

City Council – Action Request Form

Date: December 21, 2018

To: The City Manager

From: Damon Dequenne, Assistant City Manager,
Aaron King, Director of Planning and Development Services

Council Action Requested: UDO-288 Electronic Sweepstakes Operations

Strategic Focus Area: Livable Neighborhoods

Strategic Objective: Improve Character and Condition of Neighborhoods

Strategic Plan Action Item: No

Key Work Item: No



Summary of Information:

This zoning text amendment is proposed by the Winston-Salem City Attorney's Office to amend Chapters A & B of the *Unified Development Ordinances* (UDO) to modify the use of Electronic Sweepstakes Operations in the City of Winston-Salem.

On December 16, 2013, City Council approved UDO-243, which amended the Unified Development Ordinances to allow Electronic Sweepstakes Operations as a permitted use in Highway Business (HB) zoning districts. UDO-288 proposes modifying the current Electronic Sweepstakes Operations use in order to clarify the current regulations for these types of businesses operating within the City. Sweepstakes operations that pay out awards in cash are in violation of North Carolina state criminal law, and as such, the Inspections Division has not been issuing permits to the businesses who engage in this practice in the City. The current UDO language does not make the limitation clear.

Committee Action:

Committee _____

Action _____

For _____

Against _____

Remarks:

In order to align the UDO with the City's practice and current state criminal law, the proposed ordinance change would clarify that permits will not be issued to sweepstakes operations which award cash prizes. If, on the other hand, a business wished to award prizes in the form of merchandise with a value of ten dollars or less, the business would be classified as Recreation Services, Indoor. Staff believes the proposed amendment will help clarify the current rules for such operations.

STAFF REPORT

DOCKET # UDO-288
STAFF: Tiffany White

REQUEST

This zoning text amendment is proposed by the Winston-Salem City Attorney's Office to amend Chapters A & B of the *Unified Development Ordinances* (UDO) to modify the use of Electronic Sweepstakes Operations in the City of Winston-Salem.

BACKGROUND

On December 16, 2013, City Council approved UDO-243, which amended the Unified Development Ordinances to allow Electronic Sweepstakes Operations as a permitted use in Highway Business (HB) zoning districts. UDO-288 proposes modifying the current Electronic Sweepstakes Operations use in order to clarify the current regulations for these types of businesses operating within the City. Sweepstakes operations that pay out awards in cash are in violation of North Carolina state criminal law, and as such, the Inspections Division has not been issuing permits to the businesses who engage in this practice in the City. The current UDO language does not make the limitation clear.

ANALYSIS

In order to align the UDO with the City's practice and current state criminal law, the proposed ordinance change would clarify that permits will not be issued to sweepstakes operations which award cash prizes. If, on the other hand, a business wished to award prizes in the form of merchandise with a value of ten dollars or less, the business would be classified as Recreation Services, Indoor. Staff believes the proposed amendment will help clarify the current rules for such operations.

RECOMMENDATION

APPROVAL

**CITY-COUNTY PLANNING BOARD
PUBLIC HEARING
MINUTES FOR UDO-288
DECEMBER 13, 2018**

Tiffany White gave an overview and background of UDO-288. The amendment proposes a change in the definition of electronic sweepstakes operations. The text would now reference the North Carolina General Statutes, for anyone moving forward.

Staff recommends approval and Jerry Kontos, City Attorney, was present for questions.

PUBLIC HEARING

FOR: None

AGAINST: None

WORK SESSION

Melynda inquired as to what will happen to existing operations and whether bingo is regulated in any way.

Jerry explained that bingo does not fall within the purview of the statute, but that they would need to follow whatever statutes are in place for bingo.

With respect to businesses that exist now, the vast majority of those businesses came in under permits once it was clarified that they were no longer classified under Services A. Many of those businesses closed when the law was changed. There is a new iteration of businesses that have popped up throughout the city and none of those businesses received permits from the City, so they're all illegal. The police department has been working with the District Attorney's Office; there are currently two (2) active cases and three (3) more which are following behind it. There is now a more concerted and deliberate attempt, from a criminal standpoint, to address and shut down these cases.

Jerry and Chris Murphy explained why the change in definition is important to be able to enforce from a zoning standpoint and how difficult it was to enforce before the change.

MOTION: Clarence Lambe moved approval of the amendment.

SECOND: George Bryan

FOR: George Bryan, Melynda Dunigan, Tommy Hicks, Arnold King, Clarence Lambe, Chris Leak, Johnny Sigers, Brenda Smith

AGAINST: None

EXCUSED: None

Aaron King

Director of Planning and Development Services

UDO-288

AN ORDINANCE PROPOSED BY THE CITY ATTORNEY'S OFFICE AMENDING THE UNIFIED DEVELOPMENT ORDINANCES TO REVISE THE ELECTRONIC SWEEPSTAKES OPERATION USE

Be it ordained by the City Council of the City of Winston-Salem, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Chapter A, Article II – Definitions is hereby amended as follows:

Article II – Definitions

ELECTRONIC SWEEPSTAKES OPERATION (W). Any business enterprise where persons utilize a (1) 'video gaming machine' as defined in N.C.G.S. 14-306-1A or (2) an 'electronic machine or device' as defined in N.C.G.S. 14-306.4, to the extent said electronic machine or device pays off in cash, or to the extent the prize, merchandise, credits or replays awarded by virtue of using an electronic machine or device are (i) repurchased for cash or rewarded by cash, (ii) exchanged for merchandise of a value of more than ten dollars (\$10.00), or (iii) where there is a cash payout of any kind, by the person operating or managing the machine or the premises, or any agent or employee of that person. ~~mechanically, electrically or electronically operated machine or device (collectively, the "electronic sweepstakes machines") that is owned, leased or otherwise possessed by a sweepstakes sponsor or promoter, to reveal the content of a sweepstakes entry.~~ Electronic Sweepstakes Operations shall not include any lottery approved by the State of North Carolina.

Section 2. Chapter B, Article II, Section 2-4 – Permitted Uses is hereby amended as follows:

TABLE B.2.6. shall be modified to remove the following use from the HB district:

Electronic Sweepstakes Operation (W) (Hi):

Section 3. Chapter B, Article II, Section 2-5 – Use Conditions is hereby amended as follows:

2-5.27.2 ELECTRONIC SWEEPSTAKES OPERATION (W)

- (A) Electronic Sweepstakes Operations shall not be permitted as a principal or accessory use in any zoning district within the City of Winston-Salem.
~~Compliance With Applicable Laws
Electronic Sweepstakes Operations shall comply with all applicable local, state and federal laws.~~

~~(B) — Not Permitted as an Accessory Use~~

~~Electronic Sweepstakes Operations shall not be permitted as an accessory use, and shall only be permitted as a principal use within the zoning district designated in Table B.2.6.~~

~~(C) — Amortization of Nonconforming Electronic Sweepstakes Operations~~

~~All Electronic Sweepstakes Operations made nonconforming by the provisions of this Ordinance, shall be discontinued on or before June 30, 2015, save and except those nonconforming Electronic Sweepstakes Operations operating as a principal use and located in a HB-S zoning district, which shall not be required to amortize. Nonconforming Electronic Sweepstakes Operations shall include businesses classified as another use, but if classified/permited following the adoption of this ordinance would be classified as an Electronic Sweepstakes Operation.~~

2-5.72 SHOPPING CENTER

Uses permitted in Shopping Centers shall be all those uses permitted in the applicable zoning district, ~~except for the following use(s), which must be specifically requested as part of any Special Use and Special Use Limited Zoning District request:~~

~~Electronic Sweepstakes Operations~~

2-5.72.1 SHOPPING CENTER, SMALL

(A) Permitted Uses

Uses permitted in Shopping Center, Small shall be all those uses permitted in the applicable zoning district, ~~except for the following use(s), which must be specifically requested as part of any Special Use and Special Use Limited Zoning District request:~~

~~Electronic Sweepstakes Operations~~

Section 4. Chapter B, Article III, Section 3-3 Parking Stacking and Loading Areas is hereby amended as follows:

TABLE B.3.8 shall be modified to remove the Electronic Sweepstakes Operation use as follows:

BUSINESS AND PERSONAL SERVICES

~~Electronic Sweepstakes Operation~~ ————— ~~1 space per electronic sweepstakes machine plus 1 space per employee~~

Section 5. Chapter B, Article V, Section 5-4.3(E) – Parking for Nonresidential Structures Built Prior to March 7, 1988 (W) is hereby amended as follows:

5-4.3 (E) Parking for Nonresidential Structures Built Prior to March 7, 1998 (W)

Nonresidential structures that are nonconforming as to off-street parking requirements in GMA 1 and GMA 2 may change uses within the building without any requirement to increase existing off-street parking on the zoning lot including zoning lots without any off-street parking. This exemption includes all permitted uses except the uses of ~~“Electronic Sweepstakes Operation,”~~ "Restaurant (without drive-through service)" and "Restaurant (with drive-through service)". A Special Use Permit from the Elected Body in accordance with Section B.6-1.5 must be granted for electronic sweepstakes operations and restaurant uses. Additions to these nonresidential structures shall be permitted in accordance with Section B.5-4.3(C), however, no new additions shall be permitted which would eliminate any existing off-street parking on the zoning lot unless the number of parking spaces remaining meets the number required by the Zoning Ordinance for the zoning lot.

Section 6. This ordinance shall be effective upon adoption.

