

CITY OF FREEPORT  
PLANNING COMMISSION  
MONDAY, NOVEMBER 2, 2015, 6:00 P.M.  
FREEPORT POLICE DEPARTMENT, MUNICIPAL COURTROOM.  
430 NORTH BRAZOSPORT BOULEVARD  
FREEPORT, TEXAS  
FORMAL SESSION

Edward Garcia, Chairman  
Cindy Cain  
Royce McCoy

Les Girouard  
Eddie Virgil

Notice is hereby given that the Planning & Traffic Commission of the City of Freeport will meet in a Joint Public Hearing on Monday, November 2, 2015 at 6:00 P.M. at the Freeport Police Department, Municipal Court Room, 430 North Brazosport Boulevard, Freeport Texas to discuss the following:

1. Open Meeting.
2. **Joint Public Hearing:** The City Council of the City of Freeport, and the Planning Commission of said City will conduct a Joint Public Hearing to consider proposed amendment to the Comprehensive Zoning Ordinance of said City, codified as Chapter 155 of the Code of Ordinances of said City, amending said ordinances to include definitions of a public place and a non-regulated night club and a prohibitions of the use of any land in the City as such a club between 2:15 a.m. and 12:00 noon on Sunday and between 2:15 a.m. and 7:00 a.m. on other days and related provisions regarding the contents certificates of occupancy for such clubs, the rights of entry by the Building Official, any Building Inspector and any police officer, their rights and duties upon entering and the obligations of all occupants at that time.
3. Make a recommendation to the City Council whether or to declare declaring the use of any land within the City as a Non-regulated Night Club, as defined in this ordinance, between 2:15 a.m. and 12:00 noon on Sunday between 2:15 a.m. and 7:00 a.m. on any other day to be a public nuisance to be abated as provided in this ordinance; amending Section 10.05(B) and 155.002 of the Code of Ordinances of said City to provide definitions; amending 155.023 of said Code of Ordinances to add thereto a new definition (P) prohibiting the use of any land or building in the City as a Non-Regulated Night Club between 2:15 A.M. and 12:00 noon on Sunday and between 2:15 A.M. and 7:00 A.M. on any other day; amending section 155.023 of said code to add thereto new division (Q) requiring every certificate of occupancy issued for any premises which could be used as a Non-Regulated Night Club shall state that the Building Official, any building inspector or police officer of the City shall have the right of entry to such premises during the hours mentioned in Division (P) for the purpose of determining whether or not such premises is in fact being used as a Non Regulated Night Club during such hours and, if so to verbally notify the occupants of such premises to immediately cease such use and providing that the continued use of such premises by any occupant for such propose after receiving such notice shall constitute a violation of the zoning ordinance of the city;

ratifying and confirming all actions previously taken by the Planning Commission of said City or the City Council, or both.

4. Adjourn

Items not necessary discussed in the order they appear on the agenda. The Council at its discretion may take action on any or all of the items as listed. This notice is posted pursuant to the Texas Open Meeting Act. (Chapter 551, Government Code).

In compliance with the Americans with Disabilities Act, the City of Freeport will provide for reasonable accommodations for persons attending City Council Meetings. Request should be received 48 hours prior to the meeting. Please contact the City Secretary office at 979-233-3526.

I, Delia Munoz City Secretary for the City of Freeport, Texas certify that this agenda was posted on the official bulletin board/glass door of City Hall, facing the rear parking lot of the building, with 24 hours a day public access, 200 West 2nd Street, Freeport Texas, October 30, 2015 at or before 5:00 p.m.

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Delia Munoz - City Secretary  
City of Freeport, Texas

TO ALL PERSONS IN INTEREST, CITIZENS, CORPORATIONS, AND FIRMS, THEIR AGENTS AND ATTORNEYS, AND TO ALL PERSONS, FIRMS, AND CORPORATIONS OWNING ANY INTEREST IN ANY LAND LOCATED WITHIN AND TO ALL INHABITANTS AND LAND OWNERS OF AND IN THE CITY OF FREEPORT, BRAZORIA COUNTY, TEXAS.

N O T I C E

A joint public hearing will be held on Monday, the 2nd day of November, 2015, at 6:00 o'clock p.m., central standard time, at the Police Department Municipal Courtroom of the City of Freeport, Texas, located at 430 North Brazosport Boulevard, within the corporate limits of said city, in Brazoria County, Texas, at which time and place the City Council and the Planning Commission of said city will conduct a joint public hearing to consider proposed amendments to the Comprehensive Zoning Ordinance of said city, codified as Chapter 155 of the Code of Ordinances of said City, amending said ordinance to include definitions of a public place and a non-regulated night club and a prohibition of the use of any land in the city as such a club between 2:15 a.m. and 12:00 noon on Sunday and between 2:15 a.m. and 7:00 a.m. on other days and related provisions regarding the contents certificates of occupancy for such clubs, the rights of entry by the Building Official, any Building Inspector and any police officer, their rights and duties upon entering and the obligations of all occupants at that time.

BY ORDER OF THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS,  
made on the 5<sup>th</sup> day of October, 2015.

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Delia Munoz, City Secretary,  
City of Freeport, Texas

NOTE: This notice should be published in the Brazosport Facts ONE (1) time only at least fifteen (15) full days prior to the date of the public hearing.

AN ORDINANCE OF THE CITY OF FREEPORT, BRAZORIA COUNTY, TEXAS, CONTAINING A PREAMBLE; CONTAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW; DECLARING THE USE OF ANY LAND WITHIN THE CITY AS A NON-REGULATED NIGHT CLUB, AS DEFINED IN THIS ORDINANCE, BETWEEN 2:15 A.M. AND 12:00 NOON ON SUNDAY AND BETWEEN 2:15 A.M. AND 7:00 A.M. ON ANY OTHER DAY TO BE A PUBLIC NUISANCE TO BE ABATED AS PROVIDED IN THIS ORDINANCE; AMENDING SECTIONS 10.05(B) AND 155.002 OF THE CODE OF ORDINANCES OF SAID CITY TO PROVIDE DEFINITIONS; AMENDING SECTION 155.023 OF SAID CODE OF ORDINANCES TO ADD THERETO A NEW DIVISION (P) PROHIBITING THE USE OF ANY LAND OR BUILDING IN THE CITY AS A NON-REGULATED NIGHT CLUB BETWEEN 2:15 A.M. AND 12:00 NOON ON SUNDAY AND BETWEEN 2:15 A.M. AND 7:00 A.M. ON ANY OTHER DAY; AMENDING SECTION 155.023 OF SAID CODE TO ADD THERETO NEW DIVISION (Q) REQUIRING EVERY CERTIFICATE OF OCCUPANCY ISSUED FOR ANY PREMISES WHICH COULD BE USED AS A NON-REGULATED NIGHT CLUB SHALL STATE THAT THE BUILDING OFFICIAL, ANY BUILDING INSPECTOR OR POLICE OFFICER OF THE CITY SHALL HAVE A RIGHT OF ENTRY TO SUCH PREMISES DURING THE HOURS MENTIONED IN DIVISION (P) FOR THE PURPOSE OF DETERMINING WHETHER OR NOT SUCH PREMISES IS IN FACT BEING USED AS A NON-REGULATED NIGHT CLUB DURING SUCH HOURS AND, IF SO, TO VERBALLY NOTIFY THE OCCUPANTS OF SUCH PREMISES TO IMMEDIATELY CEASE SUCH USE AND PROVIDING THAT THE CONTINUED USE OF SUCH PREMISES BY ANY OCCUPANT FOR SUCH PURPOSE AFTER RECEIVING SUCH NOTICE SHALL CONSTITUTE A VIOLATION OF THE ZONING ORDINANCE OF THE CITY; RATIFYING AND CONFIRMING ALL ACTIONS PREVIOUSLY TAKEN BY THE PLANNING COMMISSION OF SAID CITY OR THE CITY COUNCIL, OR BOTH; PROVIDING THAT ANY PERSON VIOLATING SAID CODE, AS AMENDED BY THIS ORDINANCE, SHALL BE GUILTY OF A MISDEMEANOR AND ASSESSED A FINE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 155.999 OF SAID CODE OF ORDINANCES; PROVIDING THAT EACH DAY ANY SUCH VIOLATION OCCURS AND EACH PART OF ANY DAY ANY SUCH VIOLATION CONTINUES SHALL CONSTITUTE A SEPARATE OFFENSE; CONTAINING SAVINGS CLAUSES; CONTAINING A SEVERANCE CLAUSE; AND PROVIDING THAT THE PENAL PROVISIONS OF THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS DESCRIPTIVE CAPTION HAS BEEN PUBLISHED TWICE IN THE BRAZOSPORT FACTS BUT ALL OTHER PROVISIONS SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, the City of Freeport, Texas (the City), is a "Home Rule City" and a "Home Rule Municipality" lying and situated in Brazoria County, Texas, as described in and defined by Section 5, Article XI of the Constitution of Texas and Section 1.005 of the Local Government Code of Texas, respectively; and,

WHEREAS, Subchapter A of Chapter 211 of the Local Government Code of Texas and Item (g) of Section 3.07 its Home Rule Charter authorize the City Council to adopt the provisions of this Ordinance; and,

WHEREAS, the use of any land or building within the City as a Non-Regulated Night Club, as hereinafter defined, after 2:15 a.m. and before 12:00 noon on Sunday and on any other day after 2:15 a.m. and before 7:00 a.m. creates a public nuisance which should be abated as provided in this ordinance; and,

WHEREAS, the City Council of the City has determined and does here now declare that the adoption of this ordinance is necessary to the health, safety and general welfare of the inhabitants of the City and is necessary to conform the comprehensive zoning plan of the City to the current zoning conditions which exist therein and to abate the public nuisance herein defined.

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

SECTION ONE--Findings of Fact and Conclusions of Law.

The City Council of the City makes the following findings of fact and conclusions of law, viz:

First, that the public hearings required by the Zoning Enabling Act of the State of Texas, codified as Chapter 211 of the Texas Local Government Code, and the present Comprehensive Zoning Ordinance of the City, codified as Chapter 155 of the Code of Ordinances of the City, have been conducted in the manner and at the time required.

Second, that not less than fifteen (15) days prior to the date of such hearings, public notice thereof was published once in the Brazosport Facts, a newspaper of general circulation in and the official newspaper of the City, stating the date, time and place of such hearings.

Third, that after considering evidence submitted at such hearings, the City Council of the City is of the opinion and finds that the operation of and use of any premises in the City as a Non-Regulated Night Club, as hereinafter defined, between 2:15 a.m. and 12:00 noon on Sunday and between 2:15 a.m. and 7:00 a.m. on any other day, constitutes a public nuisance which can and should be abated by the changes in Chapter 155 of the City's Code of Ordinances set forth below.

Fourth, that Section 105.06(c), Texas Alcoholic Beverage Code, prohibiting consumption or possession with intent to consume of an alcoholic beverage in a public place between 2:15 a.m. and 12:00 noon on Sunday and between 2:15 a.m. and 7:00 a.m. on any other day applies only to premises that constitute a public place and such consumption or possession with intent to consume is not prohibited by said Code or any other statute of the State of Texas or regulation of any other agency thereof on other premises; and,

Fifth, that the health, safety, morals and general welfare of the inhabitants of the City will best be served by the adoption of this ordinance prohibiting the use of any premises in the City from being used as a Non-Regulated Night Club as hereinafter defined.

SECTION TWO-CODE OF ORDINANCES AMENDED

The Comprehensive Zoning Ordinance of the City, read, passed and approved as Ordinance No. 1100 on the 3rd day of April, 1964, now codified as Chapter 155 of the City's Code of Ordinances and hereinafter sometimes called "the Zoning Ordinance," is hereby amended as follows:

First, Section 10.05(B) of the Code of Ordinances of the City is hereby amended to add the following definition:

PUBLIC PLACE has the meaning given to it in Section 1.07 (40) of the Texas Penal Code."

Second, Section 155.002 of the Code of Ordinances of the City is hereby amended to add the following definition:

■ NON-REGULATED NIGHT CLUB. A Night Club that sponsors or permits any on-site event or activity involving alcohol which is not regulated by the Texas Alcoholic Beverage Commission between the hours of 2:15 a.m. and 12:00 noon on Sunday and 2:15 a.m. and 7:00 a.m. on other days if such club has or is required by the Code of Ordinances of the City to have any of the following: (1) a sound amplification permit, (2) a dance hall permit or (3) a coin-operated machine on which a tax is required to be paid or (4) if such club charges a door charge, an entry fee or other valuable consideration for entry onto or to remain upon the premises."

Third, Section 155.023 of the Code of Ordinances is hereby amended to add new Divisions (P) and (Q) which shall read, respectively, as follows:

(P) No land or building in the City may be used as a Non-Regulated Night Club between the hours of 2:15 a.m. and 12:00 noon on Sunday and between the hours of 2:15 a.m. and 7:00 a.m. on other days."

(Q) Every certificate of occupancy issued for any premises that, in the opinion of the Building Official, could be used as a Non-Regulated Night Club shall provide that the Building Official and any Building Inspectors or Police Officer of the City shall have a right of entry to such premises during the hours mentioned in Division (P) of this section for the purpose of determining whether or not such premises is in fact being used as a Non-Regulated Night Club during any of the hours mentioned in Division (P) of this section and, if such premises is being so used, the duty to verbally notify the occupants of such premises to immediately cease such use and that the continued use of such premises by any occupant as a Non-Regulated Night Club during such hours after receiving such notice shall be a violation of the Zoning Ordinance and, upon conviction, shall be punished as provided in Section 155.999 of this Chapter. Provided, however, nothing in this Division shall prevent an arrest or prosecution of any Occupant found to be in violation of Section 105.06(c) of the Alcoholic Beverage Code for consuming or possessing with intent to consume an alcoholic beverage in a public place during such hours without the giving of such warning."

SECTION THREE--Ratification and Confirmation.

The City Council of the City of Freeport, Texas, hereby ratifies and confirms any and all action taken by the Planning Commission of said City or the City Council of said City, or both, in connection with the change in zoning classification evidenced by this ordinance, including but not limited to the calling of a public hearing required by said Zoning Enabling Act and the Zoning Ordinance, the giving of public notice of such hearings, the giving of written notice to the owners of property which is the subject of such and to the adjoining property owners, the making of preliminary and final reports with respect to such change and the conducting of the public hearings required by said Act and the Zoning Ordinance.

#### SECTION FOUR - PENALTY

Any person violating the Code of Ordinances of the City, as amended by this ordinance, shall be guilty of a misdemeanor and upon conviction therefor assessed a fine as prescribed in Section 155.999 of said Code; and each day such violation occurs and each part of any day any such violation continues shall constitute a separate offense.

#### SECTION FIVE--SAVINGS CLAUSES

(a) Nothing contained in this ordinance shall cause any rights heretofore vested to be altered, affected or impaired in any way and all such rights may be hereafter enforced as if this ordinance had not been adopted.



(b) This ordinance is cumulative of and in addition to all other ordinances of the City of Freeport, Texas, on the same subject and all such ordinances are hereby expressly saved from repeal. Provided however, where this ordinance and another ordinance conflict or overlap, this ordinance shall prevail.

(c) No offense committed and no fine, forfeiture or penalty incurred prior to the effective date of this ordinance is to be affected by the adoption of this ordinance but the punishment for any offense committed and the recovery of any fines or forfeitures incurred prior to such date shall take place as if this ordinance had not been adopted.

SECTION SIX--SEVERANCE CLAUSE.

In the event any section or provision of this ordinance is found to be unconstitutional, void or inoperative by the final judgment of a court of competent jurisdiction, such defective provision, if any, is hereby declared to be severable from the remaining sections and provisions of this ordinance and such remaining sections and provisions shall remain in full force and effect.

SECTION SEVEN--EFFECTIVE DATE.

The penal provisions of this ordinance shall take effect and be in force from and after its descriptive caption has been published twice in the Brazosport Facts, the official newspaper of the City, but all other provisions shall take effect and be in force from and after its passage and adoption.

READ, PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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Norma Moreno Garcia, Mayor,  
City of Freeport, Texas

ATTEST:

\_\_\_\_\_  
Delia Munoz, City Secretary,  
City of Freeport, Texas

APPROVED AS TO FORM ONLY:

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Wallace Shaw, City Attorney  
City of Freeport, Texas

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