

REGULAR CITY COUNCIL MEETING

June 5, 2012

7:00 P.M.

A Regular City Council Meeting of the Terrell City Council was held on Tuesday, June 5, 2012, 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 TOMMY SPENCER
COUNCILMEMBER #3 RICKY JORDAN
COUNCILMEMBER #4 CHARLES WHITAKER
COUNCILMEMBER #5 D.J. ORY

1. Call to order.

Mayor Pro Tem Ricky Jordan, called meeting to order.

2. Invocation.

Torry Edwards, City Manager, gave the opening prayer.

3. Presentation of Proclamation to Hulse Public Library for "Summer Reading Season".

Ricky Jordan presented to Council the Proclamation to Hulse Public Library for "Summer Reading Season".

4. Discuss and Consider Approval of Regular City Council Meeting Minutes of May 15, 2012, and City Council Spring Retreat of May 24, 2012.

Deputy Mayor Pro Tem D. J. Ory, made a motion to approve the Regular City Council Meeting Minutes of May 15, 2012 and City Council Retreat of May 24, 2012. Councilmember Charles Whitaker, seconded the motion. Ayes - All. Nays - None. Motion carried.

5. Hear Remarks from Visitors.

Edna Wilson, 902 S. Hattie, Terrell, Texas, commented to Council about a pit bull held by a chain in a vacant lot adjoining her property. The vacant lot is not owned by the dog owner.

NEW BUSINESS

6. Discuss and Consider Appointment to Terrell Planning and Zoning Commission.

Deputy Mayor Pro Tem D. J. Ory, made a motion to table Appointment to Terrell Planning and Zoning Commission. Councilmember Tommy Spencer, seconded the motion. Ayes - All. Nays - None. Motion carried.

7. Discuss and Consider Ordinance 2540; An Ordinance Of The City Of Terrell, Texas, Amending The Annual Budget For The Year Beginning October 1, 2011, And Ending September 30, 2012, As Passed And Adopted On September 20, 2011 To Provide For Increases In Certain Accounts; Providing For Severability; And Providing An Effective Date.

John Rounsavall, City Secretary, and Jim Harper, Fire Chief, presented to Council for Discussion and Consideration on first reading Ordinance 2540; An Ordinance Of The City Of Terrell, Texas, Amending The Annual Budget For The Year Beginning October 1, 2011, And Ending September 30, 2012, As Passed And Adopted On September 20, 2011 To Provide For Increases In Certain Accounts; Providing For Severability; And Providing An Effective Date. Deputy Mayor Pro Tem D. J. Ory, made a motion to approve Ordinance 2540; An Ordinance Of The City Of Terrell, Texas, Amending The Annual Budget For The Year Beginning October 1, 2011, And Ending September 30, 2012, As Passed And Adopted On September 20, 2011 To Provide For Increases In Certain Accounts; Providing For Severability; And Providing An Effective Date. Councilmember Tommy Spencer, seconded the motion. Ayes - All. Nays - None. Motion carried.

ORDINANCE NO. 2540

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, AMENDING THE ANNUAL BUDGET FOR THE YEAR BEGINNING OCTOBER 1, 2011, AND ENDING SEPTEMBER 30, 2012, AS PASSED AND ADOPTED ON SEPTEMBER 20, 2011 TO PROVIDE FOR INCREASES IN CERTAIN ACCOUNTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

8. Discuss and Consider Easement Agreement Between the City of Terrell and Windstream KDL, Inc.

Greg Shumpert, Assistant City Attorney, presented to Council for Discussion and Consideration Easement Agreement Between the City of Terrell and Windstream KDL, Inc. Deputy Mayor Pro Tem D. J. Ory, made a motion to table Easement Agreement Between the City of Terrell and Windstream KDL, Inc. Councilmember Tommy Spencer, seconded the motion. Ayes - All. Nays - None. Motion carried.

9. Discuss and Consider Work Authorization for Phase 3 Right of Way for the Spur 557 Ramps and County Road 305 Project.

Mike Sims, Assistant City Manager, and Carlton Tidwell, Representing Terrell Economic Development Corporation, presented to Council for Discussion and Consideration Work Authorization for Phase 3 Right of Way for the Spur 557 Ramps and County Road 305 Project. Deputy Mayor Pro Tem D. J. Ory, made a motion to approve City Manager to enter into agreement with Raba-Kistner Infrastructure, Inc. and execute Work Authorization for Phase 3 Right of Way for the Spur 557 Ramps and County Road 305 Project. Councilmember Charles Whitaker, seconded the motion. Ayes - All. Nays - None. Motion carried.

10. Discuss and Consider Setting Date, Time and Location for City Council 2012-2013 Budget Retreat.

Torry Edwards, City Manager, presented to Council for Discussion and Consideration Setting Date, Time and Location for City Council 2012-2013 Budget Retreat. Deputy Mayor Pro Tem D. J. Ory, made a motion to set the 2012-2013 Budget Retreat for Thursday, June 28, 2012, beginning at 9:00 a.m. and Friday, June 29, 2012, beginning at 8:00 a.m. to be held at the William F. Long Airport Terminal At Terrell Municipal Airport, 400 East British Flying School Blvd., Terrell, Texas 75160. Councilmember Tommy Spencer, seconded the motion. Ayes - All. Nays - None. Motion carried.

11. Discuss and Consider City Council Meeting Schedule for July, 2012.

Torry Edwards, City Manager, presented to Council for Discussion and Consideration City Council Meeting Schedule for July, 2012. Deputy Mayor Pro Tem D. J. Ory made a motion to not hold a Regular City Council Meeting on July 3, 2012, and to not hold a Special City Council Meeting and Workshop on July 12, 2012. Councilmember Tommy Spencer, seconded the motion. Ayes - All. Nays - None. Motion carried.

CONSENT AGENDA

Deputy Mayor Pro Tem D. J. Ory made a motion to adopt on CONSENT AGENDA Ordinance No. 2538 and Ordinance No. 2539 on second reading. The motion was seconded by Councilmember Tommy Spencer. Ayes – All. Nays – None. Motion carried.

12. Discuss and Consider Adoption on Second Reading of Ordinance 2538; An Ordinance Of The City Of Terrell, Texas, Amending Section 10, Article IV, Section A, Section B And Section D(11), Floodplain Management Regulations, Of Chapter Four, Building Regulations, Of The Revised Code Of Ordinances; Recognizing A Revised Flood Insurance Study, Providing Additional Definitions And Clarification Of Development Standards, Adding Requirements Concerning Floodplain Compensation, Providing For Repeal Of Conflicting Ordinances; Providing For Severability And Providing An Effective Date.

ORDINANCE NO. 2538

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, AMENDING SECTION 10, ARTICLE IV, SECTION A, SECTION B AND SECTION D(11), FLOODPLAIN MANAGEMENT REGULATIONS, OF CHAPTER FOUR, BUILDING REGULATIONS, OF THE REVISED CODE OF ORDINANCES; RECOGNIZING A REVISED FLOOD INSURANCE STUDY, PROVIDING ADDITIONAL DEFINITIONS AND CLARIFICATION OF DEVELOPMENT STANDARDS, ADDING REQUIREMENTS CONCERNING FLOODPLAIN COMPENSATION, 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, TEXAS:
ARTICLE I**

THAT SECTION TEN, FLOODPLAIN MANAGEMENT REGULATIONS, OF CHAPTER FOUR, BUILDING REGULATIONS, OF THE REVISED CODE OF ORDINANCES, BE AND IS HEREBY AMENDED TO READ AS FOLLOWS:

SECTION 10: FLOODPLAIN MANAGEMENT REGULATIONS (INCLUDING REVISIONS THROUGH JULY 3, 2012) AND ANY ADDITIONAL FLOOD ELEVATION DATA PROVIDED BY FEMA SHALL BE AUTOMATICALLY ADOPTED

A. STATUTORY AUTHORIZATION

The Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315, delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City Council of the City of Terrell, Texas, does ordain as follows:

B. FINDINGS OF FACT

- (1) The flood hazard areas of the City of Terrell, Texas, are subject to periodic inundation, which results, or may result, in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

C. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplain;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone

areas in such a manner as to minimize future flood blight areas; and

(7) Insure that potential buyers are notified that property is in a flood area.

D. METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, these regulations use the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplain, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

ARTICLE II

DEFINITIONS

Unless specifically defined below, words or phrases used in this section shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

ALLUVIAL FAN FLOODING – means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

APEX – means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

APPURTENANT STRUCTURE – means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

AREA OF FUTURE CONDITIONS FLOOD HAZARD – means the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

AREA OF SHALLOW FLOODING -means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD is the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

BASE FLOOD -means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION (BFE) – The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year – also called the Base Flood.

BASEMENT -means any area of the building having its floor subgrade (below ground level) on all sides

BREAKAWAY WALL – means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

CRITICAL FEATURE means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

DEVELOPMENT -means any man-made change in improved and unimproved real estate, "including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING –means, for insurance purposes, a non-basement building, has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

EXISTING CONSTRUCTION means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures".

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION -means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD OR FLOODING means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) the overflow of inland or tidal waters.

(b) the unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD ELEVATION STUDY – means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation

and determination of mudslide (i.e., mudflow) and / or flood-related erosion hazards.

FLOOD INSURANCE RATE MAP (FIRM) -means an official map of the community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY -See *Flood Elevation Study*

FLOODPLAIN OR FLOOD-PRONE AREA -means any land area susceptible to being inundated by water from any source (see definition of flooding).

FLOODPLAIN MANAGEMENT – means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

FLOODPLAIN MANAGEMENT REGULATIONS – means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOOD PROTECTION SYSTEM -means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

FLOOD PROOFING -means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY see *Regulatory Floodway*

HIGHEST ADJACENT GRADE - means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE -means any structure that is:

- (1) Listed' individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic

preservation programs that have been certified either:

- (a) By an approved state program as determined by the Secretary of the Interior or;
- (b) Directly by the Secretary of the Interior in states without approved programs.

LEVEE -means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LEVEE SYSTEM -means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

LOWEST FLOOR -means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

MANUFACTURED HOME -means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

MANUFACTURED HOME PARK OR SUBDIVISION – means a parcel (or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL –means for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on the community's Flood Insurance Rate Map are referenced.

NEW CONSTRUCTION -means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after September 30, 1980, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after December 27, 1977; and includes any subsequent improvements to such structures".

NEW MANUFACTURED HOME PARK OR SUBDIVISION - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after December 27, 1977.

RECREATIONAL VEHICLE -means a vehicle which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projections;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and

(d) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY – means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

RIVERINE – means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

SPECIAL FLOOD HAZARD AREA – see *Area of Special Flood Hazard*

START OF CONSTRUCTION – (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)) includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE –means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE -means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvements. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or,

(b) Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure".

VARIANCE -means a grant of relief by a community from the requirements of this ordinance

when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this section.

VIOLATION -means the failure of a structure or other development to be fully compliant with the community's flood-plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5), is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION -means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplain of coastal or riverine areas.

ARTICLE III

GENERAL PROVISIONS

SECTION A. LANDS TO WHICH THESE PROVISIONS APPLY

These provisions shall apply to all areas of special flood hazard within the jurisdiction of the City of Terrell, Kaufman County, Texas.

SECTION B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS), for the City of Terrell, Texas" dated July 3, 2012, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM), and any revision thereto are hereby adopted by reference and declared to be a part of this section.

SECTION C. ESTABLISHMENT OF DEVELOPMENT PERMIT

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance. The fees and charges to be paid by applicants for such permits shall be as set forth in Appendix 1 of this Code of Ordinances.

SECTION D. COMPLIANCE

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

SECTION E. ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION F. INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be:

- (1) considered as minimum requirements;
- (2) liberally construed in favor of the governing body; and
- (3) deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION G. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Terrell, Texas, or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

ARTICLE IV

ADMINISTRATION

SECTION A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The City Engineer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other sections of 44 CFR (Emergency Management and Assistance – National Flood Insurance Program Regulations) pertaining to floodplain management.

SECTION B. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance;
- (2) Review permit applications to determine whether to ensure that proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.
- (3) Review, approve, or deny all applications for development permits required by adoption of this ordinance.
- (4) Review permits for proposed development to assure that all necessary permits (including those required by Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) have been obtained from those Federal, State or local governmental agencies from which prior approval is required.

(5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the city engineer shall make the necessary interpretation.

(6) Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Texas Water Development Board (TWDB), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(7) Assure that the flood carrying capacity within the altered or relocated portion of any water-course is maintained.

(8) When base flood elevation data have not been provided in accordance with Article 3, Section B., the city engineer shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available from a Federal, State, or other source, in order to administer the provisions of this Article 5.

(9) When a regulatory floodway has not been designated, the city engineer must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

(10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than 1 foot, provided that the community **first** complete all the provisions required by Section 65.12.

SECTION C. PERMIT PROCEDURES

(1) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

(a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;

(b) Elevation in relation to mean sea level to which any non-residential structure shall be flood-proofed;

(c) A certificate from a registered professional engineer or architect that the non-residential flood-proofed structure shall meet the flood-proofing criteria of Article 5, Section B (2);

(d) Description of the extent to which any water-course or natural drainage will be altered or relocated as a result of proposed development;

(e) Maintain a record of all such information in accordance with Article 4, Section (B) (1).

(2) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

- (a) The danger to life and property due to flooding or erosion damage;
- (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (c) The danger that materials may be swept onto other lands to the injury of others;
- (d) The compatibility of the proposed use with existing and anticipated development;
- (e) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (f) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas / electrical, and water systems;
- (g) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- (h) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

SECTION D. VARIANCE PROCEDURES AND APPEALS

(1) The Zoning Board of Adjustment as established by the City Council of Terrell, Texas, shall hear and decide appeals and requests for variances from the requirements of this ordinance.

(2) The Zoning Board of Adjustment shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the city engineer in the enforcement or administration of this ordinance.

(3) Any person or persons aggrieved by the decision of the Zoning Board of Adjustment may appeal such decisions in the courts of competent jurisdiction.

(4) The city engineer shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(5) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this ordinance.

(6) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size, contiguous to and surrounded by lots with

existing structures constructed below the base flood level, providing the relevant factors in Section C (2) of this Article have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.

(7) Upon consideration of the factors noted above and the intent of this ordinance, the zoning board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of ordinance (Article 1, Section C).

(8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(10) Prerequisites for granting variances:

(a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(b) Variances shall only be issued upon (i) a showing of good and sufficient cause (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and

(c) Any applicant to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(11) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the above criteria are met, the criteria outlined in Article 4, Section D (1)-(9) are met and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

ARTICLE V

PROVISIONS FOR FLOOD HAZARD REDUCTION

SECTION A. GENERAL STANDARDS

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

(1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting

from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

(4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and

(7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

SECTION B. SPECIFIC STANDARDS FOR FLOOD HAZARD REDUCTION

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Article 3, Section B, (ii) Article 4, Section B (8), or (iii) Article 5, Section C (3), the following provisions are required:

(1) Residential Construction - new construction or substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to two (2) feet or more above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the city engineer that the standard of this subsection, as proposed in Article 4, Section C (1) a., is satisfied.

(2) Nonresidential Construction - new construction or substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement) elevated to two (2) feet above the base flood level, or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the city engineer.

(3) **Enclosures** new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than the basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of

floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- (a) A minimum of two (2) openings on separate walls having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
- (b) The bottom of all openings shall be no higher than one (1) foot above grade.
- (c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) Manufactured Homes

(a) Require that all manufactured homes to be placed within Zone A, on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purpose of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(b) Require all manufactured homes that are placed or substantially improved within Zones A1-30, AH and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(c) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

- i. The lowest floor of the manufactured home is two (2) feet above the base flood elevation, or
- ii. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(5) Recreational Vehicles

Requires that all recreational vehicles placed on sites within Zones A1-A30, AE, and AH on the community's FIRM either:

- (a) Be on the site for fewer than 180 consecutive days, or
- (b) Be fully licensed and ready for highway use, or
- (c) Meet the permit requirements of Article 4, Section C (1) of this section, and the applicable elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

SECTION C. STANDARDS FOR SUBDIVISION PROPOSALS

- (1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article 1, Section B, C, and D of the ordinance.
- (2) All proposals for the development of subdivisions including the placement of Manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Article 3, Section C; Article 4, Section C; and the provisions of Article 5 of this ordinance.
- (3) Base flood elevation data shall be generated for subdivision proposals and other proposed developments including the placement of manufactured home parks and subdivisions which are greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Article 3, Section B or Article 4, Section B (8) of this ordinance.
- (4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (5) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

SECTION D. STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES)

Located within the areas of special flood hazard established in Article 3, Section B, are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of **residential** structures shall have the lowest floor (including basement) elevated above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified).
- (2) All new construction and substantial improvements of **non-residential** structures shall:
 - (a) have the lowest floor (including basement) elevated two (2) feet above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM; or

(b) together with attendant utility and sanitary facilities be designed so that below the base specific flood depth in an AO Zone, or below the Base Flood Elevation in an AH Zone, level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the city engineer that the standards of this Section, as proposed in Article 4, Section C are satisfied.

(4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood water around and away from proposed structures.

SECTION E. FLOODWAYS

Floodways - located within the areas of special flood hazard established in Article 3, Section B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If Article 5, Section E (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 5.

(3) Under the provision of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 645.12.

SECTION F. SEVERABILITY

If any section, clause sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of their remaining portions of the Ordinance.

SECTION G. PENALTIES FOR NON-COMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 for each violation, and

in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City of Terrell from taking such other lawful action as is necessary to prevent or remedy any violation.

PASSED AND APPROVED ON THIS 15TH DAY OF MAY, 2012.

PASSED AND ADOPTED ON THIS 5TH DAY OF JUNE, 2012.

13. Discuss and Consider Adoption on Second Reading of Ordinance 2539; An Ordinance Of The City Of Terrell, Texas, Prohibiting The Use Of Designated Groundwater From Beneath Certain Property Located Within The City Of Terrell Municipal Airport And Supporting Certification Of A Municipal Setting Designation By The Texas Commission On Environmental Quality; Providing A Penalty Clause; Providing A Severability Clause; And Providing An Effective Date.

ORDINANCE NO. 2539

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH CERTAIN PROPERTY LOCATED WITHIN THE CITY OF TERRELL MUNICIPAL AIRPORT AND SUPPORTING CERTIFICATION OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Subchapter W, "Municipal Setting Designations," of Chapter 361, "Solid Waste Disposal Act," of the Texas Health and Safety Code authorizes the Texas Commission on Environmental Quality to create municipal setting designations; and

WHEREAS, pursuant to Section 401.005(a) of the Texas Local Government Code, for the purpose of establishing and enforcing a municipal setting designation, the governing body of a municipality may regulate the pumping, extraction, or use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, to prevent the use of or contact with groundwater that presents an actual or potential threat to human health; and

WHEREAS, pursuant to Section 401.005(b) of the Texas Local Government Code, for the purpose of establishing and enforcing a municipal setting designation, the governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances; and

WHEREAS, the City Council finds that:

- (1) The eligibility criteria of Section 361.803 of the Texas Health and Safety Code

have been met;

(2) This municipal setting designation ordinance will not have an adverse effect on the current or future water resource needs or obligations of the City of Terrell;

(3) There is a public drinking water supply system that satisfies the requirements of Chapter 341 of the Texas Health and Safety Code and that supplies or is capable of supplying drinking water to the designated property and property within one-half mile of the designated property; and

(4) This municipal setting designation ordinance is necessary because the concentration of chemicals of concern exceed concentrations considered safe for human ingestion; and

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

SECTION 1. That for purposes of this municipal setting designation ordinance, the "designated property" means the property described in Exhibit A attached to the Ordinance.

SECTION 2. That for purposes of this municipal setting designation ordinance, "designated groundwater" means water below the surface of the designated property to a depth of 200 feet.

SECTION 3. That use of the designated groundwater from beneath the designated property as potable water, as defined in Section 361.801(2) of the Texas Health and Safety Code, and the following uses of or contacts with the designated groundwater are prohibited:

- (1) Human consumption or drinking.
- (2) Showering or bathing.
- (3) Cooking.
- (4) Irrigation of crops for human consumption.

SECTION 4. That the City Council supports the application to the Texas Commission on Environmental Quality for certification of a municipal setting designation for the designated property.

SECTION 5. That any person owning, operating, or controlling the designated property remains responsible for complying with all applicable federal, state, and local statutes, ordinances, rules, and regulations relating to environmental protection, and that this municipal setting designation ordinance in itself does not change any environmental assessment or cleanup

requirements applicable to the designated property.

SECTION 6. That approval of this municipal setting designation ordinance shall not be construed to subject the City of Terrell to any responsibility or liability for any injury to persons or damages to property caused by any chemical of concern.

SECTION 7. That within sixty (60) days after adoption of this municipal setting designation ordinance, the City Engineer shall cause to be filed a certified copy of this municipal setting designation ordinance in the deed records of the county where the designated property is located.

SECTION 8. That the City Engineer shall notify the Texas Commission on Environmental Quality sixty (60) days prior to any amendment or repeal of this municipal setting designation ordinance.

SECTION 9. That a person violating Section 3 of this municipal setting designation ordinance, upon conviction, is punishable by a fine not to exceed \$2,000, and that the Texas Commission on Environmental Quality shall be notified of any violations.

SECTION 10. It is the intention of the City Council that this municipal setting designation ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this ordinance shall not affect the validity or unconstitutionality of any other portion of this ordinance.

SECTION 11. That this municipal setting designation ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Terrell, and it is accordingly so ordained.

PASSED AND APPROVED this the 15th day of May, 2012.

PASSED AND ADOPTED this the 5th day of June, 2012.

END OF CONSENT AGENDA

14. Adjourn into Executive Session in Accordance with Section 551 of the Texas Government Code to Discuss the Following:
a.) Section 551.071 – Consultation with Attorney.

This item passed by Council.

15. Reconvene into Regular Session and Consider Action, if any, on Items Discussed in Executive Session.

This item passed by Council.

16. Adjourn.

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

Ricky Jordan, Mayor Pro Tem

Attest:

John Rounsavall, City Secretary