

AN ORDINANCE TO AMEND CHAPTER 40.1 OF THE CODE OF THE CITY OF PORTSMOUTH, VIRGINIA (2006) PERTAINING TO ZONING FOR THE PURPOSE OF ADDING “CASINO GAMING ESTABLISHMENT” TO SECTION 40.1-8.3 (DEFINITIONS), MODIFYING TABLE 40.1-4.1(A)(USE TABLE) TO PERMIT A CASINO GAMING ESTABLISHMENT BY USE PERMIT, AND ESTABLISHING A NEW SECTION 40.1-3.7(D) TO AUTHORIZE THE CREATION OF AN ENTERTAINMENT OVERLAY DISTRICT.

BE IT ORDAINED by the Council of the City of Portsmouth, Virginia:

1. That Chapter 40.1 of the Code of the City of Portsmouth, Virginia (2006) be amended by the adoption of the amendments shown on Exhibit A hereto and made a part hereof.
2. That this Ordinance shall take effect on the date of its adoption.

ADOPTED by the Council of the City of Portsmouth, Virginia at a meeting held on September 22, 2020.

Teste:

City Clerk

EXHIBIT A

INTERPRETATION: In the amendments listed below, instructions are provided in *underlined italics*. Where only a portion of a section or a table is to be modified, the language to be deleted is indicated with a ~~double strikethrough~~ and the language to be added is indicated by double underlining. Where an entire existing section or table is to be deleted, the deletion is noted in the instructions and no strikethrough is provided. Where an entire new section or table is to be added, the addition is noted in the instructions and the new section or table is shown in plain text, without underlining.

AMENDMENT #: 1

SECTION 40.1-8.3

Section 40.1-8.3 (“Definitions”) is hereby modified by adding the defined term “Casino Gaming Establishment” as shown below between the definition of “Car Wash or Auto Detailing” and the definition of “Casualty Damage”. Section 40.1-8.3 is not otherwise amended.

SECTION 40.1-8.3 DEFINITIONS

...

CASINO GAMING ESTABLISHMENT

Casino gaming establishment means the premises upon which lawful casino gaming is authorized and licensed as provided in Chapter 41 of Title 58.1 of the Code of Virginia (§ 58.1-4100 *et seq.*). "Casino gaming establishment" does not include a riverboat or similar vessel.

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AMENDMENT #2:

Table 40.1-4.1(A) (“Use Table”) is hereby modified by adding “Casino Gaming Establishment” between “Animal Care” and “Conference and Training Centers” in the “Commercial Use Classification” section of the Table. Table 40.1-4.1(A) is not otherwise amended.

TABLE 40.1-4.1(A): USE TABLE

P = PERMITTED USE U = USE PERMIT REQUIRED A = ALLOWED BLANK CELL OR SLASH = PROHIBITED USE

USE CATEGORY	USE TYPE	ZONING DISTRICTS														ADDITIONAL REQUIREMENTS			
		RESIDENTIAL [1]				BUSINESS					ACTIVITY CENTER			SPECIAL [2]					
		N R	G R	U R	U R H	N M U	G M U	M U H	I L	I N	N A C	C A C	R A C	H R	H L O		H L B	P G	W F
...																			
COMMERCIAL USE CLASSIFICATION																			
...																			
Animal Care	Animal grooming	/	/	/	/	P	P	P	P	P	A	A	A	/	/	/	/	/	40.1-4.3(C)(3)
	Animal shelter	/	/	/	/	U	U	P	P	P	/	A	A	/	/	/	/	/	
	Kennel, indoor	/	/	U	U	P	P	P	P	P	A	A	A	/	/	/	/	/	
	Kennel, outdoor	/	/	/	/	U	U	U	P	P	/	A	A	/	/	/	/	/	
	Veterinary clinic	/	/	U	U	P	P	P	P	P	A	A	A	/	/	/	/	/	
Casino Gaming Establishment	Casino Gaming Establishment	/	/	/	/	/	/	U*	/	/	/	/	/	/	/	/	/	/	*Must be within Entertainment Overlay District and authorized by local referendum as required by state law. 40.1-3.7(D).
Conference and Training Centers	Conference or training center	/	/	/	/	/	P	P	P	/	/	A	A	/	/	P	/	U	40.1-4.3(C)(4)
...																			

AMENDMENT #3:

Section 40.1-3.7 (Overlay Zoning Districts) is modified by adding a new Subsection 40.1-3.7(D) as shown below:

40.1-3.7 OVERLAY ZONING DISTRICTS

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(D) Entertainment Overlay District

(1) Definitions

For the purposes of this section, the following words and terms shall have the following respective meanings, except where the context clearly indicates a different meaning:

- (a) **"Board"** means the Virginia Lottery Board established by Chapter 41 of the Code of Virginia.
 - (b) **"Casino gaming"** or "game" means baccarat, blackjack, twenty-one, poker, craps, dice, slot machines, roulette wheels, Klondike tables, punchboards, faro layouts, numbers tickets, push cards, jar tickets, or pull tabs and any other activity that is authorized by the Board as a wagering game or device under Chapter 41 (§ 58.1-4100 *et seq.*). "Casino gaming" or "game" includes on-premises mobile casino gaming.
 - (c) **"Casino gaming establishment"** has the meaning set forth in Section 40.1-8.3.
 - (d) **"Casino gaming operator"** means any person issued a license by the Board to operate a casino gaming establishment.
 - (e) **"Department"** means the independent agency responsible for the administration of the Virginia Lottery created in Chapter 41 of the Code of Virginia.
 - (f) **"Director"** means the Director of the Virginia Lottery.
 - (g) **"Gaming operation"** means the conduct of authorized casino gaming within a casino gaming establishment.
 - (h) **"On-premises mobile casino gaming"** means casino gaming offered by a casino gaming operator at a casino gaming establishment using a computer network of both federal and nonfederal interoperable packet-switched data networks through which the casino gaming operator may offer casino gaming to individuals who have established an on-premises mobile casino gaming account with the casino gaming operator and who are physically present on the premises of the casino gaming establishment, as authorized by regulations promulgated by the Board.
 - (i) **"Lottery"** or "state lottery" means the lottery or lotteries established and operated pursuant to Chapter 41 of the Code of Virginia.
 - (j) **"Sports betting"** means placing wagers on sporting events as such activity is regulated by the Board. "Sports betting" includes placing bets in-person and online sports betting on events as authorized by the Board.
 - (k) **"Supplier"** means any person that sells or leases, or contracts to sell or lease, any casino gaming equipment, devices, or supplies, or provides any management services, to a licensee.
 - (l) **"Ticket courier service"** means a service operated for the purpose of purchasing Lottery tickets on behalf of individuals located within or outside the Commonwealth and delivering or transmitting such tickets, or electronic images thereof, to such individuals as a business-for-profit delivery service.
 - (m) **"Voluntary exclusion program"** means a program established by the Board that allows individuals to voluntarily exclude themselves from the gaming areas of facilities under the jurisdiction of the Board by placing their name on a voluntary exclusion list and following the procedures set forth by the Board.
- (2) **Purpose**
- (a) An entertainment overlay district is intended to establish standards and conditions for the development and operation of an entertainment establishment and/or casino gaming establishment including accessory uses while protecting the public health,

safety, and general welfare by insuring they are compatible with existing and anticipated land uses (*Code of Virginia § 58.1-4101*).

- (b) Because of the special characteristics of an entertainment overlay district, in particular casino gaming establishments, development in this district will require flexibility to accommodate their unique needs, especially in terms of signage and exterior lighting that would not typically be permitted in other areas of the City.

(3) Applicability

- (a) An entertainment overlay district is an overlay district that is superimposed over the High Intensity Mixed-Use (MU-H) zoning district with the intent of supplementing generally applicable development regulations with additional development regulations that address special area- and use-specific conditions, features, or plans while maintaining the character and purposes of the underlying base MU-H zoning district.
- (b) The standards and requirements included in this overlay district apply to all development in an entertainment overlay district as identified.

(4) Procedure

- (a) An entertainment overlay district is established in accordance with the procedures and requirements for an amendment to the Official Zoning Map in accordance with *Sec. 40.1-2.3(A) Zoning Map Amendment (Rezoning) or Text Amendment*, and the standards in this section.
- (b) The following are requirements for an application to establish an entertainment overlay district.

(i) Overlay District Conceptual Master Plan

Development within an entertainment overlay district shall conform to the requirements of the City Council approved master plan. An entertainment overlay district master plan shall include:

- a. Statement of planning objectives for the district;
- b. District boundaries;
- c. Location and square footage of individual development areas, identified by land use(s) and/or development density or intensity;
- d. Conceptual architectural elevations of proposed entertainment establishment and/or casino gaming establishment footprints, setbacks, proposed heights, and lot coverage;
- e. Architectural form, materials, and other guidelines for proposed buildings;
- f. Parking and loading locations and quantity;
- g. Pedestrian and vehicular circulation systems;
- h. General location of all other on-site public facilities serving the development;
- i. Location, amount, and type of open space set-asides;
- j. Conceptual landscaping plan, including landscaping, street trees, appropriate buffers, and screening;
- k. Conceptual signage plan including signage descriptions, sizes, locations, and examples;
- l. Conceptual exterior lighting plan;
- m. Traffic impact analysis (TIA) prepared in accordance with *Sec. 40.1-5.12 Transportation Analysis* and with *Code of Virginia § 15.2-2222*, if required;

- n. Development phasing plan in accordance with *Sec. 40.1-3.7(D)(5)*;
- o. Comprehensive list and justification of any proposed modifications to the applicable development and dimensional standards of the Zoning Ordinance.

(5) Development Phasing Plan

If development in an entertainment overlay district is proposed to be phased, the entertainment overlay master plan shall include a development phasing plan with specified anticipated uses and timeframes that identifies the general sequence or phases in which the district is proposed to be developed, including:

- (a) Timing, process, and procedure of casino gaming establishment, hotel, convention center, entertainment venues, parking, parking structure, residential, and other nonresidential development; and
- (b) Timing, process, and procedure of development of infrastructure (public and private) and open space.

(6) General Standards for all Entertainment Overlay Districts

(a) Zoning District

- (i) An entertainment overlay district may only be approved with a base High Intensity Mixed-Use (MU-H) zoning district.
- (ii) Any casino gaming use must be within an entertainment overlay district.

(b) Minimum District Size

- (i) An entertainment overlay district shall be at least 25 acres in size.
- (ii) After an entertainment overlay district has been established, any additional land added to the district shall be:
 - a. Contiguous, which is defined as adjacent to or directly across any public street from the existing entertainment overlay district. For the purposes of this section, public street shall not include an interstate or similar street-type.
 - b. There is no minimum acreage or size requirement for area added to an existing entertainment overlay district.
 - c. Expansion of an existing entertainment overlay district shall follow the same process by which the entertainment overlay district was established.
 - d. Any area incorporated into an existing entertainment overlay district shall require an amendment to the adopted master plan.

(c) Density

- (i) The maximum density for residential development for the entertainment overlay district shall be 60 units per acre.
- (ii) As part of a Use Permit application outlined in *Sec.40.1-2.3(B)*, the applicant may request a higher maximum density for City Council approval.

(d) Dimensional Standards

- (i) The dimensional standards applicable in each development area of the entertainment overlay district shall be as required by the dimensional standards of *Sec. 40.1-3.4(D)*, *Business Base Zoning Districts – High Intensity Mixed-Use (MU-H) District* of the Zoning Ordinance, unless specified herein.
- (ii) The maximum building height in an entertainment overlay district shall be 200 feet.

- (iii) As part of a Use Permit application outlined in *Sec. 40.1-2.3(B)*, the applicant may request an increase in the maximum building height for City Council approval.
 - (iv) As part of a Use Permit application outlined in *Sec. 40.1-2.3(B)*, the applicant may request a reduction in building setbacks within the overlay district for City Council approval, except no reduction in setbacks is permitted along the perimeter of the entertainment overlay district.
- (e) Uses**
- (i) Uses within an entertainment overlay district shall be the same as the uses within the MU-H zoning district as identified in *Table 40.1-4.1(A), Use Table* with the exception of the following prohibited uses:
 - a. Manufactured home
 - b. Rooming or boarding house
 - c. Shelter
 - d. Group home
 - e. Halfway house
 - f. Correctional facility
 - g. Cemetery, columbarium, mausoleum
 - h. All uses in the Adult Uses Category
 - i. Flea market
 - j. Bed and breakfast inn
 - k. Self-service storage facility
 - l. All uses in the Heavy Vehicle Sales and Service Use Category
 - m. All uses in the Light Vehicle Sales and Service Use Category
 - n. All uses in the Industrial Use Classification
 - (ii) All applicable use-specific standards in *Sec. 40.1-4.3* shall continue to apply within the entertainment overlay district.
 - (iii) As part of a Use Permit process outlined in *Sec. 40.1-2.3(B)*, an applicant may request modifications to use-specific standards for City Council approval.
- (f) Development Standards**
- (i) All development in an entertainment overlay district shall comply with the development standards of *Sec. 40.1-5 Development Standards* unless permitted modifications are approved as provided herein.
 - (ii) Requests to modify the development standards in *Sec. 40.1-5.1 Off-Street Parking*, *Sec. 40.1-5.9 Exterior Lighting*, and *Sec. 40.1-5.11 Signage* are permitted as provided herein and shall be consistent with the intent of the entertainment overlay district.
 - (iii) **Off-Street Parking, Loading, and Circulation**
 - a. **Off-Street Parking**
 - i. For uses within a casino gaming establishment, such as casino gaming, restaurants, personal services, and retail, required off-street parking shall be provided at a ratio of not less than 0.75 parking spaces for each gaming position.
 - 1. Should a hotel or motel be incorporated within a casino gaming establishment, there shall be in addition not less than one (1) parking space for each hotel room.

2. Should a convention center be incorporated within a casino gaming establishment, there shall be in addition not less than one (1) parking space per 500 square feet of convention space.
 - ii. An applicant may request modification to the aforementioned parking standards, in accordance with section b. below.
 - iii. Other uses within an entertainment district overlay shall meet the parking requirements in accordance with *Sec. 40.1-5.1* unless modifications are approved pursuant to section **b.** below.
- b. Modifications to parking standards are permitted through:**
- i. Alternative Parking Plan**
 1. In cases where development conditions require a deviation from the parking standards in *Sec. 40.1-5.1* and/or *Sec. 40.1-3.7(D)(6)(f)(iii)*, a request for an alternative parking plan in accordance with *Sec. 40.1-5.1(M)* and *Sec. 40.1-5.1E(5)* shall be required:
 - a) As part of the entertainment overlay district master plan;
 - b) As part of any development application;
 - c) As part of a Use Permit process outlined in *Sec.40.1-2.3(B)* with a parking demand study; or
 - d) As a Special Exception from the Board of Zoning Appeals in accordance with *Sec. 40.1-2.3(D)(5)*.
 2. As part of an alternative parking plan, requests for off-site parking to meet the minimum off-street parking requirement is permitted in accordance with *Sec. 40.1-5.1(M)(2)*, except as provided herein.
 3. Requests for off-site parking to meet the minimum off-street parking requirements shall be located no more than 800 feet from the property line of the parcel of which the parking is required.

(iv) Exterior Lighting

- a. Development in an entertainment overlay district, in particular casino gaming establishments, will have unique needs for exterior lighting that require flexibility and would not typically be permitted in other areas of the City.
- b. Exterior lighting shall comply with local, state, and federal regulations and shall not interfere with any public roadways including the interstate.
- c. Exterior lighting shall comply with *Code of Virginia Ch. 12, Title 33.2*.
- d. All development in an entertainment overlay district shall comply with *Sec. 40.1-5.9 Exterior Lighting*, unless modified in accordance with section e. below, with the following exceptions:
 - i. Maximum illumination levels shall be measured at the exterior boundaries of the district and not at any property boundaries within the district.
 - ii. Upwardly directed lighting may be used to illuminate structures and landscaping in the district.
 - iii. Awnings or canopies used for building accents over doors, windows, etc., may be internally illuminated (i.e. from underneath or behind the awning).

- e. **Modifications to exterior lighting standards are permitted through:**
 - i. **Alternative Exterior Lighting Plan**
 1. In cases where development conditions require a deviation from the lighting standards in *Sec. 40.1-5.9*, a request for an alternative exterior lighting plan shall be required:
 - a) As part of the entertainment overlay district master plan;
 - b) As part of a Use Permit; or
 - c) For uses within an entertainment overlay district that do not require a Use Permit, a Use Permit may be applied for to request an alternative exterior lighting plan.
 2. An application for an alternative exterior lighting plan shall not be requested to increase the maximum illumination levels at the exterior district boundaries.
 3. An application for an alternative exterior lighting plan shall indicate how compliance with the standards in this Ordinance is impossible or impractical, and shall illustrate how compliance can be achieved to the maximum extent practicable. Alternative plans, materials, or methods may be justified due to:
 - a) Lot size or configuration;
 - b) The presence of utility or other easements;
 - c) The nature of the use or improvement as long as the request(s) does not impact adjacent residential development outside the district or create a safety hazard;
 - d) The potential for interference with public safety; and
 - e) Other situations where strict adherence to the lighting standards in this Ordinance are determined to be impractical by the Zoning Administrator.

(v) **Signage**

- a. An entertainment overlay district, in particular casino gaming establishments, will have unique needs for signage, such as pylon signs or roof-mounted signs, that require flexibility and would not typically be permitted in other areas of the City.
- b. All signage shall comply with local, state, and federal regulations and shall not interfere with any public roadways including the interstate.
- c. The signs prohibited in *Code of Virginia Sec. 33.2-1216* are prohibited in this overlay.
- d. All development in an entertainment overlay district shall comply with *Sec. 40.1-5.11 Signage*, unless modified in accordance with section e. below, with the following exception:
 - i. Off-premises signs are permitted in the entertainment overlay district.
- e. **Modifications to signage standards are permitted through:**
 - i. **Alternative Signage Plan**

As part of the entertainment overlay district master plan, an applicant may submit an alternative signage plan to request modification(s) to *Sec. 40.1-5.11*.

ii. Use Permit

1. As part of a Use Permit process outlined in *Sec.40.1-2.3(B)*, an applicant may request modifications to sign standards and/or to request signs that are prohibited in *Sec. 40.1-5.11*.
2. For uses within an entertainment overlay district that do not require a Use Permit, a Use Permit may be applied for to request modifications to sign standards and/or to request signs that are prohibited in *Sec. 40.1-5.11*.

iii. Special Exception

As a Special Exception from the Board of Zoning Appeals in accordance with *Sec. 40.1-5.11(G)*, an applicant may submit an alternative signage plan to request modification(s) to sign standards and/or request signs that are prohibited in *Sec. 40.1-5.11*.

iv. Alternative Sign Overlay District

As a Use Permit or as a Special Exception, an application for the establishment of an Alternative Sign Overlay District shall be submitted, reviewed, and decided upon in accordance with *Sec. 40.1-5.11(H)*.

(7) Amendments to an Adopted Overlay Master Plan

(a) General

- (i) If an applicant determines it is necessary to alter the concept or intent of the adopted master plan, the master plan shall be amended, extended, or modified only by approval of City Council following the same procedure with which the overlay was established.
- (ii) In addition to the processes listed within this section and Ordinance, modification to the density maximum, building height maximum, use-specific standards in *Sec. 40.1-4.3*, and the development standards in *Sec. 40.1-5.1 Off-Street Parking*, *Sec. 40.1-5.9 Exterior Lighting*, and *Sec. 40.1-5.11 Signage* are also permitted via amendment to the adopted master plan as provided herein and shall be consistent with the intent of the entertainment overlay district.
- (iii) Modifications that are approved and referenced in section (ii) above will be considered adopted amendments to the adopted entertainment overlay district master plan without requiring a separate amendment.
- (iv) Amendments approved as described in section (ii) above shall only apply to the specific property for which the approval was granted and not for the entire entertainment overlay district.

(b) Amendments Defined

The following items are considered an alteration of the concept or intent of the adopted master plan and are treated as an amendment:

- (i) Any modification to the Development Phasing Plan;
- (ii) Changes in use designations;

- (iii) Decreases in open space set-asides shown on the adopted master plan greater than 20 percent. This does not include open space set-asides specifically required by individual uses in other sections of the Zoning Ordinance;
- (iv) Substantial changes in the location of streets (particularly if streets are to be deleted or access points to the development moved so traffic flows both inside and outside the development are affected);
- (v) Change in the proportion of housing types by more than 10 percent;
- (vi) Substantial changes to the design or materials of structures; or
- (vii) Major alteration or modification of any specific condition of the master plan.

(8) Minor Deviations

- (a) Subsequent plans and permits for development within an approved entertainment overlay district may include minor deviations from the master plan, provided such deviations are limited to changes addressing technical considerations that could not reasonably be anticipated during the zoning classification process or any other change that has no material effect on the character of the approved entertainment overlay district or any of its requirements. The following shall constitute minor deviations:
 - (i) Minor shifts in building size or location;
 - (ii) Modifications of open space set-asides less than 20 percent; and
 - (iii) Facility design modifications for amenities and the like.
- (b) Minor deviations can be approved through an administrative review process by the Zoning Administrator.