

REGULAR CITY COUNCIL MEETING

AUGUST 4, 2009

7:00 P.M.

A Regular Meeting of the Terrell City Council was held on Tuesday, August 4, 2009 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 – ABSENT (EXCUSED)
COUNCILMEMBER #2 SANDRA WILSON
COUNCILMEMBER #3 RICKY JORDAN – ABSENT (EXCUSED)
COUNCILMEMBER #4 JACK JONES
COUNCILMEMBER #5 DON THURMAN

1. Call to order.

Mayor Pro tem Don Thurman called the meeting to order.

2. Invocation.

Councilmember Sandra Wilson gave the opening prayer.

3. Discuss and Consider Approval of Special City Council Meeting and Retreat Minutes of July 9-10, 2009, Special City Council Meeting and Workshop Minutes of July 16, 2009 and Regular City Council Meeting Minutes of July 21, 2009.

Councilmember Jack Jones made a motion to approve the Special City Council Meeting and Retreat Minutes of July 9-10, 2009, Special City Council Meeting and Workshop Minutes of July 16, 2009 and Regular City Council Meeting Minutes of July 21, 2009. The motion was seconded by Councilmember Sandra Wilson. Ayes – all; Nays – none. Motion carried.

4. Hear Remarks from Visitors.

Mayor Pro tem Don Thurman recognized Boy Scouts attending the Council Meeting.

NEW BUSINESS

5. Discuss and Consider Approval of Fund Request for Special Event from 2008-2009 Hotel/Motel Tax Fund.

City Manager Torry Edwards and Sarah Keggereis representing the Chamber of Commerce presented to Council for discussion and consideration a Fund Request for Special Event from 2008-2009 Hotel/Motel Tax Fund. Councilmember Sandra Wilson made a motion to approve \$12,000 plus \$8,000 Special Event from 2008-2009 Hotel/Motel Tax Fund. The motion was seconded by Councilmember Jack Jones. Ayes – all; Nays – none. Motion carried.

6. Discuss and Consider Award of Bids for Project No. 06-02 Water Distribution System Improvements.

Steve Rogers, City Engineer and Frank Rasor representing Rasor and Associates presented to Council for discussion and consideration Bids for Project No. 06-02 Water Distribution System Improvements. Councilmember Sandra Wilson made a motion to award bid for Project No. 06-02 Water Distribution System Improvements to Whitewater Construction, Inc. in the amount of \$201,156.28. The motion was seconded by Councilmember Jack Jones. Ayes – all; Nays – none. Motion carried.

7. Discuss and Consider Award of Bid for Project 08-04 Bachelor Creek Interceptor Phase 1 – Rosehill Road to FM 148.

Steve Rogers, City Engineer and Jerry Buechter representing Schaumburg & Polk presented to Council for discussion and consideration bid for Project 08-04 Bachelor Creek Interceptor Phase 1 – Rosehill Road to FM 148. Councilmember Jack Jones made a motion to award bid for Project 08-04 Bachelor Creek Interceptor Phase 1 – Rosehill Road to FM 148 to Wright

Construction, Inc. in the amount of \$1,615,788.50. The motion was seconded by Councilmember Sandra Wilson. Ayes – all; Nays – none. Motion carried.

8. Discuss and Consider Approval of Change Order No. 1 to Project 08-03 – Bachelor/Kings Drainage Improvements.

Steve Rogers, City Engineer presented to Council for discussion and consideration Change Order No. 1 to Project 08-03 – Bachelor/Kings Drainage Improvements. Councilmember Jack Jones made a motion to approve Change Order No. 1 to Project 08-03 Bachelor/Kings Drainage Improvements. The motion was seconded by Councilmember Sandra Wilson. Ayes – all; Nays – none. Motion carried.

9. Discuss and Consider Approval of Ordinance No. 2421– Approving a Negotiated Resolution Between the ATMOS Cities Steering Committee and Atmos Energy Corp., Mid-Tex Division Regarding the Company’s Rate Review Mechanism.

John Rounsavall, City Secretary/Finance Director presented to Council for discussion and consideration Ordinance No. 2421 – Approving a Negotiated Resolution Between the ATMOS Cities Steering Committee and Atmos Energy Corp., Mid-Tex Division Regarding the Company’s Rate Review Mechanism. Councilmember Sandra Wilson made a motion to approve Ordinance No. 2421 – Approving a Negotiated Resolution Between the ATMOS Cities Steering Committee and Atmos Energy Corp., Mid-Tex Division Regarding the Company’s Rate Review Mechanism on first reading. The motion was seconded by Councilmember Jack Jones. Ayes – all; Nays – none. Motion carried.

ORDINANCE NO. 2421

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS (“CITY”) APPROVING A NEGOTIATED RESOLUTION BETWEEN THE ATMOS CITIES STEERING COMMITTEE (“ACSC” OR “STEERING COMMITTEE”) AND ATMOS ENERGY CORP., MID-TEX DIVISION (“ATMOS MID-TEX” OR “COMPANY”) REGARDING THE COMPANY’S RATE REVIEW MECHANISM FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION, DECLARING EXISTING RATES TO BE UNREASONABLE, REQUIRING THE COMPANY TO REIMBURSE CITIES’ REASONABLE RATEMAKING EXPENSES, ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT AND FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE, APPROVING ATMOS’ PROOF OF REVENUES ADOPTING A SAVINGS CLAUSE, DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT, DECLARING AN EFFECTIVE DATE, AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE STEERING COMMITTEE’S LEGAL COUNSEL.

10. Discuss and Consider Approval of Agreement with ABS Telecom, LLC for Management of Grant Application Process and Record Keeping.

City Manager Torry Edwards, John Rounsavall, City Secretary/Finance Director and Beth Womack representing ABS Telecom, LLC presented to Council for discussion and consideration an Agreement with ABS Telecom, LLC for Management of Grant Application Process and Record Keeping. Councilmember Jack Jones made a motion to table this item pending receiving additional information. The motion was seconded by Councilmember Sandra Wilson. Ayes – all; Nays – none. Motion carried.

11. Discuss and Consider Approval of Ordinance No. 2422 - Budget Amendment.

John Rounsavall, City Secretary/Finance Director presented to Council for discussion and consideration Ordinance No. 2422 – Budget Amendment. Councilmember Jack Jones made a motion to approve Ordinance No. 2422 – Budget Amendment on first reading. The motion was seconded by Councilmember Sandra Wilson. Ayes – all; Nays – none. Motion carried.

ORDINANCE NO. 2422

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, AMENDING THE ANNUAL BUDGET FOR THE YEAR BEGINNING OCTOBER 1, 2008, AND ENDING SEPTEMBER 30, 2009, AS PASSED AND ADOPTED ON SEPTEMBER 16, 2008 TO PROVIDE FOR INCREASES IN CERTAIN ACCOUNTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

CONSENT AGENDA

Councilmember Jack Jones made a motion to adopt Ordinance No. 2418, Ordinance No. 2419 and Ordinance No. 2420 on second reading on CONSENT AGENDA. The motion was seconded by Councilmember Sandra Wilson. Ayes – all; Nays – none. Motion carried.

12. Discuss and Consider Adoption on Second Reading of Ordinance No. 2418 - Amending Appendix 1 – Fee Schedule, Section 2 – Library Fines and Fees.

ORDINANCE NO. 2418

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, AMENDING APPENDIX 1, FEE SCHEDULE, SECTION 2: LIBRARY FEES AND CHARGES OF THE REVISED CODE OF ORDINANCES OF THE CITY OF TERRELL, TEXAS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVING AN EFFECTIVE DATE.

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

THAT Appendix I, Fee Schedule, Section 2: Library Fees and Charges of the Revised Code of Ordinances of the City of Terrell, Texas be amended as follows:

SECTION I.

SECTION 2: LIBRARY FINES AND FEES:

Fines and Fees Adjustments:

Reduce Borrowing Restriction threshold from \$10 to \$5
Increase Maximum fine per item from \$6 to \$10
Increase maximum total fine per card from \$30 to \$50

Fees for New Services:

DVD/CD Cleaning/repair - \$1 per disk
Fax Transmission - \$1 per page
Fax Receipt \$1 plus \$0.25 per page
Notarization of documents - \$5 per document.

SECTION II

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

SECTION III

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinances 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 such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 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 on first reading this 21st day of July, 2009.

PASSED AND ADOPTED on second reading this 4th day of August, 2009.

13. Discuss and Consider Adoption on Second Reading of Ordinance No. 2419 – Juvenile Curfew Ordinance.

ORDINANCE NO. 2419

AN ORDINANCE AMENDING CHAPTER 8, OFFENSES AND NUISANCES, SECTION 8, “CURFEW FOR MINORS” OF THE CODE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS, AS AMENDED, BY ADDING DEFINITIONS; REQUIRING THE CHIEF OF POLICE TO MAKE PERIODIC REPORTS TO THE CITY COUNCIL CONCERNING THE EFFECTIVENESS AND NEED FOR THE SECTION; REQUIRING THE CITY COUNCIL TO PERIODICALLY REVIEW THE EFFECTS OF THE SECTION ON THE COMMUNITY AND THE PROBLEMS THE SECTION IS INTENDED TO REMEDY; TO HOLD PUBLIC HEARINGS, AND TO ABOLISH, CONTINUE OR MODIFY THE SECTION; PROVIDING THAT FAILURE BY THE CITY COUNCIL TO CONDUCT SUCH PERIODIC REVIEWS AND HEARINGS SHALL CAUSE THE SECTION TO EXPIRE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

ARTICLE I.

That Chapter 8, Offenses and Nuisances, Section 8, Curfew for Minors shall be amended as follows:

SECTION 8: CURFEW FOR MINORS

A. Definitions. In this section:

- (1) Curfew Hours means:
 - (a) 11:00 p.m. on any Sunday Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and
 - (b) 12:30 a.m. until 6:00 a.m. on any Friday or Saturday.
- (2) **Date of the Adoption of this Section means** July 28, 2006.
- (3) **Emergency** means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- (4) **Establishment** means any privately-owned place of business operated for a profit to which the public is invited including, but not limited to any place of amusement or entertainment.
- (5) **Guardian** means:
 - (a) a person who, under court order, is the guardian of the person of a minor; or
 - (b) a public or private agency with whom a minor has been placed by a court.
- (6) **Minor** means any person under seventeen (17) years of age.

- (7) **Officer** means a police officer.
- (8) **Operator** means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes, but is not limited to, the members or partners of an association or partnership and the officers of a corporation.
- (9) **Parent** means a person who is:
 - (a) a natural parent, adoptive parent, or step-parent of another person; or
 - (b) at least eighteen (18) years of age and authorized by a parent or guardian to have the care and custody of a minor.
- (10) **Public Place** means any place to which the public, or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.
- (11) **Remain** means to:
 - (a) linger or stay; or
 - (b) fail to leave premises when requested to do so by an officer or the owner, operator, or other person in control of the premises.
- (5) **This Section** means Chapter 8, Section 8 of the Terrell City Code.

B. Offenses

- (1) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.
- (2) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.
- (3) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

C. Defenses

- (1) It is a defense to prosecution under Subsection (b) that the minor was:
 - (a) accompanied by the minor's parent or guardian;
 - (b) on an errand at the direction of the minor's parent or guardian without any detour or stop;
 - (c) in a motor vehicle involved in interstate travel;
 - (d) engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - (e) involved in an emergency;
 - (f) on the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
 - (g) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Terrell, a civic

organization, or another similar entity that takes responsibility for the minor;

- (h) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
- (i) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.

- (2) It is a defense to prosecution under Subsection (B)(3) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

B. Enforcement.

Before taking any enforcement action under this Section, an officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense, in Subsection (C) is present.

E. Penalties.

- (1) A person who violates a provision of this Section is guilty of a separate offense for each day or part of a day during which the violation is committed, continued or permitted. Each offense, upon conviction, is punishable by a fine not to exceed five hundred dollars (\$500.00).
- (2) When required by Section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates Subsection (B)(1) of this Section and shall refer the minor to juvenile court.

F. Report By the Chief of Police

Before the third anniversary of the date of the adoption of this Section the Chief of Police shall review this Section, report to the City Council, and make recommendations concerning the effectiveness of and need for this Section. The Report By the Chief of Police shall specifically include the following information:

- (1) The practicality of enforcing this Section and any problems with enforcement identified by the Police Department;
- (2) The impact of this Section on crime statistics;
- (3) The number of persons successfully prosecuted for a violation of this Section; and
- (4) The City's net cost of enforcing this Section.

G. City Council Review.

Before the third anniversary of the date of the adoption of this Section, and every third year thereafter, the City Council shall:

- (1) review this Section's effects on the community and on the problems the Section was intended to remedy;
- (2) conduct public hearings on the need to continue the Section; and
- (3) abolish, continue or modify the Section.

Failure by the City Council to act in accordance with paragraphs (G) (1) - (3) shall cause this Section to expire.

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 judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and section 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 the 21st day of July, 2009.
PASSED AND ADOPTED THIS the 4th day of August, 2009.

14. Discuss and Consider Adoption on Second Reading of Ordinance No. 2420 - Budget Amendment.

ORDINANCE NO. 2420

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, AMENDING THE ANNUAL BUDGET FOR THE YEAR BEGINNING OCTOBER 1, 2008, AND ENDING SEPTEMBER 30, 2009, AS PASSED AND ADOPTED ON SEPTEMBER 16, 2008 TO PROVIDE FOR INCREASES IN CERTAIN ACCOUNTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION I.

The following funds are amended to reflect the following in the budget:

<u>TAX INCREMENT FUND REVENUE</u>	BUDGETED	AMOUNT	AMENDED
015-00-3801 FM 148 Funding Agreement	\$ -0-	\$12,972.00	\$12,972.00
015-00-3802 IH 20 Funding Agreement	\$ -0-	\$20,500.00	\$20,500.00
<u>EXPENDITURES</u>			
015-15-4401 FM 148 TxDOT LPAFA Agmt.	\$ -0-	\$12,972.00	\$12,972.00
015-15-4402 IH 20 TxDOT LPAFA Agmt.	\$ -0-	\$20,500.00	\$20,500.00

SECTION II.

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SECTION 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 of this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 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 on this the 21st day of July, 2009.

Passed and Adopted on this the 4th day of August, 2009.

END OF CONSENT AGENDA

15. Receive City Manager's Reports and Correspondence – Special City Council Meeting – Friday, August 7, 2009 – 9:00 a.m.

City Manager Torry Edwards presented Reports and Correspondence to Council.

16. 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