

REGULAR CITY COUNCIL MEETING

OCTOBER 16, 2007

7:00 P.M.

A meeting of the Terrell City Council was held on Tuesday, October 16, 2007 at 7:00 p.m. in the City Council Chambers located at 201 East Nash Street, Terrell, Texas with the following members present:

COUNCILMEMBER #1 HAL RICHARDS
COUNCILMEMBER #2 TOMMY SPENCER
COUNCILMEMBER #3 RICKY JORDAN
COUNCILMEMBER #4 JACK JONES
COUNCILMEMBER #5 DON THURMAN

1. Call to order.

Mayor Hal Richards called the meeting to order.

2. Invocation.

Reverend Chuck Schorlemmer gave the opening prayer.

3. Consider Approval of Special City Council Meeting and Workshop Minutes of October 2, 2007 and Regular City Council Meeting Minutes of October 2, 2007.

Councilmember Don Thurman made a motion to approve the Special City Council Meeting and Workshop Minutes of October 2, 2007 and Regular City Council Meeting Minutes of October 2, 2007 with corrections. The motion was seconded by Deputy Mayor Pro tem Jack Jones. Ayes – all; Nays – none. Motion carried.

Correction:

12. Discuss and Consider Approval of Ordinance No. 2345 – Amending Chapter 8: Offenses and Nuisances, Section 13: Littering Prohibited.

Greg Shumpert, Assistant City Attorney presented to Council for discussion and consideration Ordinance No. 2345 – Amending Chapter 8: Offenses and Nuisances, Section 13: Littering Prohibited. Deputy Mayor Pro tem Jack Jones made a motion to approve Ordinance No. 2345 - Amending Chapter 8: Offenses and Nuisances, Section 13: Littering Prohibited. The motion was seconded by Mayor Pro tem Ricky Jordan. Ayes – all; Nays – none. Motion carried.

ORDINANCE NO. 2345

AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS AMENDING CHAPTER 8, OFFENSES AND NUISANCES, SECTION 13, LITTERING PROHIBITED, TERRELL CITY CODE REVISED; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES;

PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

4. Hear Remarks from Visitors.

None were made.

PUBLIC HEARING

5.

- a.) Conduct a Public Hearing to Receive Public Comment on Granting Petition of Property Owners for Voluntary Annexation of 7.853 Acres of Adjacent and Contiguous Territory Out of the John C. Hale Survey, Abstract No. 202, into the City of Terrell.**

Torry Edwards, City Manager and Jerry Ragsdale representing Oakmont Capital Group presented to Council for discussion and consideration Petition of Property Owners for Voluntary Annexation of 7.853 Acres of Adjacent and Contiguous Territory Out of the John C. Hale Survey, Abstract No. 202, into the City of Terrell. Mayor Hal Richards opened a Public Hearing to Receive Public Comment on Granting Petition of Property Owners for Voluntary Annexation of 7.853 Acres of Adjacent and Contiguous Territory Out of the John C. Hale Survey, Abstract No. 202, into the City of Terrell. No one against Granting Petition of Property Owners for Voluntary Annexation of 7.853 Acres of Adjacent and Contiguous Territory Out of the John C. Hale Survey, Abstract No. 202, into the City of Terrell. Jerry Ragsdale representing Oakmont Capital Group spoke for Granting the Petition. Mayor Hal Richards closed the Public Hearing.

- b.) Discuss and Consider Approval of Ordinance No. 2352 - Annexing 7.853 Acres of Adjacent and Contiguous Territory Out of the John C. Hale Survey, Abstract No. 202, into the City of Terrell.**

Deputy Mayor Pro tem Jack Jones made a motion to approve Ordinance No. 2352 - Annexing 7.853 Acres of Adjacent and Contiguous Territory Out of the John C. Hale Survey, Abstract No. 202, into the City of Terrell on first reading. The motion was seconded by Councilmember Don Thurman. Ayes – all; Nays – none. Motion carried.

ORDINANCE NO. 2352

AN ORDINANCE TO THE CITY OF TERRELL, TEXAS, ANNEXING ADJACENT AND CONTIGUOUS TERRITORY, AS DESCRIBED IN EXHIBIT A AND AS DEPICTED IN EXHIBIT A.1 TO THE CITY OF TERRELL, TEXAS; FINDING THAT ALL NECESSARY AND REQUIRED LEGAL CONDITIONS HAVE BEEN SATISFIED; PROVIDING THAT SUCH AREA SHALL BECOME A PART OF THE CITY AND THAT THE OWNERS AND INHABITANTS THEREOF SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS AND BE BOUND BY THE ACTS AND ORDINANCES NOW IN EFFECT AND TO BE HEREAFTER ADOPTED; FURTHER PROVIDING FOR AMENDING AND

CORRECTING THE OFFICIAL BOUNDARIES OF THE CITY AS HERETOFORE ADOPTED; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR SAID ORDINANCE TO TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS PASSAGE.

NEW BUSINESS

6. Receive Presentation from Stallings Addition Neighborhood Association.

Pastor Johnny Dorsey representing Stallings Addition Neighborhood Association came before Council to discuss problems in Stallings Addition. The Group requested City assistance with security cameras. Mayor Hal Richards encouraged member of the Association to attend Terrell Citizens University. Mary Vonderant spoke to Council regarding community clean-up and community involvement. There was no action taken on this item.

7. Discuss and Consider Approval of Encroachment Agreement Between Trinity Valley Electrical Cooperative and the City of Terrell at Lake Tawakoni.

Steve Rogers, City Engineer presented to Council for discussion and consideration Encroachment Agreement Between Trinity Valley Electrical Cooperative and the City of Terrell at Lake Tawakoni. Councilmember Don Thurman made a motion to approve Encroachment Agreement Between Trinity Valley Electrical Cooperative and the City of Terrell at Lake Tawakoni. The motion was seconded by Deputy Mayor Pro tem Jack Jones. Ayes – all; Naves – none. Motion carried.

8. Discuss and Consider Approval of Resolution No. 589 – Taxing Tangible Personal Property in Transit which Would Otherwise Be Exempt Pursuant to Texas Tax Code, Section 11.253.

John Rounsavall, City Secretary/Finance Director presented to Council for discussion and consideration Resolution No. 589 – Taxing Tangible Personal Property in Transit Which Would Otherwise Be Exempt Pursuant to Texas Tax Code, Section 11.253. Torry Edwards, City Manager stated for the record this follows TML recommendation. Councilmember Tommy Spencer made a motion to approve Resolution No. 589 – Taxing Tangible Personal Property in Transit Which Would Otherwise Be Exempt Pursuant to Texas Tax Code, Section 11.253. The motion was seconded by Deputy Mayor Pro tem Jack Jones. Ayes – all; Naves – none. Motion carried.

RESOLUTION NO. 589

A RESOLUTION OF THE CITY OF TERRELL TO TAX TANGIBLE PERSONAL PROPERTY IN TRANSIT WHICH WOULD OTHERWISE BE EXEMPT PURSUANT TO TEXAS TAX CODE, SECTION 11.253

WHEREAS, the 80th Texas Legislature in Regular Session has enacted House Bill 621 to take effect on January 1, 2008, which added Tex. Tax Code §11.253 to exempt from taxation certain tangible personal property held temporarily at a location in this state for assembling, storing, manufacturing, processing or fabricating purposes (goods-in-transit) which property has been subject to taxation in the past; and

WHEREAS, Tex. Tax Code §11.253(j) as amended allows the governing body of a taxing unit, after conducting a public hearing, to provide for the continued taxation of such goods-in-transit; and

WHEREAS, the City Council of the City of Terrell, having conducted a public hearing as required by Section 1-n (d), Article VIII, Texas Constitution, is of the opinion that it is in the best interests of the city to continue to tax such goods-in-transit;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF TERRELL THAT: The goods-in-transit, as defined Tex. Tax Code 11.253(a)(2), as amended by House Bill 621, enacted by the 80th Texas Legislature in Regular Session, shall remain subject to taxation by the City of Terrell.

Passed and Approval on this the 16th day of October, 2007.

9. Discuss and Consider Proposals for Automatic Meter Reading System and Water Meters.

Steve Rogers, City Engineer presented to Council for discussion and consideration Proposals for Automatic Meter Reading System and Water Meters. Mayor Hal Richards commented the City should be assertive in its communication with the public. Councilmember Don Thurman made a motion to award contract to Texas Meter and Great Southwest Meter in the estimated amount of \$1,698,373.91. The motion was seconded by Deputy Mayor Pro tem Jack Jones. Ayes – all; Naves – none. Motion carried.

10. Discuss and Consider Proposal for Water Meter Reading Services.

John Rounsavall, City Secretary/Finance Director presented to Council for discussion and consideration Proposal for Water Meter Reading Services. Deputy Mayor Pro tem Jack Jones made a motion to approve Proposal for Water Meter Reading Services submitted by Severn Trent Environmental Services. The motion was seconded by Councilmember Tommy Spencer. Ayes – all; Nays – none. Motion carried.

11. Discuss and Consider Approval of Resolution No. 594 - Suspending the October 25, 2007 Effective Date of Atmos Energy Corp., Mid-Tex Division Requested Rate Change to Permit the City Time to Study the Request and to Establish Reasonable Rates.

John Rounsavall, City Secretary/Finance Director presented to Council for discussion and consideration Resolution No. 594 - Suspending the October 25, 2007 Effective Date of Atmos Energy Corp., Mid-Tex Division Requested Rate Change to Permit the City Time to Study the Request and to Establish Reasonable Rates. Councilmember Tommy Spencer made a motion to approve Resolution No. 594 - October 25, 2007 Effective Date of Atmos Energy Corp., Mid-Tex Division Requested Rate Change to Permit the City Time to Study the Request and to Establish Reasonable Rates. The motion was seconded by Councilmember Don Thurman. Ayes – all; Nays – none. Motion carried.

RESOLUTION NO. 594

RESOLUTION OF THE CITY OF TERRELL, SUSPENDING THE OCTOBER 25, 2007, EFFECTIVE DATE OF ATMOS ENERGY CORP., MID-TEX DIVISION REQUESTED RATE CHANGE TO PERMIT THE CITY TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH ATMOS CITIES STEERING COMMITTEE AND OTHER CITIES IN THE ATMOS ENERGY CORP., MID-TEX DIVISION SERVICE AREA TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; REQUIRING REIMBURSEMENT OF CITIES' RATE CASE EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL

WHEREAS, on or about September 20, 2007, Atmos Energy Corp., Mid-Tex Division (Atmos), pursuant to Gas Utility Regulatory Act § 104.102 filed with the City of Terrell, a Statement of Intent to change gas rates in all municipalities exercising original jurisdiction within its Mid-Tex Division service area effective October 25, 2007; and

WHEREAS, it is reasonable for the City of Terrell to maintain its involvement in the Atmos Cities Steering Committee (ACSC) and to cooperate with the 141 similarly situated city members and other city participants of ACSC in conducting a review of the Company's application and to hire and direct legal counsel and consultants and to prepare a common response and to negotiate with the Company and direct any necessary litigation; and

WHEREAS, the Gas Utility Regulatory Act § 104.107 grants local regulatory authorities the right to suspend the effective date of proposed rate changes for ninety (90) days; and

WHEREAS, the Gas Utility Regulatory Act § 103.022 provides that costs incurred by Cities in ratemaking activities are to be reimbursed by the regulated utility.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS:

1. That the October 25, 2007, effective date of the rate request submitted by Atmos on or about September 20, 2007, be suspended for the maximum period allowed by law to permit adequate time to review the proposed changes and to establish reasonable rates.

2. That the City is authorized to cooperate with ACSC and its member cities in the Mid-Tex service area to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations to the City regarding reasonable rates and to direct any necessary administrative proceedings or court litigation associated with an appeal of a rate ordinance and the rate case filed with the City or Railroad Commission.

3. That the City's reasonable rate case expenses shall be reimbursed by Atmos.

4. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

5. A copy of this Resolution shall be sent to Atmos, care of Joe T. Christian, Director of Rates, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Blevins Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

APPROVED on this the 16th day of October, 2007.

12. Discuss and Consider Approval of City Council Meeting and Procedures Policy.

John Rounsavall, City Secretary/Finance Director presented to Council for discussion and consideration City Council Meeting and Procedures Policy. Deputy Mayor Pro tem Jack Jones made a motion to approve City Council Meeting and Procedures Policy. The motion was seconded by Councilmember Tommy Spencer. Ayes – all; Naves – none. Motion carried.

13. Discuss and Consider Approval of Boards and Commissions Policies and Procedures.

John Rounsavall, City Secretary/Finance Director presented to Council for discussion and consideration Boards and Commissions Policies and Procedures. Councilmember Don Thurman made a motion to approve Boards and Commissions Policies and Procedures with change to Section V. by City Attorney. The motion was seconded by Councilmember Tommy Spencer. Ayes – all; Naves – none. Motion carried.

14. Discuss and Consider Approval of Ordinance No. 2346 - Amending Chapter 2, Section 2: Terrell Municipal Airport Board.

John Rounsavall, City Secretary/Finance Director presented to Council for discussion and consideration Ordinance No. 2346 – Amending Chapter 2, Section 2: Terrell Municipal Airport Board. Deputy Mayor Pro tem Jack Jones made a motion to approve Ordinance No. 2346 – Amending Chapter 2, Section 2: Terrell Municipal Airport Board on first reading. The motion was seconded by Councilmember Tommy Spencer. Ayes – all; Naves – none. Motion carried.

ORDINANCE NO. 2346

AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS AMENDING CHAPTER 2, ADMINISTRATION, SECTION 2; TERRELL MUNICIPAL AIRPORT BOARD, TERRELL CITY CODE REVISED; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

15. Discuss and Consider Approval of Ordinance No. 2347 - Amending Ordinance No. 1415 Establishing a Firemen and Police Civil Service Commission.

John Rounsavall, City Secretary/Finance Director presented to Council for discussion and consideration Ordinance No. 2347 – Amending Ordinance No. 1415 – Establishing a Firemen and Police Civil Service Commission. Councilmember Don Thurman made a motion to approve Ordinance No. 2347 – Amending Ordinance No. 1415 – Establishing a Firemen and Police Civil Service Commission on first reading. The motion was seconded by Deputy Mayor Pro tem Jack Jones. Ayes – all; Nays – none. Motion carried.

ORDINANCE NO. 2347

AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS AMENDING ORDINANCE 1415 ESTABLISHING A FIREMEN’S AND POLICEMAN’S CIVIL SERVICE COMMISSION; PROVIDING FOR APPOINTMENT OF COMMISSIONERS AND SETTING TERMS OF OFFICE; ESTABLISHING THE OFFICE OF DIRECTOR OF FIREMEN’S AND POLICEMEN’S CIVIL SERVICE; AND PROVIDING THAT THE POWERS, DUTIES AND PROCEDURES BEFORE SAID COMMISSION SHALL BE THOSE PROVIDED IN TEXAS REVISED CIVIL STATUTE ARTICLE 1269m; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

16. Discuss and Consider Approval of Ordinance No. 2348 - Amending Chapter 2, Section 4: Library Advisory Board.

John Rounsavall, City Secretary/Finance Director presented to Council for discussion and consideration Ordinance No. 2348 – Amending Chapter 2, Section 4: Library Advisory Board. Deputy Mayor Pro tem Jack Jones made a motion to approve Ordinance No. 2348 – Amending Chapter 2, Section 4: Library Advisory Board on first reading. The motion was seconded by Councilmember Tommy Spencer. Ayes – all; Nays – none. Motion carried.

ORDINANCE NO. 2348

AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS AMENDING CHAPTER 2, ADMINISTRATION, SECTION 4; LIBRARY ADVISORY BOARD, TERRELL CITY CODE REVISED; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

17. Discuss and Consider Approval of Ordinance No. 2349 - Amending Chapter 2, Section 2-5: Park Board.

John Rounsavall, City Secretary/Finance Director presented to Council for discussion and consideration Ordinance No. 2349 – Amending Chapter 2, Section 2-5: Park Board. Councilmember Don Thurman made a motion to approve Ordinance No. 2349 – Amending Chapter 2, Section 2-5: Park Board on first reading. The motion as seconded by Councilmember Tommy Spencer. Ayes – all; Nays – none. Motion carried.

ORDINANCE NO. 2349

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS AMENDING CHAPTER 2, ADMINISTRATION, SECTION 2-5, TERRELL PARK BOARD; TERRELL CITY CODE REVISED, PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

18. Discuss and Consider Approval of Ordinance No. 2350 - Amending Chapter 2, Section 10: Planning and Zoning Commission.

John Rounsavall, City Secretary/finance Director presented to Council for discussion and consideration Ordinance No. 2350 – Amending Chapter 2, Section 10: Planning and Zoning Commission. Councilmember Don Thurman made a motion to approve Ordinance No. 2350 – Amending Chapter 2, Section 10: Planning and Zoning Commission on first reading. The motion was seconded by Councilmember Tommy Spencer. Ayes – all; Nays – none. Motion carried.

ORDINANCE NO. 2350

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS AMENDING CHAPTER 2, ADMINISTRATION, SECTION 10, PLANNING AND ZONING COMMISSION; TERRELL CITY CODE REVISED, PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

19. Discuss and Consider Approval of Ordinance No. 2351 - Abolishing the Terrell Joint Airport Zoning Board, the Terrell Farmers Market Advisory Board, the Central Business District Advisory Board, the Thoroughfare Plan Advisory Board, the Relocation Advisory Board, the Terrell 2000 Advisory Board and the Terrell Tourism Board.

Councilmember Tommy Spencer made a motion to approve Ordinance No. 2351 - Abolishing the Terrell Joint Airport Zoning Board, the Terrell Farmers Market Advisory Board, the Central Business District Advisory Board, the Thoroughfare Plan Advisory Board, the Relocation Advisory Board, the Terrell 2000 Advisory Board and the Terrell Tourism Board on first reading. The motion was seconded by Councilmember Don Thurman. Ayes – all; Nays – none. Motion carried.

ORDINANCE NO. 2351

AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS, ABOLISHING THE TERRELL JOINT AIRPORT ZONING BOARD, THE TERRELL FARMERS MARKET ADVISORY BOARD, THE CENTRAL BUSINESS DISTRICT ADVISORY BOARD, THE THOROUGHFARE PLAN ADVISORY BOARD, THE RELOCATION ADVISORY BOARD, THE TERRELL TOURISM BOARD AND THE TERRELL 2000 ADVISORY BOARD; PROVIDING FOR REPEAL OF THE ORDINANCES CREATING THESE BOARDS AND CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

20. Discuss and Consider Appointments to the Following Boards:

c.) Airport Board.

Deputy Mayor Pro tem Jack Jones made a motion to appoint Jerry Gibson to replace Paul Sampson. The motion was seconded by Councilmember Don Thurman. Ayes – all; Nays – none. Motion carried.

Councilmember Tommy Spencer made a motion to appoint Terry Eason to replace Bill Jenkins. The motion was seconded by Deputy Mayor Pro tem Jack Jones. Ayes – all; Nays – none. Motion carried.

d.) Library Advisory Board.

Councilmember Don Thurman made a motion to appoint Beth Brown to replace Rhonda Morrow. The motion was seconded by Deputy Mayor Pro tem Jack Jones. Ayes – all; Nays – none. Motion carried.

Mayor Hal Richards made a motion to appoint John Davidson to the open position on the Library Advisory Board. Motion dies for lack of second.

Deputy Mayor Pro tem Jack Jones made a motion appoint Stephanie Jones to the open position the Library Advisory Board. The motion was seconded by Councilmember Don Thurman. Ayes – all; Nays – none. Motion carried.

Mayor Hal Richards made a motion to extend the board terms of Riter Hulseby and Jim McGinty for the final two (2) years. The motion was seconded by Deputy Mayor Pro tem Jack Jones. Ayes – all; Nays – none. Motion carried.

e.) Planning and Zoning Commission.

Councilmember Tommy Spencer made a motion to appoint Don Archer to the Planning and Zoning Commission. The motion was seconded by Councilmember Don Thurman. Ayes – all; Nays – none. Motion carried.

Councilmember Don Thurman made a motion to appoint Tom Aldinger to replace James Mays. The motion was seconded by Deputy Mayor Pro tem Jack Jones.

Councilmember Tommy Spencer made a motion to appoint Jeff Crawford to replace John Dyess. The motion was seconded by Councilmember Don Thurman. Ayes – all; Nays – none. Motion carried.

f.) Park Board.

Mayor Hal Richards made a motion to appoint Robert Lee for final two (2) year term. The motion was seconded by Deputy Mayor Pro tem Jack Jones. Ayes – all; Nays – none. Motion carried.

Councilmember Don Thurman made a motion to appoint Sandra Harrelson to replace John Harris. The motion was seconded by Councilmember Tommy Spencer. Ayes – all; Nays – none. Motion carried.

Deputy Mayor Pro tem Jack Jones made a motion to appoint Dale Martin to replace Terry Turner. The motion was seconded by Councilmember Don Thurman. Ayes – all; Nays – none. Motion carried.

CONSENT AGENDA

Councilmember Tommy Spencer made a motion to adopt Ordinance No. 2343, Ordinance No. 2344 and Ordinance No. 2345 on CONSENT AGENDA. The motion was seconded by Councilmember Don Thurman. Ayes – all; Nays – none. Motion carried.

21. **Discuss and Consider Adoption on Second Reading Ordinance No. 2343 – Creating a New Neighborhood Integrity Code.**

ORDINANCE NO. 2343

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, ADOPTING A NEW NEIGHBORHOOD INTEGRITY CODE; REPEALING ORDINANCE NO. 2004, BUILDING REGULATIONS, SECTION 19; SUBSTANDARD BUILDINGS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS THAT:

SECTION I.

That Chapter 4, Section 19, Substandard Buildings of the Terrell City Code is hereby repealed and a new Chapter 4, Section 19, Neighborhood Integrity Code shall read as follows, in all other respect, said Code to remain in full force and effect:

“NEIGHBORHOOD INTEGRITY CODE

A General

1. *Title.* This shall be known as the Neighborhood Integrity Code and shall be hereinafter referred to in this article as the "code."
2. *Purpose.* The purpose of this code is to provide minimum standards to protect the health, safety, morals, and welfare of the citizens of the City of Terrell by establishing minimum standards applicable to the use, occupancy and maintenance of all structures, buildings and properties. Minimum standards are established with respect to utilities, facilities, and other physical components essential to make structures safe, sanitary, and fit for human use and habitation. It is further declared to be the purpose and intent of this code to regulate and control public nuisances and other conditions or circumstances that adversely affect the health, safety or welfare of the general public. It is not intended that this Code be interpreted or enforced to require the city to intervene in matters which are primarily personal or private in nature and which may appropriately be resolved between or among private interests without material damage to the public health, safety, or welfare.

3. *Compliance.* This code is found to be remedial and essential to the public interest, and it is intended that this code be liberally construed to effect its purpose. All structures within the city on the effective date of this code, or constructed thereafter, must comply with the provisions of this Code.
4. *Scope.* This code shall apply to all zoning districts, land, properties, structures, and buildings within the city, including all vacant, occupied, residential, nonresidential, improved or unimproved land, properties, structures and buildings.
5. *Other Ordinances.* If any other ordinances or codes of the city conflict with this code and the standards or regulations established herein, the higher or stricter standard or regulation shall prevail.

B. Definitions

The following definitions shall apply in the interpretation and enforcement of this code. When terms are not defined in this code, they shall have their ordinary accepted meanings within context with which they are used.

Building means any structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind which has enclosing walls for fifty percent of its perimeter.

Building Code means the International Residential Code, for cases involving one and two-family dwellings, or the International Building Code for all other structures, both promulgated by the International Code, as adopted by this jurisdiction.

Enforcement authority means the chief building official of Terrell or his designee.

Graffiti means words, phrases, designs, symbols, letters, or drawings written, painted, scratched or applied in any other way to any sidewalk, fence, wall, window, walls of buildings, tree, or other structure or item or to any portion or element thereof, whether the property is public or private, regardless of its content or nature and regardless of the nature of the material of the structural component or property.

Lateral clearance means the dimension measured horizontally and perpendicular to a sidewalk, street, paved alley, or easement within which no encroachment is allowed; or the dimension measured horizontally and perpendicular to an alley or easement line beyond which no encroachment is allowed.

Minimum housing code means the International Property Maintenance Code, 2006 edition as amended herein.

Nuisance. The following shall be defined as nuisances:

1. Any public nuisance known at common law.
2. Any attractive nuisance which may prove detrimental to children whether in a building, on the premises of a building, or upon an unoccupied lot. This includes any abandoned wells, shafts, basements, or excavations; abandoned refrigerators and motor vehicles; any structurally unsound fences or structures; or any lumber, trash, fences, debris or vegetation which may be hazardous for children;

3. Whatever is dangerous to human life or is detrimental to health, as determined by the health officer;
4. Graffiti of any type;
5. Any tree, shrub, or other plant which creates a hazard or risk of damage or destruction to persons or property;
6. Any substandard condition under this code.

Owner means a person claiming, or in whom invested, the ownership, dominion, or title of real property, including but not limited to:

1. Holder of fee simple title;
2. The holder of a life estate;
3. The holder of a leasehold estate for an initial term of five years or more;
4. The buyer in possession, or having right of possession under a contract for deed;
5. The mortgagee, receiver, executor, or trustee in possession or control or having the right of possession or control of real property; but not including the holder of a leasehold estate or tenancy for initial term of less than five years; and
6. In the case of a cooperation or partnership, "owner" includes an officer, partner, or manager of the entity.

Person means any individual, corporation, organization, partnership, association, or any other legal entity.

Premises means a lot, plot or parcel of land including the buildings, structures, landscaping or trees thereon.

Property means a lot, plot, or parcel of land, including any structures on the land.

Repair means the replacement of existing work with the same kind of material used in the existing work, not including additional work that would change the structural safety of the building, or that would affect or change required exit facilities, a vital element of an elevator, plumbing, gas piping, wiring or heating installations, or that would be in violation of a provision of law or ordinance. The term "repair" or "repairs" shall not apply to any change of construction.

Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. Structure shall include but is not limited to any residential building, non-residential building, dwelling, condominium, townhouse, apartment unit, detached garage, shed, awning, fence, screening wall, sign, swimming pool, excavation.

Tenant means any person or their agent who occupies a structure or property.

Unauthorized means without the permission of the owner or the person in control of the property, whether public or private.

C. Enforcement

1. The enforcement authority for this code shall be the chief building official of Terrell or his designee.
2. The enforcement authority is authorized at reasonable times to inspect:
 - a. Premises which contain no structure; and

- b. The exterior of a structure and premises which contain a structure, provided, however, if such structure is occupied, the enforcement authority shall first present proper credentials and request entry on the premises;
 - c. The interior of a structure, if the permission of the owner, occupant, or person in control is given.
3. The enforcement authority shall have the power to obtain search warrants allowing the inspection of any specified premises to determine the presence of a health hazard or unsafe building condition, including but not limited to any structural, property, or utility hazard, or in violation of any health or building regulation, statute, or ordinance.

D. Violation; penalty

1. In addition to imposing a criminal penalty the city may, in accordance with the state law bring a civil action against a person violating a provision of this code. The civil action may include, but is not limited to a suit to recover a civil penalty authorized by state law for each day or portion of a day during which the violation is committed or continued.
2. The civil penalties provided for in subsection 1. above and any criminal penalties are in addition to any other enforcement remedies including injunctive relief that the city may have under city ordinances and state law.

E. Responsibility

1. It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, occupy or maintain any premises, building or structure, or cause or permit the same to be done in violation of this code.
2. Every owner and tenant of any premises shall maintain such premises in compliance with this code and in a clean, sanitary, and safe condition; and shall dispose of rubbish, garbage, junk or other waste in a lawful manner.
3. An owner shall not let, rent, or lease any premises for occupancy or use which does not comply with this code.

F. International Property Maintenance Code

1. The International Property Maintenance Code, 2006 edition, a copy of which is attached hereto and made a part of this code for all purposes, the same as if copied in full herein, with the exception of such sections thereof as are hereafter deleted, modified, or amended, is hereby adopted as the official standards of the city in addition to the minimum standards established in this code.
2. Whenever the term "board of appeals" is used in the International Property Maintenance Code, the same shall mean the Building and Standards Commission appointed by the City Council. Whenever the term "code

official" is used in the International Property Maintenance Code it shall mean the chief building official of the City of Terrell.

G. Minimum standards; exterior grounds

1. *Sanitation.* All exterior property areas shall be maintained in a clean, safe, and sanitary condition.
2. *Grading and drainage.* No filling, excavation or other improvement shall be performed or constructed on any property which will have an adverse effect on an existing drainage pattern on an adjacent property.
3. *Glare.* Exterior lights placed or erected on private property shall be shielded, placed or erected so as not to create a traffic hazard or a public nuisance.
4. *Trees, shrubs and plants.*
 - a. Trees, shrubs, and plants shall not obstruct the access to or from any door or window of any structure which is used, or is required by city codes and ordinances to be used, for ingress or egress.
 - b. Trees, shrubs, or plants that are dead and which are hazardous to persons or property shall be removed.
5. *Nuisances.* All properties shall be maintained free of any nuisances.
6. *Erosion control.* The unpaved areas of the front yard shall be maintained with grass, ground cover, or other type of landscaping to such an extent that the soil, when wet, will not be picked up and spread to sidewalks or adjacent private or public property and is not subject to erosion during rains.
7. *Antennas, towers, stacks, etc.* Antennas, towers, stacks, satellite dishes, and similar structures must be maintained structurally sound, free of deterioration, firmly secured, and must comply with applicable requirements of the City of Terrell Zoning Ordinance, as amended.
8. *Accessory structures.* Carports, awnings, patio covers, garages, sheds, storage buildings, and other accessory structures shall be maintained structurally sound, and free of deterioration.
9. *Swimming pools and spas.* Swimming pools, spas, and similar structures shall be maintained safe, secure, free of stagnant water, and structurally and mechanically sound in accordance with the City of Terrell Code of Ordinances.
10. *Graffiti.* It shall be unlawful for any person who shall be in any place, public or private, to deface, write or mark, cut, print, stamp, indent or display any word, sentence, symbol, or figure on public or privately owned buildings, permanent structures, or places located on or within the city without the authorization of the property owner.

H. Minimum standards; exterior structure maintenance

1. *General.* The exterior of a structure shall be maintained structurally sound.

2. *Structural members.* All supporting structural members of all structures shall be kept structurally sound, free of deterioration, and maintained capable of safely bearing the dead and live loads upon them.
3. *Exterior surfaces.* The foundation, exterior wall, floor, roof, and all exterior surfaces of every structure shall be maintained in a state of repair sufficient to exclude rats, rodents, birds, vermin, and other animals.
4. *Foundation walls.* All foundation walls shall be maintained so as to safely carry applicable dead and live loads that are imposed upon the foundation walls.
5. *Exterior walls.* The exterior wall of every structure shall be free of holes, breaks, loose or rotting boards or timbers, and any other conditions which might admit rain or dampness to the interior portions of the walls or to the interior of the structure. The exterior wall surface materials of every structure shall be maintained weatherproof or the surface protected as required to prevent deterioration.
6. *Roofs.* The roof of every structure shall be structurally sound, tight, and free of leaks, and roof drainage shall be adequate to prevent rain water from causing dampness in the walls or interior portion of the structure.
7. *Decorative features.* The cornices, entablatures, belt courses, corbels, terra cotta trim, wall facings and similar decorative features of every structure shall be maintained in good repair with proper anchorage and in a safe condition.
8. *Exterior attachments.* All exterior canopies, marquees, signs, awnings, stairways, fire escapes, standpipes, rain gutters, exhaust ducts and similar overhang extensions attached to a structure shall be maintained in good repair and be properly anchored so as to be kept in a safe and sound condition, and their exterior surface materials shall be maintained weatherproof and shall be surface coated or protected as required to prevent deterioration.
9. *Chimneys.* All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe, sound, properly mortared and in good repair, and their exterior surface materials shall be maintained weatherproof and shall be surface coated or protected as required to prevent deterioration.
10. *Stairs and porches.* Every stair, porch, balcony, and all appurtenances attached thereto shall be so constructed as to be safe to use and capable of supporting the loads to which it is subjected and shall be kept in sound condition and good repair, and their exterior surface materials shall be maintained weatherproof and shall be surface coated or protected as required to prevent deterioration.
11. *Window and door frames.* The windows, doors, and frames of every habitable structure shall be constructed and maintained in such relation to the adjacent wall construction so as to exclude rain as completely as possible from entering the dwelling or structure.
12. *Weathertight.* The windows and exterior doors of every habitable structure shall be fitted in their frames so as to be reasonably weathertight and shall be kept in sound condition and good repair.

13. *Glazing.* Every window and/or window sash shall be fully supplied with approved glazing materials which are without open cracks and holes. A window and/or window sash may be temporarily secured and/or closed with alternate materials approved by the enforcement authority for periods during actual construction, remodeling, or repairs, provided the period of time does not exceed 30 days. The enforcement authority may grant extensions of time due to extenuating circumstances.
14. *Door hardware.* The exterior doors, door hinges, and door latches of every habitable structure shall be maintained in good condition. Door locks in exterior doors of dwelling units shall be maintained in good repair and capable of tightly securing the door. A door may be temporarily secured and/or closed with alternate materials approved by the enforcement authority for periods during actual construction, remodeling, or repairs, provided the period of time does not exceed 30 days. The enforcement authority may grant extensions of time due to extenuating circumstances.
15. *Burglar bars.* Burglar bars shall comply with requirements of the building code and other codes or ordinances of the city. Burglar bars on windows of bedrooms of residential structures shall be constructed and mounted in such a way so as to be operable and openable from the interior of the residence without special knowledge or the need of tools.
16. *Garage doors.* Garage doors shall be capable of being closed reasonably plumb, and shall be kept in sound condition and good repair.

I. Substandard property; repair; vacate

1. Any structure, building or premises in violation of the minimum standards set forth herein or in violation of the International Property Maintenance Code is substandard and declared to be a nuisance. The failure of the owner or tenant to maintain any premises or structure in accordance with the minimum standards set forth in this code, the apartment code and the International Property Maintenance Code shall be grounds for the enforcement authority to declare the property substandard.
2. All buildings or portions thereof which are determined to be substandard as defined in this code are declared to be prima facie public nuisances to the extent of such substandard condition, and shall be abated by repair, rehabilitation, demolition, or removal, in accordance with the procedure provided in this code.
3. Whenever an occupied structure, building or property is determined to be substandard and is in such condition as to make it immediately dangerous to the life, limb, property, safety, or welfare of the public or of the occupants, the enforcement authority shall order such building, structure or property vacated.

J. Enforcement procedures; appeal

1. When a building, structure or premises or portions thereof have been determined by the enforcement authority as substandard and a nuisance as defined in this code, the nuisance shall be abated by repair, rehabilitation, demolition, removal, or vacation in accordance with the determination of the enforcement authority.
2. Any party aggrieved by an order of the enforcement authority, may, prior to the expiration of the period for compliance in said order, appeal said order to the Building and Standards Commission in accordance with the procedures for an appeal to the Building and Standards Commission.
3. There shall be a filing fee for an appeal to the Building and Standards Commission in an amount determined by resolution of the city council.
4. The enforcement of orders issued by the enforcement authority and/or Building and Standards Commission shall be in accordance with the provisions of the International Property Maintenance Code unless contrary to Chapter 54 of the Texas Local Government Code, as amended, in which event the latter shall control; and the enforcement authority and the Building and Standards Commission shall have, exercise and perform all the powers, duties and functions of the code official and the board of appeals, respectfully, as set forth in the minimum housing code.
5. Except in cases where vacation orders are made to protect the immediate safety and welfare of the inhabitants, any order appealed hereunder shall be stayed until such appeal is decided by the Building and Standards Commission, but shall not be stayed after a decision pending appeal to the courts except on proper order of such court or as otherwise required by state law.

K. Recovery of costs

1. If the building, structure or premises is not vacated, secured, repaired, removed, or demolished, or if the occupants are not relocated within the allotted time, the city may vacate, secure, remove, or demolish the building, structure or premises or relocate the occupants at its own expense.
2. If the city incurs expenses under this subsection, the city may assess the expenses on and has a lien against the property on which the building or structure was located, unless it is a homestead and is protected by the Texas Constitution. The lien is extinguished if the property owner or another person having interest in the legal title to the property reimburses the city for the expenses. The lien arises and attaches to the property at the time the notice of lien is recorded and indexed in the office of the county clerk of Kaufman County. The notice must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the real property on which the building was located, the amount of expenses incurred by the city and the balance due.
3. If notice is given and the opportunity to repair, remove or demolish the building or structure is afforded to each owner, mortgagee and lienholder, the city's lien is a privileged lien subordinate only to tax liens and all previously

recorded bona fide mortgage liens attached to the real property to which the city's lien attaches.

4. The assessment and recovery of costs to repair or demolition shall be in accordance with the procedure prescribed by the International Property Maintenance Code.
5. Whenever the Enforcement Authority determines that graffiti is located on publicly or privately owned permanent structures so as to be capable of being viewed by any person utilizing any public right-of-way of this city, the authority is authorized to abate or cause to be abated, the graffiti and, in the case of privately owned property, bill the owner for the costs thereof. If the owner fails to pay such billing within thirty (30) days, or otherwise refuses to reimburse the city for such costs, the city may file a mechanic's lien against the property for said costs.

L. Building and Standards Commission

1. Whenever the term "board of appeals" is used in the International Property Maintenance Code, it shall mean the Building and Standards Commission of the City of Terrell. The Building and Standards Commission shall have, exercise and perform the powers, duties and functions of the board of appeals as set forth in the International Property Maintenance Code.
2. The Building and Standards Commission shall have by majority vote, authority to:
 - a. Uphold the determination and order of the enforcement authority;
 - b. Find that the structure or building is not substandard and/or a nuisance and refer the matter to the enforcement authority for further appropriate action;
 - c. Grant a reasonable period of time in which to comply with the determination or order of the enforcement authority;
 - d. Authorize an alternate method of compliance with the order of the enforcement authority if it can be demonstrated that such alternate method substantially complies with this code;
 - e. When it is determined that due to the peculiarities of the property, a literal enforcement of the code would result in an unnecessary hardship, allow minor variations necessary to relieve the hardship which will not result in danger to persons or property and will not adversely impact the maintenance, appearance or value of surrounding properties.
 - f. Find the building or structure is substandard and order demolition; repair or correction of the structure within a specified period of time; repair or correction of the structure within a specified period of time and demolition of the structure if the repair or correction is not timely effected; repair or correction of the structure by the owner, mortgagee, or lienholder within a specified period of time and repair or correction by the city if not timely effected by the owner, mortgagee or lienholder; repair, correction or demolition of the structure within a specified period of time and the assessment of a civil penalty against the owner for each day or part of a

day that the owner fails to repair, correct or demolish the structure; vacation of the structure as necessary; or closure of an open and vacant structure.

M. Notice of violation; abatement

1. When a nuisance, as defined by this code, or a substandard building or structure is found to exist on any property within the city, the enforcement authority shall provide written notice to any person, firm or corporation owning, claiming, occupying or having supervision or control of such property that a nuisance exists on the property and that the same must be abated in accordance with the determination of the enforcement authority within ten days of receipt of the notification. If such person, firm or corporation fails or refuses to comply with such notification, or if such person, firm or corporation maintains a building, structure or other property in violation of the standards set forth in this code, they shall be deemed in violation of the standards established herein and are subject to the penalties as provided herein.
2. To determine the identity and address of a property owner or lienholder the enforcement authority shall search the following records:
 - a. County real property records of Kaufman County;
 - b. appraisal district records of Kaufman County;
 - c. records of the secretary of state, if the property owner or lienholder is a corporation, partnership, or other business association;
 - d. assumed name records of Kaufman County;
 - e. tax records of the City of Terrell; and
 - f. utility records of the City of Terrell.
3. When a notice is mailed via certified mail, return receipt requested, to a property owner or lienholder and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.
4. If the order of the enforcement authority is not complied with, the city, after appropriate notice and hearing, may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense.
5. Notification - Prior to the issuance of a citation issued for failure of a person to remove graffiti from property under his or her control under the provisions of this chapter, the owner must be given notice of the violation. Notice may be made personally to the owner in writing or by publication in the official newspaper at least twice within seven consecutive days. If no action is taken by the owner, a citation may be issued seven days after notification of violation.”

SECTION II

A. Severability

If any section or part of any section or paragraph of this ordinance is declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, for or effect of any section or sections or part of a section or paragraph of this ordinance.

B. Violations

It shall be unlawful for any person, corporation or other entity to rent, offer for rent, or permit occupancy by human beings of any building having been declared substandard under this section, and anyone found guilty of such an offense shall be punished by a fine, and each and ever day's violation shall constitute a separate and distinct offense.

PASSED on the first reading on the 2nd day of October, 2007.

PASSED on the second reading on the 16th day of October, 2007.

22. Discuss and Consider Adoption on Second Reading Ordinance No. 2344 – Creating a Building and Standards Commission.

ORDINANCE NO. 2344

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, CREATING A BUILDING AND STANDARDS COMMISSION; CREATING A NEW SECTION 30, CHAPTER 4 OF THE CODE OF ORDINANCES OF THE CITY OF TERRELL; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS THAT:

SECTION I.

That a new Chapter 4, Section 30, Building and Standards Commission of the Terrell City Code is hereby adopted to read as follows, in all other respect, said Code to remain in full force and effect:

“BUILDING AND STANDARDS COMMISSION

A. Implementation of state statute

The City Council of the City of Terrell, Texas, by this adoptive ordinance, hereby implements chapter 54, and any amendments thereto, Local Government Code of the State of Texas by appointing a building and standards commission to hear and determine cases involving the alleged violation of city ordinances.

B. Creation of building and standards commission

1. *City of Terrell Building and Standards Commission.* A City of Terrell Building and Standards Commission is hereby established in accordance with the provisions of Chapter 54, and any amendments thereto, of the Local Government Code of the State of Texas. The commission is established to hear and determine cases concerning alleged violations of the ordinances of the City of Terrell relating to:
 - a. The preservation of public safety, relating to the materials or methods used to construct a building or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;
 - b. The fire safety of building or improvement, including provisions relating to materials, types of construction or design, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;
 - c. Relating to dangerously damaged or deteriorated buildings or improvements; or
 - d. Relating to conditions caused by accumulation of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents.
2. *Appointment.* The commission shall consist of seven members appointed by the City Council of the City of Terrell. The City Council may remove a commission member for cause on a written charge. Before a decision regarding removal is made, the City Council must hold a public hearing on the matter if requested by the commission member subject to the removal action.
3. *Terms of members.* The terms of four members of the commission shall expire on January 1, 2010; the terms of three members of the commission shall expire on January 1, 2011. Thereafter, all members appointed to the commission shall serve a two-year term. No person shall serve more than three (3) consecutive terms.
4. *Vacancy.* A vacancy shall be filled for the unexpired term.
5. *Meetings.* The commission shall hold its meetings on the call of the chairman and at other times as determined by the commission. All meetings shall be open to the public.
6. *Quorum.* All cases to be heard by the commission must be heard by at least four members.
7. *Chairman and vice chairman.* A chairman and a vice chairman shall be selected by the members of the commission. After the initial selection of chairman and vice chairman, such selection shall be conducted following the annual appointment of new members.

8. *Authority of chairman.* The chairman, or in the chairman's absence the acting chairman, may administer oaths and compel the attendance of witnesses.
9. *Secretary.* The city manager or his designee shall furnish a person who shall serve as the secretary of the building and standards commission, but such appointee shall not be a member thereof. The secretary shall keep a record of the cases, activities, and actions of the commission and its determinations, give notice of the date and time of hearings, and perform such other duties as are consistent with or may be necessary for the enforcement of this article, as required by the commission.
10. a. *Vote.* The concurring vote of three members of the commission shall be necessary for the adoption of any motion, the issuance of any order or the determination of the amount and duration of any civil penalty.
b. *Abstention.* Should any member of the building and standards commission choose to abstain from voting on any question before the building and standards commission, where no declared conflict of interest exists, the abstention shall be recorded as an affirmative vote in favor of the motion pending before the building and standards commission in the official minutes of the City of Terrell.
11. *Rules and regulations.* The commission shall adopt rules in accordance with this article and pursuant to section 54.034, Chapter 54, Local Government Code of the State of Texas. The rules shall establish procedures for use in hearings, providing ample opportunity for presentation of evidence and testimony by respondents or persons opposing charges brought by the municipality or its building officials relating to alleged violations of ordinances.

C. Jurisdiction and authority

1. *Jurisdiction.* The building and standards commission shall have the quasi judicial authority authorized by said Local Government Code to enforce the health and safety ordinances of the City of Terrell, Texas.
2. *Authority and functions.* The building and standards commission may:
 - a. Order the repair, within a fixed period, of buildings found to be in violation of a city ordinance;
 - b. Declare a building substandard in accordance with the powers granted by Chapter 54, and any amendments thereto, Local Government Code of the State of Texas;
 - c. Order, in an appropriate case, the immediate removal of persons or property found on private property, enter on private property to secure the removal if it is determined that conditions exist on the property that constitute a violation of a city ordinance, and order action to be taken as necessary to remedy, alleviate, or remove any substandard building found to exist;

- d. Issue orders or directives to any peace officer of the state, including a sheriff or constable or the chief of police of the city, to enforce and carry out the lawful orders or directives of the commission;
 - e. Determine the amount and duration of the civil penalty the city may recover against the owner or owner's representative with control over the premises on proof that such party was actually notified of the provisions of the ordinance, and after receiving notice of the ordinance provisions, said party committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance, such civil penalty not to exceed \$1,000.00 a day for violation of such ordinance, all as provided by Chapter 54, and any amendments thereto, Local Government Code of the State of Texas.
3. If the building and standards commission declares a building substandard or requires repairs to be made to the building, the repair work or demolition, including removal of all demolition debris from the property shall be completed not more than 90 days from the date of the order. The building and standards commission may extend the required completion date of the repair or demolition beyond 90 days from the date of the order under the following conditions:
- a. The owner, lienholder or mortgagee submits a detailed plan and time schedule for the work; and
 - b. The owner, lienholder or mortgagee establishes tha the work can not be reasonably completed within 90 days.
 - c. The owner, lienholder or mortgagee must submit monthly reports demonstrating compliance with the time schedule approved. Failure to submit monthly reports or comply with the approved schedule will cause the time limitation for completion to revert to 90 days from the date of the order.
 - d. Approval of the time limitation for completions of work beyond 90 days will require concurrent approval of the city council.

D. Presentation of cases

The chief building official of the city shall present all cases before the commission.

E. Notice

Notice of all proceedings before the commission must be given by:

1. Certified mail, return receipt requested, to the record owner of the affected property, and each holder of a recorded lien against the affected property, as shown by the records of the office of the county clerk of Kaufman County if the address of the lienholder can be ascertained from the deed of trust establishing the lien or other applicable instruments on file in the office of the county clerk;

2. and to all unknown owners, by posting a copy of the notice on the front door of each improvement situated on the affected property or as close to the front door as practicable.
3. The notice shall be posted and mailed on or before the tenth day before the date of the hearing before the commission and must state the date, time, and place of the hearing. In addition, the notice must be published in newspaper of general circulation in the City of Terrell on one occasion before the tenth day before the date fixed for the hearing.
4. When a notice is mailed via certified mail, return receipt requested, to a property owner or lienholder and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.

F. Determination of identity and address of property owners and lienholders

To determine the identity and address of a property owner or lienholder, the city shall search the following records:

- a. County real property records of Kaufman County;
- b. appraisal district records of Kaufman County;
- c. records of the secretary of state, if the property owner or lienholder is a corporation, partnership, or other business association;
- d. assumed name records of Kaufman County;
- e. tax records of the City of Terrell; and
- f. utility records of the City of Terrell.

G. The hearing

The commission shall keep minutes of its proceedings showing the vote of each member on each question or the fact that a member is absent or fails to vote. The commission shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the office of the commission as public records.

H. Recording of civil penalty

A determination by the commission which involves the establishment of an amount and duration of a civil penalty shall be final and binding and constitute prima facie evidence of the penalty in any court of competent jurisdiction in a civil suit brought by the city for final judgment in accordance with the established penalty.

I. Duty of city secretary

The city secretary shall file with the district clerk of Kaufman County, a certified copy of the order of the commission establishing the amount and duration of any civil penalty. Thereafter, pursuant to Chapter 54, and any amendments thereto,

Local Government Code of the State of Texas, no other proof shall be required for a district court to enter final judgment on the penalty.

J. Judicial review

Any owner, lienholder, or mortgagee of record jointly or severally aggrieved by any decision of the commission may present a petition to a district court, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the legality. The petition must be presented to the court within 30 calendar days after the date a copy of the final decision of the commission is mailed by first class mail, certified, return receipt requested, to all persons to whom notice is required to be sent. The commission shall mail such copy promptly after the decision becomes final. In addition, an abbreviated copy shall be published one time in a newspaper of general circulation in the city within ten calendar days after the date of the delivery or mailing of the copy as herein provided, including the street address or legal description of the property; the date of the hearing, a brief statement indicating the results of the order, and instruction stating where a complete copy of the order may be obtained, and a copy shall be filed in the office of the city secretary. On presentation of the petition, the court may allow a writ of certiorari pursuant to said Chapter 54, and any amendments thereto, Local Government Code of the State of Texas. If no appeals are taken from the decision of the commission within the required period, the decision of the commission shall, in all things, be final and binding.

K. Municipal court proceedings not affected

Action taken by the city under this article shall not affect the ability of the city to proceed under the jurisdiction of the city's municipal court.”

SECTION II

C. Severability

If any section or part of any section or paragraph of this ordinance is declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, for or effect of any section or sections or part of a section or paragraph of this ordinance.

D. Violations

It shall be unlawful for any person, corporation or other entity to rent, offer for rent, or permit occupancy by human beings of any building having been declared substandard under this section, and anyone found guilty of such an offense shall be punished by a fine, and each and ever day's violation shall constitute a separate and distinct offense.

PASSED on the first reading on the 2nd day of October, 2007.
PASSED on the second reading on the 16th day of October, 2007.

- 23. Discuss and Consider Adoption on Second Reading Ordinance No. 2345 – Amending Chapter 8: Offenses and Nuisances, Section 13: Littering Prohibited.**

ORDINANCE NO. 2345

AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS AMENDING CHAPTER 8, OFFENSES AND NUISANCES, SECTION 13, LITTERING PROHIBITED, TERRELL CITY CODE REVISED; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS THAT:

ARTICLE I.

Chapter 8, Offenses and Nuisances, Section 13, of the Terrell City Code Revised is hereby amended as follows:

Sec. 8-13. LITTER

A. Littering in Public Places.

1. No person may throw or deposit litter or junk in any public place within the city except in receptacles for the collection of litter, or in official city disposal facilities.
2. No person may sweep into or deposit into any gutter, right-of-way or other public place within the city the accumulation of litter including, but not limited to, grass clippings, leaves, tree limbs and/or other yard waste from any building, from any private property, or from any public or private sidewalk or driveway.
3. No person may throw or deposit litter or junk in any park within the city except in receptacles for the collection of litter. No person may throw or deposit in a park any glass bottle, glass, nails, tacks, wire, cans or other substance capable of injuring any person except in receptacles for the collection of litter.
4. Persons owning or occupying property within the city shall keep

the sidewalk or right-of-way in front of or adjacent to those premises' and any alley or right-of-way beside or behind those premises free of litter and junk.

5. A person commits an offense under this sub-section if he throws or discards any litter or junk in any unauthorized manner as specified in paragraphs 1 through 3 above. A culpable mental state is not required for the commission of an offense under this subsection.

B. Litter thrown by persons in vehicles.

1. No person, while a driver or passenger in any vehicle, may throw or deposit litter upon any right-of-way or other public place, or upon private property.

2. A person commits an offense if a passenger in a motor vehicle which he is operating throws or discards from such vehicle onto any right-of-way, public property or private property, any litter.

3. A culpable mental state is not required for the commission of an offense under this sub-section.

C. Truck loads causing litter.

1. No person may drive or move any truck or other vehicle unless such vehicle is so constructed or so loaded as to prevent any load, contents or litter from being blown or deposited upon any right-of-way or other public place or private property.

2. All vehicles hauling or transporting any load, contents or litter upon any -street, alley or other public place must comply with the requirements of Vernon's Ann. Civ. St. Art. 6701d-11, §3A, with regard to securing loads, contents or litter from spilling or blowing off such vehicle.

D. Depositing litter in receptacles.

Any person placing litter in any receptacles must do so in such a manner as to prevent it from being carried or deposited by the wind or other elements upon any right-of-way or other public place, or upon private property.

E. Private property generally.

1. No person may throw or deposit litter or junk on occupied, unoccupied or vacant privately owned property within the city.

2. No person may accumulate or allow to accumulate litter, junk, rubbish or garbage on occupied, unoccupied or vacant privately owned property within the city.
3. No person may accumulate or allow to accumulate within any house, building or other structure any filth, carrion, or other impure, unsanitary or unwholesome matter.
4. A person commits an offense under paragraphs 2 and 3 of this Section if he is criminally negligent.

F. Impairment of drainage.

1. No person may allow water or any unwholesome or unsanitary matter to stagnate, accumulate or stand upon property which he owns, occupies or has control over within the city.
2. No person may throw or place in any street, alley or gutter any litter, junk, yard waste, or any other thing whatsoever which prevents the free passage of water or causes same to stagnate therein. No person may lay or repair any water, gas or service pipes in a manner that impairs the drainage or free passage of water.
3. A person commits an offense under this sub-section if he is criminally negligent.

G. Penalty

Violation of any provision of this section shall be punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), and each day that any violation continues shall constitute a separate offense. However, an offense related to any provision of this section which also constitutes an offense under state law shall be punishable in accordance with the applicable state law.

ARTICLE II.

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

ARTICLE III.

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

ARTICLE IV

This Ordinance will take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

PASSED AND APPROVED THIS 2ND DAY OF OCTOBER, 2007.
PASSED AND ADOPTED ON THIS THE 16TH DAY OF OCTOBER, 2007.

END OF CONSENT AGENDA

24. Adjourn.

There were no other matters discussed or acted on at this meeting. There being no further business the meeting was adjourned.

Hal Richards, Mayor

Attest:

John Rounsavall, City Secretary