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## STAFF COMMENTS FOR PLANNING COMMISSION

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**MEETING DATE:** December 7, 2016

**TEXT AMENDMENT: CTAM-7431-2016**

**TITLE:** CTAM-7035-2015: AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE), ARTICLE I, ENTITLED, "IN GENERAL," § 24-1, ENTITLED, "DEFINITIONS;" ARTICLE III, ENTITLED, "REGULATIONS APPLICABLE TO PARTICULAR ZONES," DIVISIONS 11, 12, 14, 15, 17, 18 AND 19; AND ARTICLE XI, ENTITLED "OFF-STREET PARKING AND LOADING," § 24-219, ENTITLED, "PARKING REQUIREMENT SCHEDULE," SO AS TO REMOVE ALL REFERENCES TO COMMERCIAL RECREATION RESTAURANT AND AMEND AMUSEMENT CENTERS DEFINITION AND USE

**REQUEST: RECOMMENDATION TO M&CC**

**STAFF LIASON: Rob Robinson, Long Range Planning Manager**

**Enclosures:**

Staff Comments  
CTAM-7431-2016 Index of Memorandum and Exhibits (in **Bold**)

## STAFF COMMENTS

This item is on the Commission's agenda for a transmittal of a recommendation to the Mayor and Council. The consolidated joint public hearing regarding CTAM-7431-2016 was held on November 7, 2016. The Planning Commission held open its record until 5:00 PM on November 30, 2016. No public testimony was presented at the public hearing nor was any received prior to the Commission's record closing.

As discussed during the public hearing and explained in Staff's Amendment Analysis memo<sup>1</sup>, the purpose of the subject text amendment is to better reflect and accommodate the changing dynamics of commercial models and work to reinvigorate or sustain the City's commercial centers.

The proposed amendment, CTAM-7431-2016, would eliminate the definition of "commercial recreation restaurant" and amend the "amusement center" definition. Further, the amendment would remove and/or amend these uses and their references within the City's applicable zones. The following bullets summarize the issues being addressed by CTAM-7431-2016:

- Current code defines "Amusement center" as a commercially operated indoor facility containing more than ten (10) coin-operated or fee paid amusement devices. This "use" is not allowed by-right in any zone and only is permitted as a special exception.
- "Commercial recreation restaurant" is defined as any establishment where the principal purpose is the sale and serving of food and beverages for on-premise consumption and where games of recreation or amusement as defined above in "amusement center" are provided in a combined operation. Again, this "use" is not allowed by-right in any zone and only is permitted as a special exception.
- "Recreational Uses or Buildings" are called out as by-right or permitted (as are Restaurants) in numerous zones (including the floating zones), but are undefined and some may be considered an "Amusement center."
- City's floating zones: MXD, CD, and CBD. The Zoning Ordinance defines permitted uses as follows:
  - MXD Zone: Commercial/employment/industrial: All uses allowed by right in any of the following zone: R-B, C-B, C-1, C-2, C-3, E-1, E-2 and I-3 zones are permitted uses.
  - CD Zone: Permitted uses. All uses listed as permitted and not solely as special exceptions or conditional uses in all zoning districts unless otherwise prohibited.

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<sup>1</sup> Ex. 3

- CBD: Permitted uses. All uses listed as permitted and not solely as special exceptions in all zoning districts, unless otherwise designated.
- “Amusement Centers” and “Commercial Recreation Restaurants” cannot even be considered as an allowable use in the City’s floating zoned commercial areas such as Crown, Rio, and the Kentlands Commercial District given they are not allowed by-right anywhere.

The changes proposed in the amendment will:

- Have the Zoning Ordinance reflect and accommodate current and future business models;
- Promote uses into City Commercial Centers that stimulate the “Activity / Lifestyle” aspect of non-residential “mixed use”;
- Remove unnecessary processes that act as a disincentive to investment (special exceptions); and
- Create certainty to encourage investment in City Commercial Centers (by-right uses and clear definitions).

Staff notes that the proposed amendment is not intended to circumvent Council approvals. These subject uses would still be required to go through the sketch / concept plan and schematic development / preliminary plan approval process to be implemented in MXD and CD zoned projects and would not be automatically allowed by-right, just permitted to be considered.

### **Conclusion:**

Staff recommends that the Planning Commission **RECOMMEND ADOPTION OF TEXT AMENDMENT CTAM-7431-2016 TO THE MAYOR AND CITY COUNCIL.**

Index of Memoranda  
CTAM-7431-2016 Amendments Commercial Recreation Restaurants/ Amusement Centers

JPH: November 7, 2016  
PC: Recommendation December 7, 2016  
Council Policy Discussion

Exhibit #:

- |           |  |
|-----------|--|
| 1         | CTAM-7431-2016 Application   |
| <b>2</b>  | <b>Draft CTAM-7431-2016 Ordinance</b>  |
| <b>3</b>  | <b>Memo to Council &amp; Planning Commission from LRPM Robinson re:<br/>Staff Analysis</b> |
| 4         | Staff Public Hearing Presentation  |
| 5         | EBDC Draft Minutes 9-16-2016   |
| 6         | Planning Commission Draft Minutes 10-05-16   |
| 7         | CTAM-7431-2016 Washington Post Legal Ad Request  |
| 8         | CTAM-7431-2016 Mailed Hearing Notifications  |
| 9         | CTAM-7431-2016 Web Hearing Notification  |
| <b>10</b> | <b>Certification of Legal Ad Publication</b>   |

Ordinance No. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE), ARTICLE I, ENTITLED, "IN GENERAL," § 24-1, ENTITLED, "DEFINITIONS;" ARTICLE III, ENTITLED, "REGULATIONS APPLICABLE TO PARTICULAR ZONES," DIVISIONS 11, 12, 14, 15, 17, 18 AND 19; AND ARTICLE XI, ENTITLED OFF-"STREET PARKING AND LOADING," § 24-219, ENTITLED, "PARKING REQUIREMENT SCHEDULE," SO AS TO REMOVE ALL REFERENCES TO COMMERCIAL RECREATION RESTAURANT AND AMEND AMUSEMENT CENTERS DEFINITION AND USE

**CTAM-**\_\_\_\_\_

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled, that Chapter 24 of the City Code (City Zoning Ordinance) Article I, § 24-1; Article III, Division 11, § 24-111; Division 12, §§ 24-117 and 24-118; Division 14, § 24-136; Division 15, § 24-144; Division 17, §§ 24-151 and 24-151A.; Division 18, §§ 24-160A and 24-160B; and Division 19, § 24-160D.3, and Article XI, and Article XI, entitled, "Off-Street Parking and Loading," §§ 24-219(b) and 24-219(c)1.;are amended to read as follows:

**ARTICLE I. IN GENERAL**

**Sec. 24-1. Definitions.**

\* \* \* \*

~~*Amusement center.* A commercially operated indoor facility containing more than ten (10) coin-operated or fee paid amusement devices suitable for participation for a fee by people of all ages, including but not limited to television games, electronic or mechanical novelty games, electromechanical and electronic target games, pinball machines, small kiddie rides and other similar devices, whether operated as a primary or accessory use. Internet cafes and similar establishments where the primary use is to permit patrons to pay a fee to play games on a computer shall be deemed to be an amusement center subject to the standards contained in section 24-118(7) of this chapter. Pool tables and billiard tables are not amusement devices and copy centers or business equipment sales establishments or facilities which provide internet connection for use with a customer's personal computer are not amusement centers.~~

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<del>Single strikethrough</del>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
<del>Double boldface strikethrough</del>	<i>Deleted from existing law or the bill by amendment.</i>
***	<i>Existing law unaffected by bill.</i>

Amusement and Recreational Facility. An indoor or outdoor commercially operated facility at which recreation or experiential activities are offered or amusement devices provided to the public as the principal commercial activity of such establishment. This may include, but not be limited to, bingo parlors, dance halls, bowling alleys, skating rinks, billiard or pool halls, miniature golf courses and amusement device arcades. Theaters and commercial fitness centers are not included.

\* \* \* \*

~~Commercial recreation restaurant.~~ Any establishment where the principal purpose is the sale and serving of food and beverages for on-premise consumption and where games of recreation or amusement as defined above in "amusement center" are provided in a combined operation for patronage and use by restaurant patrons, incidental to their consumption of food and beverages.

~~For purposes of determining whether a proposed establishment meets the definition of "commercial recreation restaurant," the following standards shall apply:~~

- ~~(1) The sale and consumption of food or beverages shall be limited to the premises; except, that a food or beverage carry-out service may be provided to the extent that such carry-out service is clearly not the principal business of that portion of the establishment devoted to the sale and consumption of food or beverages.~~
- ~~(2) The recreation portion of the establishment shall not be advertised or operated as a separate facility or otherwise designed, advertised or operated to encourage use by other than restaurant patrons.~~
- ~~(3) Any areas devoted primarily to electronic or mechanical games of recreation or amusement shall encompass no more than twenty five (25) percent of the establishment's gross floor area.~~

### ARTICLE III. REGULATIONS APPLICABLE TO PARTICULAR ZONES

\* \* \* \*

#### DIVISION 11. C-1 ZONE, LOCAL COMMERCIAL

\* \* \* \*

#### **Sec. 24-111. Uses permitted by right.**

The following uses are permitted by right in the C-1 Zone:

\* \* \* \*

- (5) Private clubs, lodges, fitness centers and ~~recreational buildings~~ indoor Amusement and Recreational Facilities.

\* \* \* \*

DIVISION 12. C-2 ZONE, GENERAL COMMERCIAL

\* \* \* \*

**Sec. 24-117. - Uses permitted by right.**

The following uses are permitted by right in the C-2 Zone:

\* \* \* \*

- (5) Private clubs, lodges and ~~recreational buildings~~ fitness centers.
- (6) Animal hospitals, animal boarding places and pet shops.
- (7) Repair and business services, including but not limited to carpenter, cabinet, plumbing or electrical shops, laundry or dry cleaning establishments, bicycle, appliance or other local repair shops and printing or publishing shops.
- (8) Sales and service of automobiles, mobile homes, farm equipment and marine equipment.
- (9) Cocktail lounges, ~~dance halls, bowling alleys, billiard parlors, theaters, ice and roller skating rinks and similar places of indoor amusement and indoor amusement and recreational Facilities.~~

\* \* \* \*

**Sec. 24-118. Uses permitted as special exceptions.**

The following uses are permitted in the C-2 Zone as special exceptions after approval by the board of appeals in accordance with the provisions of section 24-189, or by the city council in accord with section 24-167A(C) as to subparagraph (9) below:

\* \* \* \*

- (2) Outdoor amusement and recreational facilities, ~~Commercial parks and other outdoor places of amusement, including miniature golf courses and driving ranges, carnivals, and fairs,~~ subject to the following requirements:
  - (a) ~~When such use abuts the side and/or rear line of a lot in a residential zone, a solid wall or substantial solid fence at least six~~

~~feet in height shall be constructed and maintained along such lot lines.~~

- ~~(b) Lighting, including permitted illuminating signs, shall be arranged so as not to reflect or cause glare into any residential zone.~~
- ~~(c) When such use occupies a corner lot, the ingress and egress driveways shall be located at least twenty feet from the intersection of the front and side street lines of the lot, and such driveways shall not exceed twenty-five feet in width. Driveway entrances and exits shall not be located directly across a street or alley nor less than twenty-five feet from residential property.~~

~~\* \* \* \*~~

- ~~(7) Amusement center, whether operated separately or in conjunction with any other permitted or special exception use, subject to the following regulations:~~
  - ~~(a) No amusement center shall exceed one thousand five hundred (1,500) square feet of gross floor area at any one location.~~
  - ~~(b) Amusement centers shall be located at least one thousand five hundred (1,500) feet from school buildings and playgrounds, and at least one thousand (1,000) feet from each other.~~
  - ~~(c) Each amusement center shall be located in a separate room, separated by fully enclosed walls from other uses on the same premises and from pedestrian circulation to and from such other areas. Each such center shall provide, at a minimum, two (2) public restrooms with minimal features for the use of the patrons; provided that the board of appeals may waive the on-premises restroom requirement where the board finds such facilities exist elsewhere in reasonably close proximity within the same building envelope, under the same ownership or control as the subject premises and where public access is permitted to such restrooms.~~
  - ~~(d) Amusement centers shall be constructed and maintained with sound attenuation materials so as not to emit noises in excess of a sixty-five (65) dba level into adjoining uses, common areas or public ways.~~
  - ~~(e) Every amusement center shall have on duty within the center, while open to the public, an adult management attendant who is at least twenty-one (21) years of age.~~
  - ~~(f) Space shall be provided for each machine so as to allow for its use without overall crowding or the obstructing of aisles or exitways. A floor plan of the interior layout of the center, reflecting the areas devoted to the placement of machines, aisleways and exitways, shall be submitted for approval by the local fire marshal prior to the approval of the special exception, and any modifications of any~~

approved floor plan must also receive the approval of the local fire marshal.

- ~~(g) Smoke detectors shall be installed, one for every nine hundred (900) square feet of floor area.~~
- ~~(h) No person under eighteen (18) years of age shall be permitted to play or operate a machine during normal school hours, unless accompanied by the parent, guardian or adult custodian of such person, and readily visible signs shall be posted so stati~~
- ~~(i) There shall be no greater number of machines on the premises than the total number of machines for which a license is issued, and such license shall be prominently displayed on the wall of the premises in plain view.~~
- ~~(j) A special exception for this use shall be granted to the applicant only and, except in the instance of a transfer or assignment to a co-licensee, spouse or partner in the subject business, is nontransferable and non-assignable, unless such transfer or assignment is approved by the board of appeals.~~
- ~~(k) The board of appeals shall set such conditions it deems necessary and desirable; provided however the board shall not approve hours of operation to extend beyond 12:00 o'clock midnight.~~
- ~~(l) A special exception for this use may not be granted to a corporate entity but shall only be granted to individuals who are officers of the corporation.~~
- ~~(m) This use shall only be granted after finding by the board set forth within section 24-189(b) and the aforestated regulations.~~
- ~~(n) Any internet cafe defined as an amusement center existing on the effective date of this ordinance shall have a period of one hundred eighty (180) days from September 1, 2002 to apply for a special exception approval as an amusement center. Any establishment failing to make application for approval after the expiration of such one hundred eighty (180) days shall not be deemed to be a lawful non-conforming use and shall be prohibited until such special exception approval is granted.~~
- ~~(8) Commercial recreation restaurant, as defined in section 24-1, subject to the following requirements:~~
  - ~~(a) All such uses shall be designed and operated as a combined use for family oriented recreation and on-premises dining.~~
  - ~~(b) Such uses shall be located at least one thousand five hundred (1,500) feet from school buildings and playgrounds, and at least one thousand five hundred (1,500) feet from each other.~~
  - ~~(c) Such use shall be constructed and maintained with sound attenuation materials so as not to emit noises in excess of a sixty-~~

~~five (65) dba level into adjoining uses, common areas or public ways.~~

- ~~(d) Every commercial recreation restaurant shall have on duty within the center, while open to the public, an adult management attendant who is at least twenty one (21) years of age.~~
  - ~~(e) Within any interior areas of such use primarily devoted to the placement and location of amusement and recreational machines or devices, space shall be provided for each machine or device so as to allow for their use without overall crowding or the obstructing of aisles or exitways. A floor plan of the interior layout of the commercial recreation restaurant, reflecting the areas devoted to dining, food service, food preparation, the placement of amusement or recreational devices and machines, aiseways and exitways, shall be submitted for approval as part of the application for a special exception. Such floor plan must be approved by the local fire marshal prior to the approval of the special exception, and any modifications of any approved floor plan must also receive the approval of the local fire marshal.~~
  - ~~(f) Smoke detectors shall be installed, one for every nine hundred (900) square feet of floor area.~~
  - ~~(g) There shall be no greater number of amusement machines on the premises than the total number of machines for which a license is issued, and such license shall be prominently displayed on a wall of that portion of the premises in plain view where such machines are located.~~
  - ~~(h) A special exception for this use shall be granted to the applicant only and, except in the instance of a transfer or assignment to a co-licensee, spouse or partner in the subject business, is nontransferable and nonassignable, unless such transfer or assignment is approved by the board of appeals.~~
  - ~~(i) The board of appeals shall set such conditions it deems necessary and desirable.~~
  - ~~(j) No person under eighteen (18) years of age shall be permitted to play or operate a machine during normal school hours, unless accompanied by the parent, guardian or adult custodian of such person, and readily visible signs shall be posted so stating.~~
  - ~~(k) This use shall only be granted after findings by the board as required within section 24-189(b) and the regulations contained within this subsection.~~
- (97) Towers, poles, antennas and ancillary buildings, in connection with the operation of a commercial radio or television broadcasting station subject to the standards and procedures in section 167A(B).

(108) Telecommunications facilities, subject to the requirements of section 24-167A(D)(2).

(119) Fortunetelling businesses.

DIVISION 14. - I-1 ZONE, LIGHT INDUSTRIAL

**Sec. 24-136. - Uses permitted by right.**

The following uses are permitted by right in the I-1 Zone:

\* \* \* \*

CULTURAL, ENTERTAINMENT AND RECREATIONAL:

~~(1) Employee recreational facilities (conditional use).~~

(21) Health clubs.

(32) Libraries, science or technical.

(43) Place of religious worship.

(54) Outdoor Amusement and recreational facilities, Commercial parks and other places of outdoor amusements, including golf courses, miniature golf courses, driving ranges, carnivals and fairs, subject to the following requirements:

a) ~~When such use abuts the side and rear line of a lot in a residential zone, a solid wall or substantial solid fence at least six (6) feet in height shall be constructed and maintained along such lot line.~~

b) ~~Lighting, including permitted illuminating signs, shall be arranged so as not to reflect or cause glare into any residential zone.~~

c) ~~When such use occupies a corner lot, the ingress or egress driveways shall be located at least fifty (50) feet from the intersection of the front and side street lines of the lot, and such driveways shall not exceed twenty-five (25) feet in width. Driveway entrances and exits shall not be located directly across a street or alley nor less than twenty-five (25) feet from residential property~~

(65) Adult-oriented businesses subject to the following requirements

\* \* \* \*

DIVISION 15. I-3 ZONE, INDUSTRIAL AND OFFICE PARK

\* \* \* \*

**Sec. 24-144. Uses permitted as special exceptions**

The following uses are permitted in the I-3 Zone as special exceptions after approval by the board of appeals:

- ~~(a)~~ Amusement center as part of, and clearly accessory to, a separate primary recreational building and/or use. This use shall be subject to the standards and requirements contained in section 24-118(7) of the City Code and the following limitations:
- ~~(1)~~ The accessory amusement center must be part of the original construction of a recreation establishment and not a part of a reuse of a building which is converted to recreational use.
  - ~~(2)~~ The building within which the amusement center is located must not be located closer than five hundred (500) feet to property zoned for, or improved with, single-family residential use.
  - ~~(3)~~ The accessory amusement center must not be located in a building which is within one-half mile, in straight line distance, to another building containing an amusement center accessory use.
- ~~(b)~~ Pawn shops, provided that a pawn shop is not located within one thousand (1,000) feet of the boundaries of property containing a school, church, religious facility, or any other pawnshop or any residentially zoned property, including property in the MXD Zone designated on an approved schematic development plan or sketch plan for residential use, and said use shall comply with the requirements of Chapter 44A, Montgomery County Code as amended. Pawnshops existing as of the effective date of this amendment shall conform to the provisions of section 24-167C(2) of the City Code.
- ~~(c)~~ Tattoo parlors and body piercing establishments subject to the following requirements in addition to other requirements generally for approving special exceptions and compliance with conditions imposed by the City Board:
- (1) The business premises must not be located on property where the boundary of the property is located within one thousand (1,000) feet of the boundaries of property containing a school, church, religious facility or other tattoo parlor or body piercing establishment or any residentially zoned property including property in the MXD Zone.
  - (2) The business premises may only operate between the hours of 9:00 a.m. and 9:00 p.m.
  - (3) The business must conform to any applicable state and local health and safety regulations.
  - (4) No instruments or equipment shall be used which has not been sterilized for use on any customer or client.

DIVISION 17. - E-1 ZONE, URBAN EMPLOYMENT

**Sec. 24-151. - Permitted uses.**

The following uses are permitted in the E-1 Zone:

\* \* \* \*

- (8) Retail sales and consumer service establishments, incidental to and located within an office structure, limited to restaurants, drugstores, newsstands, barbershops, valet shops, specialty shops and delicatessens, banks and financial institutions.
- (9) Off-street parking.
- (10) Restaurants (Class C).
- (11) Amusement and recreational facilities Recreational or educational buildings or uses.

**Sec. 24-151A. - Uses permitted by special exception.**

~~Amusement center as part of, and clearly accessory to, a separate primary recreational building and/or use. This use shall be subject to the standards and requirements contained in section 24-118(7) of the City Code.~~

\* \* \* \*

DIVISION 18. E-2 ZONE, MODERATE INTENSITY INDUSTRIAL PARK

**Sec. 24-160A. Permitted uses.**

\* \* \* \*

- ~~(8) Recreational facilities, primarily for the use of employees, provided such use does not adjoin any street which provides principal access to the principal use or user served.~~
- (98) Trade, artistic and technical schools.
- (409) Accessory uses on the same lot or parcel as the primary use which is customarily incidental and subordinate to the principal or primary use.
- (4410) Accessory structures in compliance with section 24-163 of this Code.
- (4211) Telecommunications facilities located entirely within an existing structure or located on the rooftop of an existing structure other than a single-family dwelling unit, subject to the requirements of section 24-167A(D)(1).

**Sec. 24-160B. - Special exception uses.**

The following uses are permitted in the E-2 Zone as special exceptions upon approval by the board of appeals in accordance with the provisions of section 24-189:

\* \* \* \*

~~Recreational or entertainment establishments, commercial.~~ Amusement and recreational facilities

\* \* \* \*

**DIVISION 19. - MXD ZONE, MIXED USE DEVELOPMENT**

\* \* \* \*

**Sec. 24-160D.3. - Uses permitted.**

\* \* \* \*

- (d) *Special exception uses.* The following uses shall be special exception uses in the MXD zone subject to approval by the city board of appeals notwithstanding the fact that such use may be allowed as a permitted use in any other zones referred to in subsections (a) and (b):

~~Amusement center, whether operated separately or in conjunction with any other permitted or special exception use<sup>1</sup>.~~

\* \* \* \*

<sup>1</sup>~~Amusement centers in the MXD Zone shall not be required to comply with the standard of subsections (1), (2) and (3) of section 24-144(a) of this Code.~~

\* \* \* \*

**ARTICLE XI. OFF-STREET PARKING AND LOADING**

\* \* \* \*

**Sec. 24-219. - Parking requirement schedule.**

\* \* \* \*

- (b) *Parking schedule.* Off-street parking space shall be provided as follows. Parking ratios for commercial uses are minimums. Maximum commercial

parking permitted is ten (10) percent more than required minimums, unless otherwise indicated, or by approval of the planning commission:

	* * * *
<b>Commercial Establishments, Retail Sales, Service, Trade or Merchandising</b>	<b><i>Parking Spaces Required</i></b>
	* * * *
Commercial establishments devoted to retail sales, service, trade or merchandising (except restaurants)	1 per 225 [square feet] of gross floor area devoted to retail sales, service, trade, merchandising or restaurants and located on any floor of a building which may be entered approximately at grade, 1 per 500 square feet of gross floor area devoted to retail sales, service, trade, merchandising or restaurants and located on any floor other than that which may be entered approximately at grade, only if the business is separate entity from the business entered at grade. Maximum for restaurants of 1/100 square feet of gross floor area.
	* * * *

*Additional Uses*

All uses not listed above shall be determined by planning commission at site plan review or prior to issuance of occupying permits.

- (c) *Shared parking for developments containing a mix of uses.*
  - (1) When any land and/or buildings are contiguous to one another, and are used for two (2) or more purposes, or when any individual building has component uses that operate at different peak periods, the number of parking spaces shall be computed by multiplying the minimum appropriate percentage, as shown in the following parking credit schedule for each of the four (4) time periods shown. The number of parking spaces required for the mixed use development is then determined by adding the results in each column. The column total that generates the highest number of parking spaces becomes the parking requirement.

Use	Weekday		Weekend	
	Day 6 a.m.—6 p.m.	Evening 6 p.m.— Midnight	Day 6 a.m.—6 p.m.	Evening 6 p.m.— Midnight
Industrial/office/warehouse	100%	10%	10%	5%
General retail/Service/Restaurant	50%	90%	100%	70%
Hotel/motel	70%	100%	75%	100%
Club/Dance Hall <del>Amusement and Recreational Facilities</del>	50%	100%	100%	100%
Education	100%	50%	50%	50%
Theaters	40%	100%	80%	100%
Religious Assembly	25%	50%	100%	50%
All Other	100%	100%	100%	100%

ADOPTED by the City Council of Gaithersburg, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
 JUD ASHMAN, MAYOR and  
 President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_ day of \_\_\_\_\_, 2016. APPROVED by the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_ day of \_\_\_\_\_, 2063.

\_\_\_\_\_  
 JUD ASHMAN, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_ day of \_\_\_\_\_, 2016, and the same was APPROVED by the Mayor of the City of Gaithersburg on the \_\_\_\_ day of \_\_\_\_\_, 2016. This Ordinance will become effective on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
 TONY TOMASELLO, City Manager

## MEMORANDUM

TO: Mayor & City Council  
Planning Commission

FROM: Rob Robinson, Long Range Planning Manager

RE: CTAM-7431-2016

DATE: October 21, 2016

### BACKGROUND

Staff, in an ongoing effort to review the City's Zoning Ordinance to better reflect and accommodate the changing dynamics of commercial models and work to reinvigorate or sustain the City's commercial centers, is bringing forward a proposed Text Amendment to Chapter 24 of the City Code. The proposed amendment, CTAM-7431-2016, would eliminate the definition of "commercial recreation restaurant" and amend the "amusement center" definition. Further, the amendment would remove and/or amend these uses and their references within the City's applicable zones.

The nation-wide trends for commercial centers are showing a change from the dominance of "soft goods" as the primary draw/ activity towards "lifestyle" or activity based anchors. The International Council of Shopping Centers (ICSC) and The Center of Shopping in a joint study cited that<sup>1</sup>:

"...consumers who went to a mall in the past month spent on dining at a restaurant or casual/fast-food establishment 43% of the time. During 22% of mall visits, shoppers spent on entertainment and activities such as movies, bowling, arcades and gyms. For both personal services and all other services (shoe repair, locksmith, banks, etc.), consumers spent on both of those categories during 13% of their visits.

\*\*\*

...open-air center visitors .... Nearly three-quarters of the total amount spent was on goods, with the remainder allocated to services. By category, the highest shares of total spending were on food/groceries or beverages (40%), all other types of goods (25%) and dining, drinking at restaurants, bars/fast-food, take-out (17%). About 9% of spending was on prescriptions/medications and health supplies and the same for other services/entertainment."

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<sup>1</sup>Industry Conditions: Shopping Centers: Where Americans Buy, Socialize, Play and Work  
Published May 19, 2016  
<http://www.thecenterofshopping.com/news/industry-conditions-shopping-centers-where-a>

The US Bureau of Labor Statistics in their 2015 Consumer Expenditures report<sup>2</sup> states that expenditures on the discretionary categories of food away from home and entertainment continued increasing in 2015, up 7.9 percent and 4.2 percent respectively.

CTAM-7431-2016 will address the evolving models within retail, restaurant, entertainment and recreational uses. Staff is of the opinion that the subject definitions in the amendment appear static and restrictive given the current ‘mix and match’ fluid nature of commercial, recreational and entertainment uses (often are mixed within a single business entity) or, do not address new and unforeseen commercial entities that are not “retail” uses such as “experiential” businesses for example the “Ripleys Believe It or Not Odditorium” in downtown Baltimore’s Harborplace or “Legoland Discovery Centers” nationwide.

### CURRENT CODE

As has been noted during previous discussions related to amending the Zoning Ordinance, most recently addressed during the introduction of “Integrated Light Manufacturing,” the current Zoning Ordinance is at times antiquated and overly restrictive and may preclude uses that would invigorate the City’s Commercial Activity Centers.

The current code defines “Amusement center” as a commercially operated indoor facility containing more than ten (10) coin-operated or fee paid amusement devices. This definition was developed to address classic video game arcades. This “use” is not allowed by-right in any zone and only is permitted as a special exception. The primary issues are the broad, seemingly arbitrary nature of this definition; if 10 devices, it’s a special exception, if 9, it can be considered something else by-right. Further, as new business ideas come forward, they may be locked into this definition.

“Commercial recreation restaurant” is defined as any establishment where the principal purpose is the sale and serving of food and beverages for on-premise consumption and where games of recreation or amusement as defined above in "amusement center" are provided in a combined operation. The definition further states that, “Any areas devoted primarily to electronic or mechanical games of recreation or amusement shall encompass no more than twenty-five (25) percent of the establishment's gross floor area.” In short, this definition would prevent new business models such as Dave & Busters, Pinstripes, and Chuckie Cheese from operating in the City. Again, this “use” is not allowed by-right in any zone and only is permitted as a special exception.

Lastly, “Recreational Uses or Buildings” are called out as by-right or permitted (as are Restaurants) in numerous zones (including the floating zones), but are undefined. Given the fluid nature of commercial models the question becomes, for example, is a batting cage, trampoline center, or bowling alley a by-right “recreational” use or a special exception only “amusement center?”

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<sup>2</sup> <http://www.bls.gov/news.release/pdf/cesan.pdf>

Staff notes the importance and implications described above. The difference between a special exception use and a by-right use not only involves a cost savings and simplicity of approval; it has impacts related to the City's floating zones: MXD, CD, and CBD. The Zoning Ordinance defines allowable uses as follows:

- MXD Zone: Commercial/employment/industrial: All uses allowed by right in any of the following zone: R-B, C-B, C-1, C-2, C-3, E-1, E-2 and I-3 zones are permitted uses.
- CD Zone: Permitted uses. All uses listed as permitted and not solely as special exceptions or conditional uses in all zoning districts unless otherwise prohibited
- CBD: Permitted uses. All uses listed as permitted and not solely as special exceptions in all zoning districts, unless otherwise designated

To summarize, "Amusement Centers" and "Commercial Recreation Restaurants" cannot even be considered as an allowable use in the City's floating zoned commercial areas such as Crown, Rio, and the Kentlands Commercial District given they are not allowed by-right anywhere. Users such as Dave & Busters, Chuckie Cheese, iPlay America, or Rabbids Amusement Center; users that can drive the transition to a successful lifestyle center, appealing to multiple demographics, would most likely look elsewhere because they would either not be eligible in the floating zones or would have to go through additional approval processes (time and costs) in the City's commercial Euclidean zones. Staff notes should the proposed amendment pass, these uses would still be required to go through the sketch / concept plan and schematic development / preliminary plan approval process to be implemented in MXD and CD zoned projects and would not be automatically allowed by-right, just permitted to be considered.

### PROPOSED AMENDMENT

Staff had four primary goals in developing the amendment:

- Have the Zoning Ordinance reflect and accommodate current and future business models
- Promote uses into City Commercial Centers that stimulate the "Activity / Lifestyle" aspect of non-residential "mixed use"
- Remove unnecessary processes that act as a disincentive to investment (special exceptions)
- Create certainty to encourage investment in City Commercial Centers (by-right uses and clear definitions).

Staff, as stated, to accomplish these goals is proposing eliminating the definition of "commercial recreation restaurant" and amending the "amusement center" definition. The effect of removing or amending these definitions and references from the Zoning Ordinance will be more flexibility in the approval process of such uses or combination thereof. Uses that previously fell into these categories would either revert to their primary use or, where appropriate, a combination of uses, and would follow the requirements of the zone in which they are located. Of note, as part of the comprehensive parking ordinance text amendment in

2014 (CTAM-6190-2014) the distinction between “restaurants” and “commercial recreation restaurants” was eliminated. They are parked at the same ratio.

To provide regional context, the City of Rockville does not differentiate “commercial recreation restaurant” from restaurants as a whole and does not have a definition for “amusement center.” Rockville does however define the following:

Recreational Establishment, Indoor, Commercial - An activity of an athletic nature for which a fee is paid which takes place inside a building, including baseball batting in cages, basketball, golf driving practice, gymnastics, golf, racquetball, rock climbing, skiing practice, swimming, tennis, volleyball, bowling, billiards, or other athletic activity.

Recreational Establishment, Outdoor, Commercial – An activity of an athletic nature for which a fee is paid which takes place outside a building.

Recreational Facility - Any non-accessory swimming pool, community building, golf course, tennis court, baseball diamond, football field, basketball court, play area, handball court, or other athletic field or facility.

Sport Facility, Multi-Purpose, Indoor, Commercial – A multi-purpose indoor facility that does not permit sale or consumption of alcoholic beverages on the premises, and provides for recreational facilities including, but not limited to, the following activities: ice hockey, figure skating, recreational ice skating, indoor soccer, in-line skating, and health and fitness activities, excluding shooting galleries or ranges, conducted in a building containing not less than 60,000 square feet of gross floor area. Such a facility may also contain meeting rooms.

Montgomery County does not differentiate “commercial recreation restaurant” from restaurants as a whole and does not have a definition for “amusement center.” The County does however define the following:

Recreation and Entertainment Facility, Indoor (Capacity up to 1,000 Persons) means a building with a capacity up to 1,000 people that provides recreation or entertainment activities such as sport facilities, theaters, and dance clubs. Recreation and Entertainment Facility, Indoor does not include Shooting Range (Indoor) (see Section 3.5.10.I, Shooting Range (Indoor)) or Health Clubs and Facilities (see Section 3.5.10.E, Health Clubs and Facilities).

## CODE CHANGES

The following is a summary of staff’s recommended changes to Chapter 24, listed by section:

**§ 24-1.** Delete definition for “Commercial recreation restaurant” and amend the definition for “Amusement center” to be “Amusement and recreational facility.” This new definition will provide guidance on what these uses include:

Amusement and Recreational Facility. An indoor or outdoor commercially operated facility at which recreation or experiential activities are offered or amusement devices provided to the public as the principal commercial activity of such establishment. This may include, but not be limited to, bingo parlors, dance halls, bowling alleys, skating rinks, billiard or pool

halls, miniature golf courses and amusement device arcades. Theaters and commercial fitness centers are not included.

Theaters were not included as they have their own definition; their own parking standards; and are specifically identified as allowable uses in a number of zones. Commercial fitness centers were also excluded given that current business models of these centers bring together numerous uses including recreation, retail, personal service, and education. Staff is of the opinion these continue to be classified under a “retail” use for simplicity.

**§ 24-111. C-1 Zone** Delete reference to “recreation buildings” and add “indoor Amusement and Recreational Facilities” and “fitness centers” is conformance with new definition.

**§ 24-117. C-2 Zone** Delete previous references to “recreation buildings” and limiting undefined uses and replace with “indoor Amusement and Recreational Facilities” and “fitness centers.”

**§ 24-118. C-2 Zone** Delete “commercial recreation restaurant” and “amusement center” uses as special exceptions and simplify (2) to read “Outdoor amusement and recreational facilities.”

Of note, the majority of the issues that the Board of Appeals typically addresses as part of the special exception review of amusement centers or commercial recreation restaurants is already addressed in other sections of the City Code and will continue to be handled through those instruments. Amusement machines will continue to be regulated under Chapter 3 of the City Code. Further, issues such as the locating of machines for fire safety and restricted access by minors are addressed under Chapter 3. Additionally, the City collection of revenue from the licensing of machines will not be impacted by the proposed changes.

**§ 24-136. I-1 Zone** Simplify (4) to read “Amusement and recreational facilities.”

**§ 24-144. I-3 Zone** Delete “amusement center” uses as special exceptions.

**§ 24-151. E-1 Zone** Delete “recreational” and replace with “amusement and recreational facilities” as permitted use.

**§ 24-151A. E-1 Zone** Delete “amusement center” uses as special exceptions.

**§ 24-160A. E-2 Zone** Delete (8) as it is covered under renumbered (9) and staff is of the opinion that adding “Amusement and recreational facilities” as a permitted use does not reflect the “recreation” reference in (8) and would conflict with § 24-160B.

**§ 24-160B. E-2 Zone** Replace existing special exception use language “Recreational or entertainment establishments, commercial” with “Amusement and recreational facilities” for zoning language consistency.

**§ 24-160D.3. MXD Zone** Delete “amusement center” uses as special exceptions.

**§ 24-219. Parking Standards** Delete conflicting language in parking ratio chart and add “Amusement and recreational facilities” to the shared use parking tabulation chart.

CERTIFICATE OF PUBLICATION

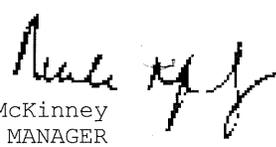
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THE WASHINGTON POST

By

  
Nicole McKinney  
BILLING MANAGER

NOTICE OF JOINT PUBLIC HEARING The Mayor and City Council and Planning Commission of the City of Gaithersburg, Maryland, will conduct a joint public hearing on Text Amendment Application CTAM-7431-

2016 on MONDAY NOVEMBER 7, 2016 AT 7:30 P.M. or as soon thereafter as this matter can be heard in

the Council Chambers at 31 South Summit Avenue, Gaithersburg, Maryland. AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE), ARTICLE I, ENTITLED, #IN GENERAL," § 24-1, ENTITLED, #DEFINITIONS;" ARTICLE III, ENTITLED, #REGULATIONS APPLICABLE TO PARTICULAR ZONES," DIVISIONS 11, 12, 14, 15, 17, 18 AND 19; AND ARTICLE XI, ENTITLED OFF-#STREET PARKING AND LOADING,"

§ 24-219, ENTITLED, #PARKING REQUIREMENT SCHEDULE," SO AS TO REMOVE ALL REFERENCES TO COMMERCIAL RECREATION RESTAURANT AND AMEND AMUSEMENT CENTERS DEFINITION AND USE Further information may be obtained from the Planning and Code Administration Department at City Hall, 31 South Summit Avenue,

between the hours of 8 a.m. and 5 p.m., Monday through Friday, or visit the City's website at [www.gaithersburgmd.gov](http://www.gaithersburgmd.gov). Rob Robinson, Long Range Planning Manager Planning and Code Administration

# 1194