



OFFICE OF THE

MANHATTAN BOROUGH PRESIDENT

1 Centre Street, 19th Floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
431 West 125th Street, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov
Mark Levine, Borough President

February 5, 2024

Recommendation on Non-ULURP Application No. N240179ZRY – Gaming Facility Text Amendment **By NYC Department of City Planning**

PROPOSED ACTIONS

The Department of City Planning (DCP) proposes a zoning text amendment to Section 32-10 and Section 42-10 of the New York City Zoning Resolution (ZR) to allow gaming facilities as a permitted use in certain commercial and manufacturing districts.

This action would facilitate the siting of up to three gaming facilities licensed by New York State pursuant to Section 1306 of the Racing, Pari-Mutuel Wagering and Breeding Law, and chosen through a process determined by the State.

BACKGROUND

In 2013, an amendment to the New York State Constitution passed by referendum to allow up to seven commercial casinos. Four licenses were awarded in upstate New York as a result of that change. Additional State legislation was passed in 2022, which reserved the remaining three licenses for the Downstate region, which includes New York City, Nassau, Suffolk, Putnam, Rockland, and Westchester Counties. On January 3, 2023, the State announced a Request for Applications for the three remaining casino licenses.

On February 3, 2023, interested parties submitted questions regarding the application to the State, and the State released their responses to those questions on August 30, 2023. On October 6, 2023, interested parties submitted a second set of questions to the State. Once the State responds to those questions, applicants will have 30 days to submit their applications. That step kicks off a public review process that will be informed by a local Community Advisory Committee (CAC). Each casino application will have a CAC that will be made up of members appointed by the following elected officials:

- New York State Governor
- New York City Mayor
- New York State Assemblymember
- New York State Senator
- Borough President
- New York City Councilmember

The CACs will hold public hearings as part of their review of each application under their purview. CAC members will vote to either approve or disapprove an application. Only those applications that are approved by two-thirds of the CAC will proceed to evaluation by the State's Gaming Facility Location Board (GFLB). The GFLB, which is expected to provide further

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guidance on timeline and details of the CAC process, will also assess each proposal’s compliance with zoning, economic activity and revenue impacts, local siting impacts, workforce enhancement, and diversity framework. The GFLB may select up to three applications for Downstate licenses that will then be considered by the State’s Gaming Commission, which makes the final licensing determination.

There are currently five proposals for casinos in Manhattan by the following applicants at the following locations, all of which are in 3 community districts:

- Related Companies and Wynn Companies at the Western Rail Yards in Community District 4
- Silverstein Properties and Greenwood Gaming at Hudson Yards in Community District 4
- SL Green, Caesars Entertainment, and Roc Nation at 1515 Broadway in Community District 5
- Saks Fifth Avenue and Hudson’s Bay Company at 611 5th Avenue in Community District 5
- Soloviev and Mohegan at 38th - 41st Streets and 1st Avenue in Community District 6

State legislation requires that “funds from taxes, fees, expired gaming relating obligations, interest or penalties, and funds forfeited from gambling activity generated from gaming facilities will go to the State’s Commercial Gaming Revenue Fund.” For gaming facilities licensed in New York City, fifty percent of the taxes and any interest and penalties related to the taxes will be paid monthly from a custody fund established by the Gaming Commission to the Metropolitan Transportation Authority commercial gaming revenue fund. The other fifty percent of the taxes, as well as associated interest and penalties, will be deposited into the commercial gaming revenue fund to be used only for elementary and secondary education or real property tax relief¹. Applicants will propose the tax rates in the Supplement Return Date phase of the application, and the Gaming Commission will set the final tax rate for each gaming facility, but for the first submission applicants will assume a 25 percent tax rate on gross gaming revenue on slot machines and a 10 percent tax rate on gross gaming revenue from all other sources².

Proposal

The New York City Zoning Resolution is mute on gaming facilities. This omission from the zoning text means in effect that there is currently no path for citing a casino in the city. The proposed zoning text amendment would establish gaming facilities within Use Group 8, which is permitted in C4, C5, C6, C7, C8 commercial districts and M1, M2, and M3 manufacturing districts. The text amendment allows gaming facilities to include other non-gaming uses that are related to the gaming areas, including but not limited to, hotels, eating or drinking establishments, or other amenities. It also grants that any gaming facility approved by a CAC is compliant with zoning regulations and therefore would not need to seek waivers or modifications through the Uniform Land Use Review Procedure (ULURP).

¹ [NYS Open Legislation | NYSenate.gov](https://www.nysenate.gov/legislation/bills/2024/N240179ZRY)

² [08.30.23.round1questionsanswers.pdf \(ny.gov\)](https://www.nysenate.gov/legislation/bills/2024/N240179ZRY/08.30.23.round1questionsanswers.pdf)

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Gaming facility applicants may apply separately for any additional approvals needed to facilitate their projects not covered by this text amendment, including amendments to the City map to de-map parkland or map streets, zoning map amendments for zoning district changes, or approvals for disposition of City property.

The proposed text amendment does not apply to future modifications to a proposal not included in the application approved by the CAC.

The proposed text specifies that it would only apply to gaming facilities that undergo review as outlined in the current New York State law that permits three gaming facilities Downstate. This amendment would not apply to any gaming facilities that may be permitted in the future through any future State actions.

COMMUNITY BOARD RESOLUTIONS

The Department of City Planning referred the proposed text amendment to community boards, borough presidents, and borough boards on December 5, 2023.

Manhattan Community Board 4 voted to recommend disapproval of the proposed text amendment on January 3, 2024, recommending that each of the gaming facility proposals be subject to ULURP, which requires input from community boards and the City Planning Commission along with a final, binding vote by the City Council. They also recommended that the text amendment be considered by all community boards in New York City, and that existing hotel permit and parking requirements, including the Hudson Yards parking settlement, apply to gaming facilities.

Manhattan Community Board 5 voted to recommend disapproval of the proposed text amendment on January 11, 2024, and also recommended that each gaming facility proposal be subject to ULURP. The board expressed concern over the lack of oversight from the Department of City Planning (DCP) and the lack of formal zoning regulations.

Manhattan Community Board 6 voted to recommend disapproval of the proposed text amendment on January 10, 2024, also nothing their request for a ULURP process.

Manhattan Community Board 8 and Manhattan Community Board 11 also discussed the proposed text amendment during public meetings on January 17, 2024, and January 10, 2024, respectively, and Community Board 8 voted to recommend disapproval while Community Board 11 did not hold a vote. There are currently no proposed gaming facilities in those community districts.

BOROUGH BOARD RESOLUTION

On January 18, 2024, the Manhattan Borough Board voted to recommend disapproval of the proposed text amendment. Members representing Community Boards 4, 5, and 6, in which all of the Manhattan gaming facility proposals are located, expressed their desire for the siting of such facilities to be subject to ULURP.

BOROUGH PRESIDENT’S COMMENTS

A citywide zoning text amendment that would allow the siting of a casino within the five boroughs of New York City for the first time must be carefully considered. Allowing for the possibility of siting a new casino opens the door to all the positives and negatives that such a facility could bring, from creating jobs and badly needed revenue streams for local community projects, to strains on infrastructure and social programming. If we are going to allow casinos in Manhattan, we must do it correctly and ensure that we can maximize the opportunities they could provide our economy and local communities. This text amendment is a first step in that process.

The 2013 authorizing referendum, as well as the legislation that opened a prospective additional permit to be awarded in the five boroughs, guarantees that revenue generated from any development be used to address budget needs in the city and state, and guarantees that local CACs will have the opportunity to review each proposal. CACs will not only hold public hearings, but also have the authority to work with applicants to make modifications to their proposals, drive hard bargains and secure important benefits for local communities. And very importantly, they have the ability to turn down projects that they deem not to meet the high bar CACs should expect of them. However, we will not be able to even discuss these opportunities if this text amendment isn’t allowed to move forward.

I believe we should use this process to its full potential and dig into the details of each proposal to ensure a fair determination. Although this process is not the same as ULURP, the ability to reckon with land use issues is still possible through the CACs.

We expect that at any moment the State will publish their responses to the second set of questions from interested parties. This step will start the clock on the public review process, regardless of whether or not New York City has established a zoning framework for siting casinos. To give New Yorkers a fair shot at formally weighing in on these casino proposals, including how to get the most community benefits from them, we must have a zoning framework in place in advance of the State process.

I understand the positions of the Manhattan community boards regarding the ULURP process and I believe that the Department of City Planning should begin drafting a new zoning text amendment that ensures that if any additional casino licenses are allowed downstate, those proposals must go through the full ULURP process. I also believe that the text, as currently written offers too much leniency on other zoning requirements, such as parking, accessory uses, and height and bulk requirements. Any proposals that are not in compliance with these zoning requirements should be required to formally seek zoning approval prior to submission to the GFLB. Finally, while I understand the inclusion of manufacturing districts is intended to be consistent with Use Group 8 regulations, I believe that the siting of a casino within a manufacturing district could present significant conflicts with other uses in those areas. This is evidenced by the fact that of the 9 New York City proposals that we know about, not one is in a manufacturing district.

I look forward to continuing to weigh this issue during the CAC process, when we will know more details about the applications.

BOROUGH PRESIDENT’S RECOMMENDATION

Therefore, I recommend **approval** of Non-ULURP Application No. N240179ZRY **with the following conditions:**

1. That the Department of City Planning commence work on a new zoning text amendment that would require any future casinos to obtain ULURP approval;
2. That the proposed zoning text be amended to require compliance with current zoning regulations, including parking, height and bulk; and
3. That the text amendment be modified to apply only to commercial zoning districts.



Mark Levine
Manhattan Borough President