

Planner: Andrea Gilles, AICP

FILE NUMBER: DCA201-011(AG) **DATE INITIATED:** June 3, 2021

TOPIC: Dallas Development Code amendment to define a “private game club” and to require a specific use permit for the use.

COUNCIL DISTRICT: All **CENSUS TRACTS:** All

PROPOSAL: Consideration of amending Chapters 51 and 51A of the Dallas Development Code, Section 51-4.208 “Recreation and Entertainment Uses”, Section 51A-4.208 “Recreation Uses”, and related sections with consideration to be given to defining a use, “private game club”, and establishing appropriate zoning districts and development standards associated with the use.

SUMMARY: The proposed code amendments are intended to provide a path to allow private game clubs to operate by specific use permit and in a capacity that complies with State Law.

ZOAC RECOMMENDATION: Not to adopt the proposed amendments.

STAFF RECOMMENDATION: Approval of the proposed amendments.

PREVIOUS CPC ACTION: On August 8, 2024, the City Plan Commission held this item under advisement until the second meeting after the court of appeals issued its ruling CHDallas2, LLC vs Andres “Andrew” Espinoza, in His Official Capacity as the Building Official of the City of Dallas, case Number: 05-22-01278-CV, which was issued on August 27, 2024. No further changes were made to this document.

REQUEST:

On January 25, 2023, the City Council authorized a supplemental agreement to a legal services contract for litigation related to the revocation of two certificates of occupancy that were issued, in error, for commercial amusement (inside) use. In the motion to adopt the item, City Council included direction to staff to take actions to consider a new use category that would provide private game clubs a path to operate in compliance with State Law.

On December 12, 2023, at the request of the Committee Chair, the City Attorney's Office, in conjunction with the Planning and Urban Design Department, briefed the Government Performance and Financial Management Committee on the status of the code amendment. At that time, staff committed to taking the proposed amendment to the Zoning Ordinance Advisory Committee for consideration.

BACKGROUND:

On June 3, 2021, City Plan Commission authorized a public hearing to consider amending Chapter 51A of the Dallas Development Code with "consideration to be given to requiring a specific use permit for commercial amusement (inside) limited to a poker room".

***Note:** Pursuant to the commercial amusement (inside) definition¹ contained in Chapter 51A of the Dallas Development Code, the use is applicable to a facility that is open to the general public. Therefore, it has been determined that a poker room operating as a commercial amusement (inside) violates Texas Penal Code, Chapter 47 "Gambling" which includes a defense to prosecution for gambling that occurs in a private place. Details are provided in this report.*

At the time of authorization, there were two poker rooms operating in Dallas; both were issued certificates of occupancy for the commercial amusement (inside) use. Several others utilizing the same model applied for certificates of occupancy for the commercial amusement (inside) use during this time period.

Chapter 51A does not specifically address "poker rooms" or "card houses". However, the Building Official has the authority to render interpretations of the development code and to assign an equivalent land use where a specific one does not exist. Such interpretations,

¹ Section 51A-4.210(b)(7) of Chapter 51A of the Dallas Development Code defines a commercial amusement (inside) as "a facility wholly enclosed in a building that offers entertainment or games of skill to the general public for a fee. This use includes but is not limited to an adult arcade, adult cabaret, adult theater, amusement center, billiard hall, bowling alley, children's amusement center, dance hall, motor track, or skating rink."

rules, and regulations must conform with the intent and purpose of the code, but it is not typical for the Building Official to conduct exhaustive legal research when determining an appropriate land use.

From a zoning perspective, commercial amusement (inside) was the land use that most closely aligned with the operations described in the applications for the two poker rooms that were issued certificates of occupancy. Later, the Building Official learned that such poker rooms violate Texas Penal Code, Chapter 47 “Gambling.” Specifically, Section 47.04, “Keeping of a Gambling Place.”² Pursuant to this section, it is an affirmative defense to prosecution under this section that:

- (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.

Texas Penal Code, Chapter 47 defines “private place”³ as a place to which the public does not have access. When the certificates of occupancy were issued for the two referenced poker rooms, the establishments were not believed to be private places. At the time of issuance, the Building Official was not aware of the referenced defense to prosecution for gambling that occurs in a private place. It would later be determined that these certificates of occupancy were issued in error.

Based on this new understanding, five succeeding certificates of occupancy were denied⁴ because the notarized land use statements submitted with the applications clearly indicated a use that would be operated in violation of the Texas Penal Code.

Denial letters were sent via certified mail to the respective applicants to inform them of

² Section 47.04, “Keeping of a Gambling Place” of Texas Penal Code, Chapter 47, “Gambling” states, “A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.”

³ Section 47.01 “Definitions” of Texas Penal Code, Chapter 47, “Gambling” 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 the common areas of apartment houses, hotels, motels, office buildings, transportation facilities, and shops.”

⁴ Section 306.5, “Denial” of Chapter 52, “Administrative Procedures of the Construction Codes”, of the Dallas City Code, states, “The building official shall deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with the codes, the Dallas Development Code, or any county, state, or federal laws or regulations.”

the Building Official's decision, which is final unless appealed to the Board of Adjustment ("the Board") in accordance with Section 51A-4.703 of the Dallas Development Code. Two applicants timely appealed to the Board; in both cases, the Building Official's decision was upheld. The applicants next appealed the to the District Court of Dallas County. Litigation is pending at the time of this report.

Subsequently, the two certificates of occupancy that were issued in error were revoked⁵. Revocation letters were sent via certified mail to respective applicants to inform them of the Building Official's decision. Both applicants timely appealed to the Board, and in both cases, the Building Official's decision was overturned. The Building Official appealed the Board's decision to the District Court of Dallas County. Outside counsel has been retained to represent both parties. Litigation is pending at the time of this report.

STAFF RECOMMENDATION:

To comply with Chapter 47 of the Texas Penal Code, Planning and Urban Design Staff, in conjunction with the City Attorney's Office, recommends a new use called, "private game club" which may only be open to members who meet more than de minimis eligibility requirements. The use may only be accessory to a main use and all economic benefits, other than personal winnings, must come from the main use. Except for the advantage of skill or luck, the risks of losing and the chances of winning any competitive game must be the same for all participants.

To ensure compatibility and to allow for ongoing monitoring, staff recommends that the use be allowed by specific use permit (SUP) only in the CR community retail, RR regional retail, CS commercial service, industrial, central area, mixed use, multiple commercial, and urban corridor districts of Chapter 51A and the SC shopping center, GR general retail, LC light commercial, HC heavy commercial, central area, and industrial districts of Chapter 51.

ZOAC did **not** recommend the adoption of this proposal.

⁵ Section 306.13 "Revocation of Certificate of Occupancy" of Chapter 52, "Administrative Procedures of the Construction Codes", of the Dallas City Code, states that the building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued in error.

ZOAC ACTION

MARCH 5, 2024

Motion: It was moved to send the item to City Plan Commission with a recommendation to not adopt the proposal.

Motion: Brent Rubin
2nd: Nathaniel Barrett

Result: Passed: 7-0
For: Barrett, Behring, Carden, Housewright, MacGregor, Rieves, Rubin
Against: None
Absent: Blair

Speakers: For: None.

Against: Philip Kingston, 5901 Palo Pinto, Dallas, TX 75206

Thomas DuPree, 5132 Bellerive Dr., Dallas TX 75287

STAFF RECOMMENDED AMENDMENTS:

(ZOAC did **not** recommend the adoption of this proposal.)

Section 51A-4.208. RECREATION USES

Note: The following language is proposed to be added to the Dallas Development Code. Single-underlining and double-underlining have been omitted throughout for readability.

(1.1) Private game club.

(A) Definition. A private game club means a private place that is only open to its members that primarily offers competitive gaming facilities including games of skill, such as axe throwing, darts, or shuffleboard. Any games played with cards, dice, balls, or any other gambling device as defined in Texas Penal Code Chapter 47 are allowed only as an accessory use in accordance with Section 51A-4.217 of the Dallas Development Code.

(i) In this paragraph, MEMBER means an individual joining the private game club. Membership must be for a minimum of a one-year time period. Members must meet more than de minimis eligibility requirements. Memberships must be limited in number and may not be transferable. Membership must be revocable for cause.

(ii) All economic benefits, other than personal winnings, must come from the main use.

(iii) Except for the advantage of skill or luck, the risks of losing and the chances of winning any competitive game must be the same for all participants.

(iv) A private game club use cannot operate in conjunction with the following uses:

- Alternative financial establishment.
- Airport or landing field.
- Alcoholic beverage establishment.
- Commercial bus station or terminal.
- Dance hall.
- Extended stay hotel or motel.
- Financial institution without drive-in window.
- Financial institution with drive-in window.
- Heliport.
- Helistop.
- Hospital.
- Hotel or motel.
- Lodging or boarding house.
- Medical clinic or ambulatory surgical center.

- Multifamily.
- Office.
- Overnight general-purpose shelter.
- Public or private school.
- Railroad passenger station.
- Railroad yard, roundhouse, or shops.
- Restaurant without drive-in or drive-through service.
- Restaurant with drive-in or drive-through service.
- STOL (short takeoff or landing) port.
- Transit passenger shelter.
- Transit passenger station or transfer center.

(B) Districts permitted. By SUP only in CR community retail, RR regional retail, CS commercial service, industrial, central area, mixed use, multiple commercial, and urban corridor districts of Chapter 51A and the SC shopping center, GR general retail, LC light commercial, HC heavy commercial, central area, and industrial districts of Chapter 51.

(C) Required off-street parking. The off-street parking requirement may be established by the ordinance granting the SUP.

(D) Required off-street loading. None.

(E) Additional provision. A private game club use must comply with Texas Penal Code Chapter 47.