

**AGENDA
BENBROOK CITY COUNCIL
THURSDAY, JANUARY 4, 2007
911 WINSOTT ROAD, BENBROOK, TEXAS
PRE-COUNCIL WORKSESSION 7:00 P.M.
CENTRAL CONFERENCE ROOM**



1. Review and discuss agenda items for regular meeting.
2. Receive other information from staff and Boards and Commissions.

**REGULAR MEETING 7:30 P.M.
COUNCIL CHAMBERS
ALL AGENDA ITEMS ARE SUBJECT TO FINAL ACTION**

- I. CALL TO ORDER**
- II. INVOCATION – DR. LARRY SANDERS, TRINITY HILLS BAPTIST CHURCH
PLEDGE OF ALLEGIANCE**
- III. OATH OF OFFICE - NEWLY APPOINTED CITY MANAGER**
- IV. MINUTES**
 1. Minutes of the regular meeting held December 21, 2006
- V. PRESENTATION BY PLANNING AND ZONING COMMISSION**
- VI. REPORTS OF CITY MANAGER**
 - A. GENERAL**

G-1676 Consider and Adopt Ordinance amending Chapter 9 – Public Peace, Morals and Welfare of the Benbrook Municipal Code by adding Section 9.36 – Residence Restrictions for Sex Offenders
- VII. OTHER MATTERS OF BUSINESS**
- VIII. INFORMAL CITIZEN COMMENTS**
- IX. EXECUTIVE SESSION - Pursuant to Texas Government Code**

Section 551.072 – Deliberation Regarding Real Property

 1. Consider Counter Offer for Drainage Easement at 8520 La Jolla Court
- X. RECONVENE FROM EXECUTIVE SESSION**

Necessary Action from Executive Session
- XI. ADJOURNMENT**

MEMORANDUM

To: City Council
From: Andy Wayman, Assistant City Manager
Subject: Minutes of December 21st City Council Meeting
Date: December 29, 2006

Joanna was unable to complete the minutes of the December 21st City Council Meeting prior to sending out the City Council packet. She plans on completing the minutes on Tuesday, January 2 and e-mailing them to City Council.

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AGENDA**



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 01/04/07	REFERENCE NUMBER: G-1676	SUBJECT: Consider and Adopt Ordinance amending Chapter 9 – Public Peace, Morals and Welfare of the Benbrook Municipal Code by adding Section 9.36 – Residence Restrictions for Sex Offenders	PAGE: 1 of 2
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BACKGROUND

The State of Texas and the Tarrant County Sheriffs Office have primary jurisdiction over registered sex offenders in Benbrook. This includes terms and conditions of probation, parole, monitoring, and registration. The State has established numerous categories of sex offenders depending on age of victim, severity of offense, number of offenses, etc.

PROPOSED ORDINANCE

The proposed ordinance prohibits registered sex offenders of minors from establishing permanent or temporary residence within 2,000 feet of facilities frequented by children to include:

1. A public park
2. A library
3. A public or private school, except trade or business schools, colleges or universities
4. A public or semi-public swimming pool
5. A licensed day care center
6. A studio or facility for instruction in the arts or sports where classes are taught to four (4) or more children at a time
7. A church
8. A video arcade facility
9. A public or non-profit recreation facility

As generally defined by State Law for sexual offenses, *minors* are anyone under seventeen (17) years of age. *Permanent residence* is defined as a place where a person lives for fourteen (14) or more consecutive days. *A temporary residence* is a place where a person lives a total of fourteen (14) or more days in a year or four (4) or more days in any month. If approved, the Benbrook Police Department would have primary jurisdiction over enforcement. The City would also maintain a map of restricted areas.

Plano, Farmers Branch, Cleburne, Arlington, Argyle, Mesquite, Coppell, Bridge City, Carrollton, Cockrell Hill, and Prosper have all enacted similar ordinances.

PENDING ATTORNEY GENERAL OPINION

State Senator Jane Nelson has requested an opinion from the Attorney General (letter attached) to determine whether a municipality has the authority to prohibit registered sex offenders from living in certain locations. The Attorney General’s opinion is expected no later than the end of February

SUBMITTED BY:	DISPOSITION BY COUNCIL: <input type="checkbox"/> APPROVED <input type="checkbox"/> OTHER (DESCRIBE)	PROCESSED BY: CITY SECRETARY
CITY MANAGER		DATE:

DATE: 01/04/07	REFERENCE NUMBER: G-1676	SUBJECT: Consider and Adopt Ordinance amending Chapter 9 – Public Peace, Morals and Welfare of the Benbrook Municipal Code by adding Section 9.36 – Residence Restrictions for Sex Offenders	PAGE: 2 of 2
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(e-mail). The Attorney General could (1) invalidate the ordinances, (2) limit the scope of the ordinances or (3) find the ordinances valid.

City Council has two options, (1) wait until the AG's opinion to take action or (2) take action now and make future amendments, if needed, based on the AG's opinion.

RECOMMENDATION

Staff recommends that City Council wait until the Attorney General's opinion to take formal action.

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ORDINANCE NUMBER _____

AN ORDINANCE OF THE CITY OF BENBROOK AMENDING CHAPTER 9 OF THE BENBROOK MUNICIPAL CODE BY ADDING SECTION 9.36, RESIDENCY REQUIREMENTS FOR SEX OFFENDERS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; PROVIDING A PENALTY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Benbrook is a home-rule city acting under its 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, The Benbrook City Council determines and declares that sex offenders are a serious threat to public safety; and

WHEREAS, The Benbrook City Council determines that establishing a policy to restrict the property available for residence by sex offenders will provide better protection for children gathering in the City.

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

SECTION 1

Chapter 9 of the Benbrook Municipal Code is hereby amended by adding Section 9.36 to read as follows:

“9.36.010 Definitions

- A. *Definitions.* For purposes of this section, the following terms, words and the derivations thereof shall have the meanings given herein.
1. *Minor.* A minor is a person younger than seventeen (17) years of age.
 2. *Permanent residence.* A place where a person abides, lodges or resides for fourteen (14) or more consecutive days.
 3. *Temporary residence.* A place where a person abides, lodges or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address or a place where a person routinely abides, resides or lodges for a period of four (4) or more days in any month and which is not the person's permanent residence.

9.36.020 Offenses

- A. For each person required to register on the Texas Department of Public Safety's Sex Offender Database (the "Database") because of a violation involving a victim who was less than seventeen (17) years of age, it is unlawful for that person to establish a permanent residence or temporary residence within two thousand (2,000) feet of any premise where children commonly gather, which, for purposes of this ordinance, shall include:
1. A public park;
 2. A library;
 3. A public or private school, except trade or business schools, colleges or universities;
 4. A public or semi-public swimming pool;
 5. A licensed day care center;
 6. A studio or facility for instruction in the arts or sports where classes are taught to four (4) or more children at a time;
 7. A church;
 8. A video arcade facility; and
 9. A public or non-profit recreation facility.
- B. Evidentiary matters; measurements.
1. It shall be prima facie evidence that this section applies to such a person if that person's record appears on the database and the database indicates that the victim was less than seventeen (17) years of age.
 2. For the purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent or temporary residence to the nearest property line of the premises where children commonly gather, as described herein above, or, in the case of multiple residences on one (1) property, measuring from the nearest property line of the premises to the nearest property line of the premises where children commonly gather, as described herein.
 3. A map depicting the prohibited areas shall be maintained by the City of Benbrook. The City shall review the map at least annually for changes. Said map will be available to the public at the City of Benbrook Police Department
- C. Culpable mental state not required. Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined by this chapter.
- D. Affirmative defenses. It is an affirmative defense to prosecution that any of the following conditions apply:
1. The person required to register on the database established the permanent or temporary residence and has complied with all of the

- sex offender registration laws of the State of Texas, prior to the date of the adoption of this ordinance.
2. The person required to register on the database was a minor when he committed the offense requiring such registration and was not convicted as an adult.
 3. The person required to register on the database is a minor.
 4. The premises where children commonly gather, as specified herein, within two thousand (2,000) feet of the permanent or temporary residence of the person required to register on the database was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the State of Texas.
 5. The information on the database is incorrect, and, if corrected, this section would not apply to the person who was erroneously listed on the database.”

SECTION 2

This ordinance shall be cumulative of all provisions of ordinances of the Code of the City of Benbrook, 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 3

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

SECTION 4

All rights and remedies of the City of Benbrook are expressly saved as to any and all violations of the provisions of the Code of the City of Benbrook or any other ordinances that 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 5

Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for all violations of this ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 6

The City Secretary of the City of Benbrook is hereby directed to engross and enroll this 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 7

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, Texas, as authorized by Section 52.013 of the Local Government Code.

SECTION 8

This ordinance shall be in full force and effect from and after passage and publication as provided by law, and it is so ordained.

PASSED AND APPROVED the 4th day of January, 2007.

Jerry B. Dittrich, Mayor

ATTEST:

Joanna King, City Secretary

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DOCUMENT**



FILE # ML-44982-06

I.D.# Committees: 44982

HEALTH AND HUMAN SERVICES, CHAIR
TEXAS LEGISLATIVE COUNCIL
GOVERNMENT ORGANIZATION
NOMINATIONS
FINANCE

P.O. BOX 12068
CAPITOL BUILDING
AUSTIN, TEXAS 78711
512/463-0112
FAX: 512/463-0923

DISTRICT OFFICE
1235 S. MAIN STREET, SUITE 280
GRAPEVINE, TEXAS 76051
817/424-3446
FAX: 817/488-6648

E-MAIL: jane.nelson@senate.state.tx.us

The Senate of the State of Texas

Jane Nelson
Senate District 12

EXECUTIVE ADMINISTRATION
MAIL DISTRIBUTION

August 29, 2006

SEP 01 2006

RQ-0526-GA

ACTION BY Nancy Fuller

COPY TO Ellen Witt

Stacy Napier
RECEIVED

The Honorable Gregg Abbott
Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

SEP 06 2006

OPINION COMMITTEE

Re: Whether a municipality may prohibit registered sex offenders from living in certain locations within the municipality.

Dear General Abbott:

Please accept this letter as a request for an opinion from your office concerning whether a municipality may prohibit registered sex offenders from living in certain locations within the municipality. It has come to my attention that several municipalities in Texas Senate District 12 and in other cities across the state either have passed or are considering passing municipal ordinances that prohibit registered sex offenders from living within a specified distance from locations where children typically congregate, including day-care facilities, schools, public swimming pools, and parks and playgrounds.

The State of Texas as authorized by statute currently collects certain personal information about sex offenders, including the location of their residences, and imposes on persons convicted of certain sexual offenses certain conditions of community supervision or parole related to their residences and movement within certain areas. Chapter 62, Code of Criminal Procedure, establishes the sex offender registration program in this state and requires individuals convicted of or receiving a grant of deferred adjudication for certain sexual offenses to register under that chapter. Specifically, under Chapter 62 an individual required to register under that chapter must inform certain law enforcement agencies of the address of the individual's intended residence and periodically verify the individual's continued residence at that address. Chapter 62 applies to individuals required to register under that chapter regardless of whether the individual is under community supervision or on parole.

Article 42.12, Code of Criminal Procedure, and Chapter 508, Government Code, govern the granting of community supervision and parole and establish certain mandatory conditions of community supervision and parole related to the movement and location of sex offenders.

Specifically, under Section 13B, Article 42.12, Code of Criminal Procedure, a judge granting community supervision to a defendant convicted of certain sexual offenses against a child must establish a statutorily prescribed child safety zone applicable to the defendant as a condition of the defendant's community supervision. Similarly, under Section 508.187, Government Code, as a condition for an inmate's release on parole from a penal institution, the parole panel must establish a statutorily prescribed child safety zone applicable to the released inmate. Additionally, under Section 11, Article 42.12, Code of Criminal Procedure, and Section 508.181, Government Code, as a condition of community supervision or parole, a judge may require a defendant or paroled inmate to reside in or within a certain locality or county.

Additionally, Article I of the Texas Constitution contains provisions that grant Texans equal rights under the law and prohibit certain disparate treatment of individuals.

On behalf of municipalities in Texas that have passed or are considering passing municipal ordinances that prohibit registered sex offenders from living within a specified distance from certain locations where children typically congregate, I, therefore, respectfully request your office to answer the following question:

Does a municipality have authority to prohibit registered sex offenders from living in certain locations within the municipality?

In answering this question, please address: (1) whether Chapter 508, Government Code, Article 42.12, Code of Criminal Procedure, or Chapter 62, Code of Criminal Procedure, preempts or otherwise limits a municipality's authority in this regard and (2) whether Section 3 or 19, Article I, Texas Constitution, or any other provision of the Texas Constitution limits a municipality's authority in this regard.

If you have any questions or require further information, please contact my general counsel, Shannon Dick, at 463-0112. Your assistance in this matter is greatly appreciated.

Very truly yours,



Senator Jane Nelson

cc: Governor Rick Perry
Lieutenant Governor David Dewhurst
Speaker Tom Craddick
Senator John Whitmire
Senator Florence Shapiro

**RETURN TO
DOCUMENT**

Andy Wayman

From: James Mills
Sent: Wednesday, December 27, 2006 1:48 PM
To: Andy Wayman
Subject: Sex Offender Ordinance

Andy,

I contacted the Office of the Attorney General to determine the status of the opinion requested regarding whether a municipality may prohibit registered sex offenders from living in certain locations. This request (RQ-0526-GA) was made by Senator Jane Nelson on August 29, 2006. I spoke with Ms. Aynesworth in the Opinion Committee office and learned that Senator Nelson's request is still pending but has been given a deadline of February 28th, 2007. Please let me know if you need any further assistance.

James Mills, Assistant Chief of Police
Benbrook Police Department
1080 Mercedes
Benbrook, Texas 76126
817-249-6075

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