



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/23/12		
Department:		Planning		
Department Head		P. Jarrell		
Agenda Coordinator (include phone #): T. Stuckey - 7156				
CAPTION				
An Ordinance of the City of Plano, Texas, amending Ordinance No. 79-6-10 to reduce the percentage of gross receipts for the sale of food for certain private club permittees and changing the references to the current provisions of the Zoning Ordinance; providing a severability clause and an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s): N/A				
COMMENTS: This item has no financial impact.				
STRATEGIC PLAN GOAL: Amending Ordinance No. 79-6-10 relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Please see attached memo.				
List of Supporting Documents: Memo Ordinance			Other Departments, Boards, Commissions or Agencies	

April 10, 2012

MEMO

TO: Bruce D. Glasscock, City Manager
Frank F. Turner, Deputy City Manager

FROM: Phyllis M. Jarrell, Director of Planning

SUBJECT: Updated Ordinance Governing Private Club Audits

City Council's recent amendments to the private club regulations contained in the Zoning Ordinance necessitate an update to a separate ordinance (Ordinance No. 79-6-10) governing the audit process for compliance with the city's adopted food-to-beverage ratio requirements. As you will recall, Council reduced this ratio from 65% food/35% alcohol to 35% food/65% alcohol. This is a city-imposed requirement; state law does not specify a food to beverage ratio requirement for private club permit holders. As such, the city is responsible for enforcement of its local regulation.

The original Ordinance No. 79-6-10 sets forth the annual audit requirements for private club permit holders. The updated ordinance reflects the change in the food-to-beverage ratio requirement and references the current provisions of the Zoning Ordinance related to private clubs. There are no proposed changes to the annual audit procedures, since state law no longer allows cities to impose more restrictive regulations on businesses that sell alcohol. The city's existing ordinances related to private clubs are "grandfathered" and may be maintained, but not strengthened.

The audit procedures outlined in the ordinance are as follows:

- Each private club permit holder must submit an annual audit by April 1st to determine the percentage of gross receipts derived from the sale of food. A CPA must prepare the audit, which covers the previous calendar year.
- If a private club holder does not submit the audit, the city may select and engage a CPA to perform the audit, at the permit holder's expense.
- Audits are presented to the City Council for consideration to determine compliance.

- The City Council may establish a six month probation period for permit holders whose operations are non-compliant, or begin proceedings to revoke the Specific Use Permit.

The Finance Department will receive and review the annual audits. There are presently 19 private clubs permit holders in the city; two of these are fraternal organizations which the state exempts from food service requirements.

The ordinance also contains language which would allow the City Council to immediately suspend operation of the private club. However, as discussed in previous meetings, the city's regulatory options are limited. The city does not have the authority to suspend or revoke a state-issued private club permit. While the city could remove the Specific Use Permit, the private club could continue to operate as a non-conforming use.

Please let me know if you have questions or need additional information.

XC: Diane Wetherbee, City Attorney
Denise Tacke, Finance Director
Tina Firgens, Planning Manager

An Ordinance of the City of Plano, Texas, amending Ordinance No. 79-6-10 to reduce the percentage of gross receipts for the sale of food for certain private club permittees and changing the references to the current provisions of the Zoning Ordinance; providing a severability clause and an effective date.

WHEREAS, on June 11, 1979, the City Council passed Ordinance No. 79-6-10 that established additional conditions which must be satisfied in the operation of a Private Club in the City; and

WHEREAS, Ordinance No. 79-6-10 was adopted prior to the state law restriction on cities for regulating businesses operating with a permit from the Texas Alcohol and Beverage Commission and, thus, Ordinance No. 79-6-10 is grandfathered under Section 109.57 of the Texas Alcohol and Beverage Code; and

WHEREAS, since the adoption of Ordinance No. 79-6-10, a number of amendments have been made to the City of Plano Zoning Ordinance that affect Private Club operations; and

WHEREAS, as a result of those amendments, Ordinance No. 79-6-10 should be amended to be consistent with those changes; and

WHEREAS, the amendments to Ordinance No. 79-6-10 will lessen the current regulations on Private Clubs; and

WHEREAS, the City Council, finds that the audit procedures contained in Ordinance No. 79-6-10 should be amended to reflect the reduction of the percentage requirement for food sale receipts and references to Private Clubs shall be changed to the current zoning regulations.

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

Section I. Section II of Ordinance 79-6-10 is hereby amended as follows:

Section II. The permittee of each Private Club in the City which is required by ordinance to have a minimum of gross receipts from the sale of food and the Private Club and has been in operation for the entire preceding calendar year shall select and engage a Certified Public Accounting firm to conduct an annual audit of the operations of such Private Club during such period. The year upon which such audit shall be conducted shall begin January 1, and end December 31. The purpose of this audit shall be to determine whether or not the permittee has complied with the requirements of City of Plano Ordinance No. 2012-3-24, which requires that not less than 35% of the gross receipts of the Private Club during the audit year be derived from the sale of food. The audit shall clearly reflect (1) the total gross receipts of the permittee for the audit year from all operations on the premises for which the Specific Use Permit for a Private Club is issued; (2) the percentage of such gross receipts derived from the sale of food; and (3) the percentage of such gross receipts derived from the sale of alcoholic beverages.

In addition, the audit shall indicate whether or not further inquiry should be made by the City of Plano into the permittee's operations to determine whether all requirements of the Zoning Ordinance for the operation of a Private Club were satisfied during the audit year.

This audit shall be completed and a copy furnished to the City Council through the City Manager's office not later than April 1st of the year following the audit year.

The audit shall be performed and a copy furnished to the City Council at the sole expense of the permittee.

If not received by April 1st, the City Council shall have the right to select and engage a Certified Public Accounting firm to perform the audit described herein. The permittee shall reimburse the City of Plano for all expenses incurred in obtaining this audit."

Section II. Sections II, III, IV and V of Ordinance No. 79-6-10 are amended to change any and all references to "Ordinance No. 77-10-10" to be revised to "Section 3.105 Private Clubs of Article 3 of the City of Plano Zoning Ordinance as the same may be amended." All other provisions in such sections, other than the ordinance references, shall remain in their entirety including the sections of Ordinance No. 79-6-10 that were not amended by this Ordinance.

Section III. It is intended by the City Council that this ordinance, and every provision thereof, shall be considered severable and the invalidity of any section, clause or provision of this ordinance shall not affect the validity of any other portion of this ordinance.

Section IV. This Ordinance shall become effective from and after its passage.

DULY PASSED AND APPROVED THIS 23RD DAY OF APRIL, 2012.

Phil Dyer, Mayor

Attested:

Diane Zucco, City Secretary

Approved as to form:

Diane C. Wetherbee, City Attorney