Day Care Center and Minnieland Academy at Harrisonburg. Note that the distance requirement in the proposed ordinance is not associated with locations of minor and major family day homes, which are often located in residential districts and within a home of the provider or of any of the children, who receive care.

Included in the packet of information for the proposed ZO amendment is a map titled Potential Skill Game Locations and Tobacco, Smoke, or Vape Shops. The map demonstrates parcels that, if the amendments are approved, *might* be able to contain skill game locations. The map is likely not 100 percent accurate as it might not have incorporated all known public or private schools or child day care centers. When a new skill game location is proposed to be located in the City, zoning staff would verify at that time that no public or private schools or child day care centers are located within 1,000 feet of the property. The map also demonstrates the addresses of properties that skill game owners—Queen of Virginia and Pace-O-Matic—reported for personal property tax purposes. As shown on the map, if the amendments are approved, if a parcel is identified as B-1 (colored red), B-2 (colored orange), or M-1 (colored brown), then these sites might be able to contain skill game locations either by right or as required with an approved SUP.

On the map, if a blue dot, which represents a site that previously contained skill games, is shown on a red or orange parcel, that site might be able to operate a skill game location—as legally allowed by the State. If the blue dot is located in a gray-colored area, then, if the ZO amendments are approved, that site might not be able to operate a skill game location. Remember that since skill games are currently illegal, there would be no nonconforming skill game locations created if the proposed ZO amendments are approved on the schedule discussed above. Note that it is possible that there are other locations staff is unaware of that operated skill games.

Staff recommends approving the ZO amendments.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

- (a) Approve the Ordinance amendments;
- (b) Approve the Ordinance amendments with modifications; or
- (c) Deny the Ordinance amendments.

Community Engagement:

As required, the request was published in the local newspaper twice advertising for Planning Commission's public hearing and twice advertising for City Council's public hearing. The advertisement was published as shown below:

Zoning Ordinance Amendment – To add Skill Game Locations and Tobacco, Smoke or Vape Shop Uses

Public hearing to consider amending the Zoning Ordinance by creating new definitions and uses called "Skill game (including skill game machine)", "Skill game location", and "Tobacco, smoke, or vape shop", to create off-street vehicle and bicycle parking requirements, and to establish location requirements for the new uses. It is proposed that neither skill game locations nor tobacco, smoke, or vape shops shall be located on or otherwise operate on any property within 1,000 feet of any property containing a public or private school or child day care center.

In addition, a notice was provided on the City's website at <https://www.harrisonburgva.gov/public-hearings>.

Although not required, prior to both the Planning Commission and City Council public hearings, staff sent notices to each property owner and physical address of properties that skill game owners Queen of Virginia and Pace-O-Matic reported for personal property tax purposes. Essentially, these are the sites identified as a blue dot on the map provided in the packet. (Note: It is possible that there are other locations staff is unaware of that operated skill games that did not receive a notice.)

Recommendation:

Staff recommends alternative (a) approval of the Zoning Ordinance amendments.

Attachments:

- Extract from Planning Commission
- Proposed Zoning Ordinance Amendments Regarding Tobacco, Smoke or Vape Shops and Skill Game Locations
- Map Titled: Potential Skill Game Locations and Tobacco, Smoke, or Vape Shops
- Copy of Notice of Public Hearing sent to the physical address of, and property owners of, known skill game locations for City Council Meeting
- Copy of Notice of Public Hearing sent to the physical address of, and property owners of, known skill game locations for

Review:

Planning Commission recommended approval (6-0) of the Zoning Ordinance amendments. (Vice Mayor Dent was absent.)