

**ORDINANCE NO. 1475**

**AN ORDINANCE AMENDING TITLE 17 - ZONING OF THE BENBROOK MUNICIPAL CODE (1985), AS AMENDED, BY AMENDING CHAPTERS 17.08 – DEFINITIONS AND 17.20 – DISTRICTS, DISTRICT BOUNDARIES AND DISTRICT USES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Benbrook is a home rule city acting under its own charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

**WHEREAS**, Chapter 211 of the Local Government Code authorizes municipalities to regulate land use, structures, businesses and related activities within its corporate limits for the purpose of promoting the public health, safety and general welfare of the community and protecting and preserving places and areas of historical, cultural and architectural importance and significance; and

**WHEREAS**, the City has previously adopted zoning regulations as Title 17 of the Benbrook Municipal Code (1985), as amended through Ordinance 1465; and

**WHEREAS**, Chapter 47 of the Texas Penal Code, stipulates that the keeping a gambling place is a violation to Texas law unless, as provided for in Sec. 47.04 of the Texas Penal Code: 1) the gambling occurred in a private place; 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; and

**WHEREAS**, the City Council recognizes that notwithstanding the plain language of Chapter 47 of the Texas Penal Code, some private gaming clubs have been allowed to open in the State of Texas and their legality is currently under debate; and

**WHEREAS**, the City Council desires, should the keeping of a gambling place in a private club be deemed legal, to restrict private gaming clubs to the “H” Industrial District; and

**WHEREAS**, a public hearing was held concerning this amendment, Case No. ZTA-21-02, by the Planning and Zoning Commission on the 9<sup>th</sup> day of September 2021 and by the City Council on the 4<sup>th</sup> day of November 2021; and

**WHEREAS**, the City Council has given published notice and held public hearings with the respect to the amendment to the Zoning Ordinance as required by law; and

**WHEREAS**, the City Council now deems the provisions of the present zoning regulations inadequate, because of changing conditions since its passage, to accomplish the foregoing objectives, and that said Title 17 shall be amended and superseded by the provisions of this ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BENBROOK, TEXAS:**

**SECTION 1**

That Section 17.08.020 from Chapter 17.08 – Definitions of Title 17 – Zoning of the Benbrook Municipal Code (1985), as amended, is hereby amended by adding the following term and definition:

“Gaming Club” means any building or structure, or portion thereof, either public or private, for which legal gambling or gaming is conducted. The term shall include any restaurant, bar, assembly room, meeting room or office which is part of or appurtenant to the room or rooms in which legal gambling is conducted. The term shall also include the business of operating the gaming club and those business enterprises which are part thereof, i.e., restaurant, bar, etc. does not include locations meeting the exceptions, listed in Chapter 47 of the Texas Penal Code, for keeping a gambling place.

**SECTION 2**

That Section 17.20.060.B from Chapter 17.20 – Districts, District Boundaries and District Uses of Title 17 – Zoning of the Benbrook Municipal Code (1985), as amended, is hereby amended to include the following:

10. Gaming club; retail sales and services – Commercial uses.

**SECTION 3**

That Table 17.20.070 from Section 17.20.070 Chapter 17.20 – Districts, District Boundaries and District Uses – Zoning of the Benbrook Municipal Code (1985), as amended, is hereby amended to include the “Gaming Club – Private” use with the existing table under the “Commercial” heading, between as indicated below:

Table 17.20.070 Table of Uses																	
Use Category	Definition	Specific Use Type	Zoning Districts														
			SD	RE	A	B	BR	CR	C	D	CF	E	F	G	HC	H	MH
<b>Commercial</b>			<b>P= Permitted Use; C = CUP Required; Blank = Not Permitted</b>														
Gaming Club	means any building or structure, or portion thereof, either public or private, for which legal gambling or gaming is conducted. The term shall include any restaurant, bar, assembly room, meeting room or office which is part of or appurtenant to the room or rooms in which legal gambling is conducted.	Private															P

#### **SECTION 4**

That all other provisions of Title 17 – Zoning of the Municipal Code, City of Benbrook, Texas, not included in this amendment, shall remain in full force and effect, save an except for necessary modifications to the “Table of Contents” affecting page numbering, and for necessary modifications to related terminology or phrases that have been modified by this amendment that will affect a similar modification to interrelated terminology and phrases cross-referenced in other Chapters in the Municipal Code.

#### **SECTION 5 CUMULATIVE CLAUSE**

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Benbrook, Texas (1985), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

#### **SECTION 6 SEVERABILITY CLAUSE**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

#### **SECTION 7 PENALTY CLAUSE**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for all violations involving zoning, fire safety or public health and sanitation, including dumping of refuse, and shall be fined not more than Five Hundred Dollars (\$500.00) for all other violations of this ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

#### **SECTION 8 SAVINGS CLAUSE**

All rights and remedies of the City of Benbrook are expressly saved as to any and all violations of the provisions of the Benbrook Municipal Code (1985), as amended, or any ordinances regulating platting or Zoning which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 9  
PUBLICATION IN PAMPHLET FORM**

The City Secretary of the City of Benbrook is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof, as provided in Section 3.10 of the Charter of the City of Benbrook.

**SECTION 10  
ENGROSSMENT AND ENROLLMENT**

The City Secretary of the City of Benbrook is hereby directed to engross and enroll the ordinance by copying the caption, penalty clause, and effective date clause of this ordinance in the minutes of the City Council and by filing the ordinance in the ordinance records of the City.

**SECTION 11  
PUBLICATION IN OFFICIAL NEWSPAPER**

The City Secretary of the City of Benbrook is hereby directed to publish the caption, penalty clause, publication clause and effective date clause of this ordinance for two (2) days in the official newspaper of the City of Benbrook, as authorized by Section 52.013 of the Local Government Code.

**SECTION 12  
EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and it is so ordained

PASSED AND APPROVED this 4<sup>th</sup> day November of 2021

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Jerry B. Dittrich, Mayor

ATTESTED BY:

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Joanna King, City Secretary