



**MINUTES
OF THE
MEETING OF THE
BENBROOK CITY COUNCIL
THURSDAY, NOVEMBER 4, 2021**

The regular meeting of the Benbrook City Council was held on November 4, 2021 at 7:30 p.m. in the Council Chambers with the following Council members present:

Jerry Dittrich, Mayor
Renee Franklin
Larry Marshall
Dustin Phillips
Alfredo Valverde
Laura Mackey
Jason Ward

Also Present:

Andy Wayman, City Manager
Jim Hinderaker, Assistant City Manager
Joanna King, City Secretary
Beth Fischer, Deputy City Secretary
Rick Overgaard, Finance Director
Bennett Howell, Public Services Director

Others:

Bill Smith
Keith Tiner
Gary Addison
Josh Harville
Phyllis Harkins
Terry Roach

I. CALL TO ORDER

Meeting called to order at 7:30 p. m. by Mayor Dittrich.

II. INVOCATION/PLEDGE OF ALEGIANCE

Invocation was given by Bill Smith.
The Pledge of Allegiance was recited.

III. CITIZEN COMMENTS ON ANY AGENDA ITEM

Terry Roach address City Council on Item G-2539 – Hotel/Motel Occupancy Tax Distribution and Item C-245 – Contract for Vista Way Extension.

IV. MINUTES

1. Approve minutes of the regular meeting held October 21, 2021

Motion by Dr. Marshall, seconded by Mr. Phillips to approve the minutes of the regular meeting held October 21, 2021.

Vote on the Motion

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Dittrich, Mr. Valverde, Ms. Mackey, Mr. Ward

Noes: None

Motion unanimously.

V. PRESENTATION BY PLANNING AND ZONING COMMISSION

PZ-2021-02

ZTA-21-02 Adopt Ordinance amending Title 17 – Zoning of the 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

Jim Hinderaker gave the following report: Staff has received calls from parties interested in opening a private gaming club in Benbrook. City regulations permit private clubs/organizations (e.g. VFW, American Legion, or a country club, etc.) to operate in most retail zoning districts, but the regulations are silent to gaming.

Section 47.04 of the Texas Penal Code prohibits most forms of gaming with these exceptions:

1. 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.

Some Texas cities have interpreted the state’s exceptions to include private gaming clubs.

Staff holds that private gaming clubs do not meet all of the exception criteria and are not permitted anywhere in the City. Should a Texas court or the Texas State Legislature deem that private gaming clubs are legal in the State of Texas, staff recommends the city take a proactive approach and restrict gaming clubs to the “H” Industrial District.

The City Attorney’s Office has reviewed the draft ordinance and found the ordinance to be a reasonable proactive approach.

Mayor Dittrich opened the public hearing at 7:42 p.m.

No one spoke to the item.

Mayor Dittrich closed the public hearing at 7:43 p.m.

Motion by Mr. Valverde, seconded by Ms. Franklin to adopt Ordinance No. 1475 amending Title 17-Zoning of the Benbrook Municipal Code by amending Chapters 17.08-Definitions and 17.20-Districts, District Boundaries and District Uses b creating a restricted use category for a "private gaming club" and limiting its location to the "H" Industrial zoning district with the provision the City Attorney's Office review the 6th WHEREAS statement to determine if it is acceptable as written or whether the language should be tightened and amended to include the entities that may determine the use to be legal.

Vote on the Motion:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Dittrich, Mr. Valverde, Ms. Mackey, Mr. Ward

Noes: None

Motion unanimously.

Ordinance No. 1475 being "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.

**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 12
EFFECTIVE DATE**

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

NOTE: The City Attorney reviewed the Ordinance on November 5, 2021 following recommendation by City Council. Following review by the City Attorney the 6th WHEREAS now reads "WHEREAS, the City Council desires, should the keeping of a gambling place in a private club be deemed legal **by a Texas court or the Texas State Legislature**, to restrict private gaming clubs to the "H" Industrial District; and

VI. REPORTS FROM CITY MANAGER

A. GENERAL

G-2536 Accept Finance Report for period ending September 30, 2021

Rick Overgaard gave the following report: The September 30, 2021, monthly finance report represents the unaudited 2020-21 fiscal year end statement. Adjustments (including accruals) will be made by the auditors and staff when the Comprehensive Annual Financial Report (CAFR) is prepared. Also, transfers were made in September, but posted in March through September to reimburse the General Fund for monthly COVID related personnel costs from the American Rescue Plan (ARP) Grant fund. March through September monthly expenditure amounts have been revised to reflect these reimbursements.

General Fund revenues for the month of September were \$693,140. Major revenues collected for the month include Property taxes of \$6,170, Fines and Forfeitures of \$61,339, Charges for Services of \$66,214, Permits of \$131,544, and Franchise Taxes of \$46,519. Sales tax collected and recognized as revenue in September was \$279,139. Fiscal year to date sales tax is \$3,359,068, an increase of 1.52% over last year at this time. General Fund revenues collected through the end of September were \$21,961,155 and 103.3% of the budget.

General Fund expenditures for the month of September were \$1,626,572. Fiscal year to date expenditures were \$18,566,268 and 87.3% of the adopted budget.

Total General Fund revenues of \$21,961,155 were greater than General Fund expenditures of \$18,566,268 by \$3,394,887.

Debt Service revenues for the month of September totaled \$1,091 and were all from property tax. Fiscal year to date revenues total \$1,710,957. There were no expenditures in September. The next debt service payments will occur in February 2022. Total revenues of \$1,710,957 exceeded total expenditures of \$1,605,259 by \$105,698.

EDC revenues through September 30, 2021, were \$1,723,726. EDC expenditures through the end of September were \$981,170. Total revenues exceeded total expenditures by \$742,556.

Total revenues received through September 30, 2021 were \$3,180,547 from stormwater utility fees, mineral lease revenue, TIF payments, and interest earnings. Total expenditures for the Capital Projects Fund were \$2,588,852 through the end of September. There were no expenditures in September. Total revenues exceeded total expenditures by \$591,695. Sufficient funds are available in the current fund balances of the Capital Projects Fund. This fund operates on a project basis rather than a specific fiscal year.

On September 30, 2021, the City had \$45,328,533 invested at varying interest rates; the EDC had \$5,544,398 available. The City's portion of the portfolio increased significantly in September due to \$22 million in bond proceeds received for the construction of the municipal complex. The bond proceeds are recorded in a separate construction fund.

Motion by Ms. Mackey, seconded by Dr. Marshall to accept the finance report for the period ending September 30, 2021.

Vote on the Motion:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Dittrich, Mr. Valverde, Ms. Mackey, Mr. Ward

Noes: None

Motion unanimously.

G-2537 Approve Investment Report for the quarter ending September 30, 2021

Rick Overgaard gave the following report: The Public Funds Investment Act (PFIA), Texas Government Code and the City's Investment Policy require that an Investment Report be presented to City Council.

The Investment Committee met on October 20, 2021, to review the report and ensure compliance with the City's investment policy. A copy of the Investment Report is attached and highlights are presented below.

- The total portfolio for the City and EDC on September 30, 2021 is \$50,872,931, with 89% or \$45,328,533 belonging to the City, and 11% or \$5,544,398 to the EDC. The City's portion includes the \$22,000,000 in bond proceeds received in September.
- 77% of the combined portfolio is in bank accounts, with 11% in local government investment pools, 11% in certificates of deposit, and 1% in agency notes.
- The weighted average maturity on the combined portfolio is 84 days with a .11% average yield to maturity.

The average yield to maturity still remains low because of continued low market interest rates, decreased yield in our local government investment pools, and previously owned higher yielding CD's that have matured.

Motion by Ms. Franklin, seconded by Mr. Valverde to accept the Investment Report for the quarter ending September 30, 2021.

Vote on the Motion:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Dittrich, Mr. Valverde, Ms. Mackey, Mr. Ward

Noes: None

Motion unanimously

G-2538 Adopt Resolution accepting Administrative Regulation F-5 City of Benbrook Investment Policy

Rick Overgaard gave the following report: Section 2256.005 (e) of the Public Funds Investment Act requires the governing body of an investing entity to adopt a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the investment policy, investment strategies and broker/dealers; and record any changes. The City of Benbrook's Investment Policy was first adopted by the Benbrook City Council in 1988. The Investment Policy is included in the Finance Section of the City's Administrative Regulations, F-5. The Investment Policy was last reviewed by City Council in October 2020, as per State Law.

The Finance Department has reviewed the Investment Policy to ensure compliance with State Law and with the Public Funds Investment Act.

Pursuant to this review, the Finance Department has determined no changes are necessary to the policy and strategies. In addition, there were no changes to the approved list of broker/dealers.

Staff has prepared a Resolution stating that the Benbrook City Council has reviewed the City's Investment Policy.

Moton by Dr. Marshall, seconded by Mr. Valverde to adopt Resolution No. 2021-10 stating that the City Council has reviewed and accepts Administrative Regulation F-5, the City of Benbrook's Investment Policy.

Vote on the Motion:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Dittrich, Mr. Valverde, Ms. Mackey, Mr. Ward

Noes: None

Motion unanimously

Resolution No. 2021-10 being “TEXAS STATING THAT THE CITY COUNCIL HAS REVIEWED THE CITY’S WRITTEN INVESTMENT POLICY.”

G-2539 Approve Hotel/Motel Occupancy Tax Distribution for FY 2021-2022

Rick Overgaard gave the following report: City Staff received applications for the FY 2021-22 Hotel/Motel Occupancy Tax budget distributions. Upon review of all requests, Staff has compiled the following list.

<u>Organization</u>	<u>Program</u>	<u>Description</u>	<u>Amount</u>
Benbrook Area Chamber of Commerce	Chamber Support	Promotional Services	\$ 6,000
City of Benbrook	Heritage Fest	Festival for Benbrook	35,000
City of Benbrook	Visitor Center	Promotion of Benbrook	100,896
City of Benbrook	Christmas Light Exhibit	Holiday Light Display	<u>20,000</u>
TOTAL REQUESTS			\$ 161,896
Required Advertising Budget		Statutory Requirement	<u>43,900</u>
TOTAL HMOT BUDGET			\$ 205,796

Motion by Mr. Valverde, seconded by Mr. Ward to approve the requests as proposed for the Hotel/Motel Occupancy Tax Budget for the 2021-22 fiscal year.

Vote on the Motion:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Dittrich, Mr. Valverde, Ms. Mackey, Mr. Ward

Noes: None

Motion unanimously

B. CONTRACT

C-345 Award Contract for the Vista Way Extension and Associated Paving Improvements

Bennett Howell gave the following report: In 2019, City Council approved the Vista Way (Aledo Road) extension to Benbrook Boulevard north of I-20 utilizing Tax Increment Finance (TIF) District and Benbrook Economic Development Corporation (BEDC) funds. The project provides another north/south connection under I-20/I-820 and includes a two-way conversion of the existing I-20/I-820

Service Road along with the realignment/signalization of the Vista Way/Old Benbrook Road intersection at Benbrook Boulevard.

The roadway extension portion of the project includes construction of a two-lane concrete street, curb, gutter, storm drain system, and streetlights from the westbound I-20/I-820 Service Road to just past the east side of Benbrook Boulevard, as necessary to accommodate the roadway's new alignment. A new concrete center median will be constructed from the south end of the Benbrook Boulevard bridge overpass at I-20/I-820 to Cook Ranch Road, along with dedicated turn lanes in all four directions at the new intersection of Vista Way/Old Benbrook Road with Benbrook Boulevard.

The project includes construction of a sidewalk along the south side of the new roadway extension, west of Benbrook Boulevard only.

The project includes construction of underground conduits/wiring and foundations for a future signalized intersection at Vista Way/Old Benbrook Road and Benbrook Boulevard, but it does not include the purchase or installation of the traffic signal poles, signal arms and lights. These items were omitted from the project plan as the Texas Department of Transportation will not allow the city to install traffic signals until traffic warrants are met. Once met, the city will install the traffic signals with TIF District funds.

Bids were received and opened on October 1, 2021, with the following results:

Company	Bid Amount (\$)
Rebcon, Inc.	\$3,099,562.68
SEMA Construction	\$3,241,503.70
McMahon Construction	\$3,289,959.31
DDM Construction Corporation	\$3,428,145.99
Reliable Paving	\$3,643,756.00
Pavecon	\$4,224,034.89

Rebcon, Inc. submitted the low bid of \$3,099,562.68. Rebcon, Inc. was properly vetted and all references recommended them for the project.

The BEDC will fund all portions of the project (\$681,904) located east of Benbrook Boulevard. The TIF District will fund the balance of the project.

Following the posting of the City Council agenda, staff learned one of the property owners has died, which will delay the recording of the Vista Way plat that includes the rights-of-way dedication needed to construct the project.

A representative of the family states the family will most likely want to proceed with the project but getting the necessary signature on the plat will take time.

Motion by Dr. Marshall, seconded by Mr. Phillips to conditionally award the Vista Way extension and associated paving improvements contract to Rebcon, Inc. for \$3,099,562.68, subject to acquisition of the necessary rights-of-way.

VII. INFORMAL CITIZEN COMMENTS

VIII. COUNCIL MEMBER AND STAFF COMMENTS

None.

IX. ADJOURNMENT

Meeting adjourned at 8:06 p.m.

APPROVED:


Jerry B. Dittrich, Mayor

ATTEST:


Joanna King, City Secretary