



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 11/04/2021	REFERENCE NUMBER: PZ-2021-02 ZTA-21-02	SUBJECT: Adopt Ordinance amending Title 17 – Zoning of the Benbrook Municipal Code by amending Chapters 17.08 – Definitions and 17.20 – Districts, District Boundaries and District Uses by creating a restricted use category for a “private gaming club” and limiting its location to the “H” Industrial zoning district. [PUBLIC HEARING]	PAGE: 1 of 2
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In August 2021, planning staff fielded several calls from parties interested in opening a private gaming club in the City of Benbrook. The city’s zoning ordinance allows private clubs/organizations (e.g. VFW, American Legion, or a country club, etc.) to operate in most retail zoning districts, but is silent to gaming.

Texas law prohibits most forms of gambling. The few exceptions include gambling at home, betting on sanctioned horse and dog races, the state lottery and gambling at Indian casinos. However, private gaming or “poker” clubs have been opening up in Texas and their legality is currently under debate.

Some cities in Texas are allowing “private gaming clubs” by determining they meet the exceptions for keeping a gambling place. Per Section 47.04 of the Texas Penal Code, the exceptions are as follows:

1. The gambling occurred in a private place (Chapter 47 of the Texas Penal Code defines “private place” as a place to which the public does not have access, and excludes, among other places, streets, highways, restaurants, taverns, nightclubs, schools, hospitals, and common areas of apartment houses, hotels, motels, office buildings, transportation facilities, and shops);
2. No person received any economic benefit other than personal winnings; and
3. Except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

City staff holds that private gaming clubs do not meet all of the exceptions listed above and therefore are not permitted in any zoning district within the city. However, should a Texas court or the Texas State Legislature deem that private gaming clubs are legal in the State of Texas, the proposed ordinance creates a “gaming club” restricted use category and further restricts its use to the “H” Industrial District only. Staff suggests the ordinance is necessary to preempt any legal interpretations or changes to existing law that may negatively affect the city.

Following the Planning and Zoning Commission public hearing on September 9, 2021, the City Attorney’s Office reviewed the draft ordinance and found the proposed regulations to be a reasonable proactive approach to restrict private gaming clubs from all commercial-zoned areas, should these clubs be deemed legal.

Planning and Zoning Recommended Motion (September 9, 2021)

Move to adopt the zoning ordinance amendment, as presented.

SUBMITTED BY: CITY MANAGER	DISPOSITION BY COUNCIL: <input type="checkbox"/> APPROVED <input type="checkbox"/> OTHER (DESCRIBE)	PROCESSED BY: CITY SECRETARY DATE:
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**UNAPPROVED MINUTES
OF THE MEETING OF THE
CITY OF BENBROOK
PLANNING AND ZONING COMMISSION
REGULAR MEETING
THURSDAY, SEPTEMBER 9, 2021**

C. Zoning Text Amendment

- 1) ZTA-21-02 – Consider an ordinance amending Title 17 – Zoning of Benbrook Municipal Code by amending Chapters 17.08 – Definitions and 17.20 – Districts, District Boundaries, and District Uses by creating a restricted use category for a “private gaming club” and limiting its location to the “H” Industrial zoning district. [PUBLIC HEARING]

Doug Howard presenting presented the staff report and asked the commission recommend the City Council approve the zoning ordinance amendment, as presented.

Commissioner Wallis asked for clarification and confirmation, as he understands, that staff hasn’t had the opportunity to speak with the City Attorney, as far as any needed adjustments to the ordinance, or if there are any unattended consequences, if adopted. Mr. Howard stated that was correct, and that the ordinance is being delivered to the city attorney. Mr. Wallis asked if it was correct that the intent for staff, between now and the City Council hearing, that the attorney will review the ordinance and will be able to provide guidance on the ordinance. Mr. Howard confirmed that Mr. Wallis’ statement was correct.

The presiding officer asked for public comment. There were no public comments.

Mr. Wallis asked for clarification for voting procedures and if a super majority is needed to approve a motion, since the entire quorum is not in attendance. Mr. Howard stated that a simple majority vote is needed; however, if the commission voted to deny a P&Z item, the City Council then requires a super majority vote to approve the item. Mr. Wallis asked if the commission did not recommend adopting this ordinance, would it still go to council. Mr. Howard stated that it has the option of moving forward; however, with this being a staff item, if it did not have P&Z support, staff would not likely move forward with the item. Mr. Wallis stated that because the P&Z doesn’t discuss the items in advance, he wanted to make sure the commission was prepared for whatever the outcome of the vote may be.

Motion by Commissioner Ramsey to recommend the City Council adopt zoning ordinance, ZTA-21-02, as presented. Seconded by Commissioner Farrar. The presiding officer called the question:

Vote on the motion:

Mr. Ramsey, Mr. Logan, Mr. Wallis, Ms. Rodriguez, and Mr. Farrar

Noes: None

Abstain: None

Motion carried: 5 – 0 – 0

Attachments

1. Ordinance