

REGULAR CITY COUNCIL MEETING

APRIL 21, 2009

7:00 P.M.

A Regular Meeting of the Terrell City Council was held on Tuesday, April 21, 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
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.

Councilmember Ricky Jordan gave the opening prayer.

3. Library Volunteer Recognition.

Becky Sullivan, Library Director recognized Library Volunteers with 1000, 2000 and 3000 volunteer hours.

4. Discuss and Consider Approval of Special City Council Meeting and Workshop Minutes of April 2, 2009 and Regular City Council Meeting Minutes of April 7, 2009.

Deputy Mayor Pro tem Don Thurman made a motion to approve Special City Council Meeting and Workshop Minutes of April 2, 2009 and Regular City Council Meeting Minutes of April 7, 2009. The motion was seconded by Councilmember Ricky Jordan. Ayes – all; Nays – none. Motion carried.

5. Hear Remarks from Visitors.

None were made.

NEW BUSINESS

6. Discuss and Consider Approval of Ordinance No. 2407 – Amending Chapter 1, Section 11. Emergency Management.

Jim Harper, Fire Chief presented to Council for discussion and consideration Ordinance No. 2407 – Amending Chapter 1, Section 11. Emergency Management. Mayor Pro tem Jack Jones made a motion to approve Ordinance No. 2407 - Amending Chapter 1, Section 11. Emergency Management on first reading. The motion was seconded by Councilmember Tommy Spencer. Ayes – all; Nays – none. Motion carried.

ORDINANCE NO.2407

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS AMENDING CHAPTER 1, SECTION 11. EMERGENCY MANAGEMENT OF THE CODE OF ORDINANCES OF THE CITY OF TERRELL ESTABLISHING A PROGRAM INCLUDING MITIGATION, PREPAREDNESS, RESPONSE AND RECOVERY PHASES OF COMPREHENSIVE EMERGENCY MANAGEMENT; ACKNOWLEDGING THE APPOINTMENT OF AN EMERGENCY MANAGEMENT DIRECTOR; AUTHORIZING THE APPOINTMENT OF AN EMERGENCY MANAGEMENT COORDINATOR; AND PROVIDING FOR THE DUTIES AND RESPONSIBILITIES OF THOSE OFFICES; IDENTIFYING AN OPERATIONAL ORGANIZATION; GRANTING NECESSARY POWERS TO COPE WITH ALL PHASES OF EMERGENCY MANAGEMENT WHICH THREATEN LIFE AND PROPERTY IN THE CITY OF TERRELL AUTHORIZING COOPERATIVE AND MUTUAL AID AGREEMENTS FOR RELIEF WORK BETWEEN THIS AND OTHER CITIES OR COUNTIES AND FOR RELATED PURPOSES; PROHIBITING UNAUTHORIZED WARNING AND ALL-CLEAR AND MAKING VIOLATIONS OF THE EMERGENCY MANAGEMENT PLAN A MISDEMEANOR PUNISHABLE BY FINE NOT TO EXCEED \$1000.00 OR CONFINEMENT IN JAIL FOR A TERM NOT TO EXCEED 180 DAYS; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

7. Discuss and Consider Approval of Ordinance No. 2408 – Adopting the City of Terrell Emergency Operations Plan.

Jim Harper, Fire Chief presented to Council for discussion and consideration Ordinance No. 2408 - Adopting the City of Terrell Emergency Operations Plan. Deputy Mayor Pro tem Don Thurman made a motion to approve Ordinance No. 2408 – Adopting the City of Terrell Emergency Operations Plan on first reading. The motion was seconded by Mayor Pro tem Jack Jones. Ayes – all; Nays – none. Motion carried.

ORDINANCE NO. 2408

AN ORDINANCE ADOPTING THE CITY OF TERRELL, TEXAS EMERGENCY MANAGEMENT PLAN AND AUTHORIZING THE EMERGENCY MANAGEMENT DIRECTOR (MAYOR), ACCORDING TO TEXAS GOVERNMENT CODE SECTION 418, TO SIGN THE NECESSARY DOCUMENTS AUTHENTICATING THE PLAN PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

8. Discuss and Consider Approval of Ordinance No. 2409 – Adoption of a Hazard Mitigation Action Plan.

Jim Harper, Fire Chief presented to Council for discussion and consideration Ordinance No. 2409 – Adoption of a Hazard Mitigation Action Plan. Councilmember Ricky Jordan made a motion to approve Ordinance No. 2409 – Adoption of a Hazard Mitigation Action Plan on first reading. The motion was seconded by Councilmember Tommy Spencer. Ayes – all; Naves – none. Motion carried.

ORDINANCE NO. 2409

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS ADDING CHAPTER 1 SECTION 11(a). HAZARD MITIGATION ACTION PLAN TO THE CODE OF ORDINANCES OF THE CITY OF TERRELL, TEXAS; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

9. Discuss and Consider Approval of Resolution No. 633 – Approving Support and Authorization of the Submission of a Home Program Application to the Texas Department of Housing and Community Affairs for Neighborhood Stabilization Program Funds.

Debbie Zajac, Director of Housing presented to Council for discussion and consideration Resolution No. 633 – Approving Support and Authorization of the Submission of a Home Program Application to the Texas Department of Housing and Community Affairs for Neighborhood Stabilization Program Funds. Mayor Pro tem Jack Jones made a motion to approve Resolution No. 633 – Approving Support and Authorization of the Submission of a Home Program Application to the Texas Department of Housing and Community Affairs for Neighborhood Stabilization Program Funds. The motion was seconded by Councilmember Tommy Spencer. Ayes – all; Naves – none. Motion carried.

RESOLUTION NO. 633

A RESOLUTION OF SUPPORT OF THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS, AUTHORIZING THE SUBMISSION OF A HOME PROGRAM APPLICATION TO THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS FOR HOME FUNDS; AND AUTHORIZING THE CITY MANAGER TO ACT AS THE CITY'S CHIEF EXECUTIVE OFFICER AND AUTHORIZED REPRESENTATIVE IN ALL MATTERS PERTAINING TO THE CITY'S PARTICIPATION IN THE PROGRAM.

WHEREAS, the City Council of the City of Terrell desires to develop and sustain a viable urban community, including quality housing and a suitable living environment; and

WHEREAS, certain substandard housing conditions exist which represent a health and safety threat to families residing in such structures; and

WHEREAS, the City Council supports the City's application for funding;

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

1. That a HOME application for the Texas Neighborhood Stabilization Program is hereby authorized to be filed on behalf of the City with the Texas Department of Housing and Community Affairs as a reimbursement program.
2. That the application be for \$500,000.00 of grant funds to carry out Neighborhood Stabilization efforts.
3. That the City Council directs and designates Torry Edwards, the City Manager as the City's Chief Executive Officer and Authorized Representative to act in all matters in connection with this application and the City's participation in the HOME Program.

PASSED AND APPROVED THIS 21ST DAY OF APRIL, 2009.

10. Discuss and Consider Bid and Award of Contract for 2009 Open Area Management and Mowing of Specified Properties.

Steve Rogers, City Engineer presented to Council for discussion and consideration Bid and Award of Contract for 2009 Open Area Management and Mowing of Specified Properties. Deputy Mayor Pro tem Don Thurman made a motion to reject all bids received for 2009 Open Area Management and Mowing of Specified Properties. The motion was seconded by Councilmember Ricky Jordan. Ayes – all; Nays – none. Motion carried.

11. Discuss and Consider Bid and Award of Contract for Project No. 08-03 – Bachelor/Kings Drainage.

Steve Rogers, City Engineer presented to Council for discussion and consideration Bid and Award of Contract for Project No. 08-03 – Bachelor/Kings Drainage. Mayor Pro tem Jack Jones made a motion to award bid for Project No. 08-03 – Bachelor/Kings Drainage to low bidder JT Dersner, Inc. in the amount of \$172,250.00. The motion was seconded by Councilmember Tommy Spencer. Ayes – all; Nays – none. Motion carried.

12. Discuss and Consider Bid and Award of Contract for Project No. 09-01 – 2009 Pavement Maintenance Program.

Dan Abell, Public Works Supervisor presented to Council for discussion and consideration Bid and Award of Contract for Project No. 09-01 – 2009 Pavement Maintenance Program. Deputy Mayor Pro tem Don Thurman made a motion to award Contract for Project No. 09-01 – 2009 Pavement Maintenance Program to JRJ Paving in the amount of \$247,481.41. The motion was seconded by Councilmember Ricky Jordan. Ayes – all; Nays – none. Motion carried.

13. Discuss and Consider Scheduling Special City Council Meeting for Thursday, May 7, 2009 – 6:30 p.m.

City Manager Torry Edwards presented to Council for discussion and consideration Scheduling Special City Council Meeting for Thursday, May 7, 2009 – 6:30 p.m. Deputy Mayor Pro tem Don Thurman made a motion to approve scheduling Special City Council Meeting for Thursday, May 7, 2009 – 6:30 p.m. The motion was seconded by Mayor Pro tem Jack Jones. Ayes – all; Nays – none. Motion carried.

14. Discuss and Consider Water Rate Study.

Mike Sims, Assistant City Manager and John Rounsavall, City Secretary/Finance Director presented to Council for discussion and consideration Water Rate Study. Deputy Mayor Pro tem Don Thurman made a motion to authorize J. Stow & Company to conduct a Water Rate Study in an amount not-to-exceed \$77,500. The motion was seconded by Councilmember Ricky Jordan. Ayes – all; Nays – none. Motion carried.

CONSENT AGENDA

Deputy Mayor Pro tem Don Thurman made a motion to adopt on CONSENT AGENDA Items No. 15-20 on second reading. The motion was seconded by Councilmember Tommy Spencer. Ayes – all; Nays – none. Motion carried.

15. Discuss and Consider Adoption on Second Reading of Ordinance No. 2399 - Landscape Water Management Regulations.

ORDINANCE No. 2399

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, ADDING SECTION 12-18 OF THE CODE OF ORDINANCES THROUGH THE ADOPTION OF A

ORDINANCE PERTAINING TO LANDSCAPE WATER MANAGEMENT
REGULATIONS FOR THE CITY OF TERRELL TO PROVIDE FOR
PENALTIES AND PROVIDING SEVERABILITY AND AN EFFECTIVE
DATE.

ARTICLE I.

WHEREAS, the City of Terrell, Texas (the "City") recognizes that the amount of water available to its water customers is limited; and

WHEREAS, pursuant to Chapter 54 of the Local Government Code, the City is authorized to adopt such policies necessary to preserve and conserve available water supplies; and

WHEREAS, the City of Terrell seeks to adopt an ordinance pertaining to landscape water management regulations.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Terrell, Texas that;

SECTION 1.

The Code of Ordinances is hereby amended by adopting a new section 12-18 to read as follows:

SECTION 2.

Lawn and Irrigation Restrictions

(a) A person commits an offense if the person irrigates, waters, or knowingly or recklessly causes or allows the irrigation or watering of any lawn or landscape located on any property owned, leased, or managed by the person between the hours of 10:00 a.m. and 6:00 p.m. year round.

(b) A person commits an offense if the person knowingly or recklessly irrigates, waters, or causes or allows the irrigation or watering of lawn or landscape located on any property owned, leased, or managed by that person in such a manner that causes:

- i. Over-watering lawn or landscape, such that a constant stream of water overflows from the lawn or landscape onto a street or other drainage area; or
- ii. Irrigating lawn or landscape during any form of precipitation or freezing conditions. This restriction applies to all forms of irrigation, including automatic sprinkler systems; or
- iii. The irrigation of impervious surfaces or other non-irrigated areas, wind driven water drift taken into consideration.

(c) A person commits an offense if the person knowingly or recklessly operates a lawn or irrigation system or device on property that the person owns, leases, or manages that:

- i. has broken or missing sprinkler head(s); or
- ii. has not been properly maintained to prevent the waste of water.

(d) All new athletic fields must have separate irrigation systems that are capable of irrigating the playing fields separately from other open spaces.

SECTION 3.

Rain and Freeze Sensors and/or ET or Smart Controllers

(a) Six months after this plan is adopted, any new irrigation system installed must be equipped with rain and freeze sensing devices and/or ET or Smart controllers in compliance with state design and installation regulations.

(b) A person commits an offense on property owned, leased or managed if the person:

- i. knowingly or recklessly installs or allows the installation of new irrigation systems in violation; or
- ii. knowingly or recklessly operates or allows the operation of an irrigation system that does not comply with Section 3 (a).

SECTION 4.

Filling or Refilling of Ponds

(a) A person commits an offense if the person knowingly or recklessly fills or refills any natural or manmade pond located on any property owned, leased, or managed by the person by introducing any treated water to fill or refill the pond. This does not restrict the filling or maintenance of pond levels by the effect of natural water runoff or the introduction of well water into the pond. A pond is considered to be a still body of water with a surface area of 2,500 square feet or more.

SECTION 5.

Washing of Vehicles.

(a) A person commits an offense if the person knowingly or recklessly washes a vehicle without using a water hose with a shut-off nozzle on any property owned, leased or managed by the person.

SECTION 6.

An offense under this Ordinance is a Class C misdemeanor punishable by a fine of up to two thousand dollars (2,000.00) and/or discontinuance of irrigation water service by the City.

SECTION 7.

Variances.

In special cases, variances may be granted by the city manager or his designee to persons demonstrating extreme hardship or need. Variances may be granted under the following circumstances:

- (a) The applicant must sign a compliance agreement agreeing to irrigate or water the lawn and/or landscape only in the amount and manner permitted by the variance; and
- (b) The variance must not cause an immediate significant reduction to the water supply; and
- (c) The extreme hardship or need requiring the variance must related to the health, safety, or welfare of the person making the request; and
- (d) The health, safety, and welfare of the public and the person making the request must not be adversely affected by the requested variance.

A variance will be revoked upon a finding that:

- (a) The applicant can no longer demonstrate extreme hardship or need; or
- (b) The terms of the compliance agreement are violated; or
- (c) The health, safety, or welfare of the public or other persons requires revocation.

SECTION 8.

The City Council does hereby find and declare that sufficient written notice of the date, hour, place and subject of the meeting considering this Ordinance was posted at a designated place convenient to the public for the time required by law preceding the meeting, that such place of posting was readily accessible at all times to the general public and that all of the foregoing was done as required by law at all times during which this Ordinance, and the subject matter thereof, has been discussed, considered and formally action upon. The City Council further ratifies, approves and confirms such written notice and the posting there.

SECTION 9.

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

SECTION 10.

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.

SECTION 11.

The City Secretary is hereby authorized and directed to cause publication of the descriptive caption of this ordinance as an alternative method of publication provided by law.

SECTION 12.

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

PASSED AND APPROVED this the 7th day of April, 2009.

PASSED AND ADOPTED this the 21st day of April, 2009.

- 16. Discuss and Consider Adoption on Second Reading of Ordinance No. 2401 – Adopting a Drought Contingency and Water Emergency Response Plan for the City of Terrell.**

ORDINANCE NO. 2401

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, REVISING SECTION 12-15 OF THE CODE OF ORDINANCES THROUGH THE ADOPTION OF A DROUGHT CONTINGENCY AND WATER EMERGENCY RESPONSE PLAN FOR THE CITY OF TERRELL TO PROMOTE RESPONSIBLE USE OF WATER AND TO PROVIDE FOR PENALTIES AND/OR THE DISCONNECTION OF WATER SERVICE FOR NONCOMPLIANCE WITH THE PROVISIONS OF THE DROUGHT CONTINGENCY AND WATER EMERGENCY RESPONSE PLAN; AND PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Terrell, Texas (the “City”), recognizes that the amount of water available to its water customers is limited; and

WHEREAS, the City recognizes that due to natural limitations, drought conditions, system failures and other acts of God which may occur, the City cannot guarantee an uninterrupted water supply for all purposes at all times; and

WHEREAS, the Water Code and the regulations of the Texas Commission on Environmental Quality (the “Commission”) require that the City adopt a Drought Contingency and Water Emergency Response Plan; and

WHEREAS, the City has determined an urgent need in the best interest of the public to adopt a Drought Contingency and Water Emergency Response Plan; and

WHEREAS, pursuant to Chapter 54 of the Local Government Code, the City is authorized to adopt such Ordinances necessary to preserve and conserve its water resources; and

WHEREAS, the City Council of the City of Terrell desires to adopt a Drought Contingency and Water Emergency Response Plan.

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

Section 1. Chapter 12, Utilities, Section 15, Water conservation and drought contingency plan of the Code of Ordinances of the City of Terrell; Texas is hereby repealed in its entirety.

Section 2. The Code of Ordinances is hereby amended by adopting a new section 15 to read as follows:

Section 3. The City Council hereby approves and adopts the Drought Contingency and Water Emergency Response Plan (the “Plan”), attached hereto as Addendum A, as if recited verbatim herein. The City commits to implement the requirements and procedures set forth in the adopted Plan.

Section 4. Any customer, defined pursuant to 30 Tex. Admin. Code Chapter 291, failing to comply with the provisions of the Plan shall be subject to a fine of up to two thousand dollars (\$2,000.00) and/or discontinuance of water service by the City. Proof of a culpable mental state is not required for a conviction of an offense under this section. Each day a customer fails to comply with the Plan is a separate violation. The City's authority to seek injunctive or other civil relief available under the law is not limited by this section.

Section 5. The City Council does hereby find and declare that sufficient written notice of the date, hour, place and subject of the meeting adopting this Ordinance was posted at a designated place convenient to the public for the time required by law preceding the meeting, that such place of posting was readily accessible at all times to the general public, and that all of the foregoing was done as required by law at all times during which this Ordinance and the subject

matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the posting thereof.

Section 6. Should any paragraph, sentence, clause, phrase or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected.

Section 7. The City Manager or his designee is hereby directed to file a copy of the Plan and this Ordinance with the Commission in accordance with Title 30, Chapter 288 of the Texas Administrative Code.

Section 8. The City Secretary is hereby authorized and directed to cause publication of the descriptive caption of this ordinance as an alternative method of publication provided by law.

Section 9. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Passed and Approved by the Terrell City Council on this 7th day of April, 2009.

Passed and Adopted by the Terrell City Council on this 21st day of April, 2009.

17. Discuss and Consider Adoption on Second Reading Ordinance No. 2402 – Adopting a Water Conservation Plan for the City of Terrell.

ORDINANCE NO. 2402

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, ADDING SECTION 12-17 OF THE CODE OF ORDINANCES THROUGH THE ADOPTION OF A WATER CONSERVATION PLAN FOR THE CITY OF TERRELL TO PROMOTE RESPONSIBLE USE OF WATER AND TO PROVIDE FOR PENALTIES AND/OR THE DISCONNECTION OF WATER SERVICE FOR NONCOMPLIANCE WITH THE PROVISIONS OF THE WATER CONSERVATION PLAN; AND PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Terrell, Texas (the “City”), recognizes that the amount of water available to its water customers is limited; and

WHEREAS, the City recognizes that due to natural limitations, drought conditions, system failures and other acts of God which may occur, the City cannot guarantee an uninterrupted water supply for all purposes at all times; and

WHEREAS, the Water Code and the regulations of the Texas Commission on Environmental Quality (the “Commission”) require that the City adopt a Water Conservation Plan; and

WHEREAS, the City has determined an urgent need in the best interest of the public to adopt a Water Conservation Plan; and

WHEREAS, pursuant to Chapter 54 of the Local Government Code, the City is authorized to adopt such Ordinances necessary to preserve and conserve its water resources; and

WHEREAS, the City Council of the City of Terrell desires to adopt a Water Conservation Plan.

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

Section 1. The Code of Ordinances is hereby amended by adopting a new section 12-17 to read as follows:

Section 2. The City Council hereby approves and adopts the Water Conservation Plan (the "Plan"), attached hereto as Addendum A, as if recited verbatim herein. The City commits to implement the requirements and procedures set forth in the adopted Plan.

Section 3. Any customer, defined pursuant to 30 Tex. Admin. Code Chapter 291, failing to comply with the provisions of the Plan shall be subject to a fine of up to two thousand dollars (\$2,000.00) and/or discontinuance of water service by the City. Proof of a culpable mental state is not required for a conviction of an offense under this section. Each day a customer fails to comply with the Plan is a separate violation. The City's authority to seek injunctive or other civil relief available under the law is not limited by this section.

Section 4. The City Council does hereby find and declare that sufficient written notice of the date, hour, place and subject of the meeting adopting this Ordinance was posted at a designated place convenient to the public for the time required by law preceding the meeting, that such place of posting was readily accessible at all times to the general public, and that all of the foregoing was done as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the posting thereof.

Section 5. Should any paragraph, sentence, clause, phrase or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected.

Section 6. The City Manager or his designee is hereby directed to file a copy of the Plan and this Ordinance with the Commission in accordance with Title 30, Chapter 288 of the Texas Administrative Code.

Section 7. The City Secretary is hereby authorized and directed to cause publication of the descriptive caption of this ordinance as an alternative method of publication provided by law.

Section 8. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Passed and Approved by the Terrell City Council on this 7th day of April, 2009.

Passed and Adopted by the Terrell City Council on this 21st day of April, 2009.

18. Discuss and Consider Adoption on Second Reading of Ordinance No. 2403 - Budget Amendment.

ORDINANCE NO. 2403

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:

**GENERAL FUND
REVENUES**

		BUDGETED	AMOUNT	AMENDED
010-00-3801	Terrell Police Department	\$8,000.00	\$3,104.62	\$11,104.68
010-00-3816	Tanger Grant Police Dept.	\$ -0-	\$ 250.00	\$ 250.00

**GENERAL FUND
EXPENDITURES**

		BUDGETED	AMOUNT	AMENDED
<u>Terrell Police Department</u>				
010-32-4418	Travel and Education	\$26,000.00	\$3,104.68	\$29,104.68
010-32-4518	Tanger Grant	\$ -0-	\$ 250.00	\$ 250.00

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 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 unconstitutionally 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 7th day of April, 2009.

Passed and Adopted on this the 21st day of April, 2009.

19. Discuss and Consider Adoption on Second Reading of Ordinance No. 2404 - Amending Chapter 11, Traffic Regulations; Section 11-57: Automated Traffic Signal Enforcement.

ORDINANCE NO. 2404

AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS AMENDING CHAPTER 11, TRAFFIC REGULATIONS; SECTION 11-57: AUTOMATED TRAFFIC SIGNAL ENFORCEMENT; BY DELETING FEES APPLIED TO ADMINISTRATIVE ADJUDICATION HEARINGS; BY PROVIDING ADDITIONAL REQUIREMENTS FOR VIOLATION NOTICES; BY EXTENDING THE DEADLINE TO REQUEST AN ADMINISTRATIVE HEARING; BY ESTABLISHING PROCEDURES FOR AN ADMINISTRATIVE HEARING; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE IMPOSITION OF CIVIL PENALTIES; AND PROVIDING AN EFFECTIVE DATE:

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

SECTION I.

That Chapter 11, Traffic Regulations: Section 11-57: Automated Traffic Signal Enforcement of the Code of Ordinances of the City of Terrell, Texas be and the same is hereby amended in part as follows:

Sec. 11-57. Automated Traffic Signal Enforcement

- (a) Definitions.

In this section:

- (1) *Department* shall mean the Police Department of the City of Terrell, Texas.
- (2) *Owner* shall mean the owner of a motor vehicle as shown on the motor vehicle registration records of the Texas Department of Transportation or the analogous department or agency of another state or country.
- (3) *Photographic traffic signal enforcement system* shall mean a system that:
 - a. consists of a camera system and vehicle sensor installed to exclusively work in conjunction with an electrically operated traffic-control signal; and
 - b. Is capable of producing at least two (2) recorded images that

depict the license plate attached to the rear of a motor vehicle that is not operated in compliance with the instruction of the traffic-control signal.

- (4) *Recorded image* means a photographic or digital image that depicts the front or rear of a motor vehicle.
 - (5) *Traffic control signal* shall mean a traffic control device that displays alternating red, amber and green lights that directs traffic when to stop at or proceed through an intersection.
- (b) Imposition of civil penalty for violations.
- (1) The City Council finds and determines that a vehicle that proceeds into an intersection when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal damages the public by endangering motor vehicle operators and pedestrians alike, by decreasing the efficiency of traffic control and traffic flow efforts, and by increasing the number of serious accidents to which public safety agencies must respond at the expense of the taxpayers, and is operated in violation of the instructions of that traffic-control signal.
 - (2) Except as provided in (3) below, the owner of a motor vehicle is liable for a civil penalty of seventy-five dollars (\$75.00) if, while facing only a steady red signal displayed by an electrically operated traffic-control signal located in the City, the vehicle is operated in violation of the instructions of that traffic-control signal, as specified by Texas Transportation Code, Section 544.007(d).
 - (3) An owner who fails to timely pay the civil penalty shall be subject to a late payment penalty of twenty-five dollars (\$25.00).
- (c) Enforcement; procedures.
- (1) The department is responsible for the enforcement and administration of this section.
 - (2) In order to impose a civil penalty under this section, the department shall mail a notice of violation to the owner of the motor vehicle against whom the City seeks to impose the civil penalty not later than the 30th day after the date the violation is alleged to have occurred to
 - a. The owner's address as shown on the registration records of the Texas Department of Transportation; or
 - b. If the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the Texas Department of Transportation.
 - (3) A notice of violation issued under this section shall contain the following:

- a. a description of the violation alleged;
- b. the date, time, and location of the violation;
- c. the location of the intersection where the violation occurred;
- d. the name and address of the owner of the vehicle involved in the violation;
- e. the registration number displayed on the license plate of the vehicle involved in the violation;
- f. a copy of the recorded image limited solely to a depiction of the area of the registration number displayed on the license plate of the vehicle involved in the violation;
- g. the amount of the civil penalty for which the owner is liable;
- h. the number of days the person has in which to pay or contest the imposition of the civil penalty and a statement that the person incurs a late payment penalty of \$25.00 if the civil penalty is not paid or imposition of the penalty is not contested within that period;
- i. a statement that the person named in the notice of violation may elect to pay the civil penalty by mail sent to a specified address instead of appearing at the time and place of the administrative adjudication hearing;
- j. Information that informs the owner of the vehicle named in the notice of violation:
 - [1] of the owner's right to contest the imposition of the civil penalty against the person in an administrative hearing;
 - [2] that imposition of the civil penalty may be contested by submitting a written request for an administrative adjudication hearing before the expiration of the period specified under Subdivision h.; and
 - [3] that failure to pay the civil penalty or contest liability for the penalty in a timely manner is an admission of liability and a waiver of the owner's right to appeal the imposition of the civil penalty;
- k. a statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty;
- l. a statement that if the owner of the motor vehicle fails to timely pay the amount of the civil penalty imposed against the owner, an arrest warrant may not be issued for the owner and the imposition of the civil penalty may not be recorded on the owner's driving record; and

- m. any other information deemed necessary by the department.
- (4) A notice of violation under this section is presumed to have been received on the 5th day after the date the notice of violation is mailed.
- (5) In lieu of issuing a notice of violation, the Department may mail a warning notice to the owner.
- (c) Presumption.
- (1) It is presumed that the owner of the motor vehicle committed the violation alleged in the notice of violation mailed to the person if the license plate of the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system belongs to the owner of the motor vehicle.
- (2) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system was owned by a person in the business of selling, renting, or leasing motor vehicles or by a person who was not the person named in the notice of violation, the presumption under Subsection (1) is rebutted on the presentation of evidence establishing that the vehicle was at the time:
- a. being test driven by another person;
 - b. being rented or leased by the vehicle's owner to another person; or
 - c. owned by a person who was not the person named in the notice of violation.
- (3) Notwithstanding Section (c) below, the presentation of evidence under subsection two by a person who is in the business of selling, renting, or leasing motor vehicles or did not own the vehicle at the time of the violation must be made by affidavit, through testimony at the administrative adjudication hearing under Section (c), or by a written declaration under penalty of perjury. The affidavit or written declaration may be submitted by mail to the City or the entity with which the City contracts for the administration and enforcement of the Automated Traffic Signal Enforcement program.
- (4) If the presumption established by Subsection (1) is rebutted under Subsection (2), a civil penalty may not be imposed on the owner of the vehicle or the person named in the notice of violation as applicable.
- (5) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in the photograph or digital image taken by the photographic traffic signal enforcement system was owned by a person in the business of renting or leasing motor vehicles and the vehicle was being rented or leased to an individual, the owner of the motor vehicle shall provide to the City or the entity with which the City contracts for the administration and enforcement of the Automated Traffic Signal Enforcement program

the name and address of the individual who was renting or leasing the motor vehicle depicted in the photograph or digital image and a statement of the period during which that individual was renting or leasing the vehicle. The owner shall provide the information required in this subsection not later than the 30th day after the date the notice of violation is received. If the owner provides the required information, it is presumed that the individual renting or leasing the motor vehicle committed the violation alleged in the notice of violation and the City or contractor may send a notice of violation to that individual at the address provided by the owner of the motor vehicle.

(c) Administrative adjudication hearing.

- (1) A person who receives a notice of violation may contest the imposition of the civil penalty by requesting in writing an administrative adjudication of the civil penalty within thirty (30) days after the date the violation was mailed. Upon receipt of a timely request, the Department shall notify the person of the date and time of the hearing on the administrative adjudication which shall be held within thirty (30) days upon the receipt of the request. The administrative adjudication hearing shall be held before and conducted by a hearing officer appointed by the City Manager. Said hearing officer shall have the authority to administer oaths and issue orders compelling the attendance of witnesses and the production of documents.
- (2) A person who fails to pay a civil penalty or to contest liability for the penalty in a timely manner or who requests an administrative adjudication hearing to contest the imposition of the civil penalty against the person and fails to appear at that hearing is considered to:
 - a. admit liability in the full amount of the civil penalty stated in the notice of violation mailed to the person; and
 - b. waive the person's right to appeal the imposition of the civil penalty.
- (3) The civil penalty shall not be imposed against the person if after a hearing, the hearing officer enters a finding of no liability.
- (4) In an administrative adjudication hearing, the issues must be proved at the hearing by a preponderance of the evidence. The reliability of the photographic traffic signal enforcement system used to produce the recorded image of the motor vehicle involved in the violation may be attested to in an administrative adjudication hearing by affidavit of an officer or employee of the City or the entity with which the City contracts to install or operate the system and who is responsible for inspecting and maintaining the system. An affidavit of an officer or employee of the City that alleges a violation based on an inspection of the pertinent recorded image, is admissible in a proceeding under this section and is evidence of the facts contained in the affidavit.
- (5) A person who is found liable for a civil penalty after an administrative adjudication hearing shall pay the civil penalty within ten (10) days of the hearing.
- (6) It shall be an affirmative defense to the imposition of civil liability under this

section, to be proven by a preponderance of the evidence; that

- a. the traffic-control signal was not in proper position and sufficiently legible to an ordinary observant person;
- b. the operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer;
- c. the operator of the motor vehicle violated the instructions of the traffic-control signal so as to yield the right-of-way to an immediately approaching authorized emergency vehicle;
- d. the motor vehicle was being operated as an authorized emergency vehicle under Chapter 546 of the Texas Transportation Code and that the operator was acting in compliance with that Chapter;
- e. the motor vehicle was a stolen vehicle and being operated by a person other than the owner of the vehicle without the effective consent of the owner;
- f. the license plate depicted in the recorded image of the violation was a stolen plate and being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued;
- g. the presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed that would make compliance with this section more dangerous under the circumstances than non-compliance; or
- h. the person who received the notice of violation was not the owner of the motor vehicle at the time of the violation.

(7) Notwithstanding anything in this section to the contrary, a person who receives a notice of violation under this section and who fails to pay the amount of a civil penalty or to timely request an administrative adjudication hearing is entitled to an administrative hearing if:

- a. the person submits a written request for the hearing to the hearing officer accompanied by an affidavit that attests to the date on which the person received the notice of violation; and
- b. the written request and affidavit are submitted to the hearing officer within the same number of days after the date the person received the notice of violation as specified under subsection(c) (1) above.

(d) Order.

(1) At the conclusion of the administrative adjudication hearing, the hearing officer

shall enter a finding of liability for the civil penalty or a finding of no liability for the civil penalty. A finding under this subsection must be in writing and be signed and dated by the hearing officer.

(2) A finding of liability for a civil penalty must specify the amount of the civil penalty for which the person is liable. If the hearing officer enters a finding of no liability, a civil penalty for the violation may not be imposed against the person.

(3) A finding of liability or a finding of no liability entered under this section may:

- a. be filed with the clerk or secretary of the City or with a person designated by the City Council; and
- b. be recorded on microfilm or microfiche or using data processing techniques.

(e) Appeal.

(1) The owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty may appeal that determination to a judge by filing an appeal petition with the clerk of the court. The petition must be filed with the City's municipal court and accompanied by payment of the costs required by law for the court.

(2) The petition must be filed before the 31st day after the date on which the administrative adjudication hearing officer entered the finding of liability for the civil penalty.

(3) The court clerk shall schedule a hearing and notify the owner of the motor vehicle and the Department of the date, time and place of the hearing.

(4) An appeal stays enforcement and collection of the civil penalty imposed against the owner of the motor vehicle. The owner shall file a notarized statement of personal financial obligation to perfect the owner's appeal.

(5) An appeal under this section shall be determined by the court by trial de novo.

(f) Effect of liability; exclusion of civil remedy.

(1) The imposition of a civil penalty under this article is not a conviction and may not be considered a conviction for any purpose.

(2) The implementation of a photographic traffic signal enforcement system by the City under this section does not prohibit a peace officer from arresting a violator of Texas Transportation Code, Section 544.007(d) as provided by Chapter 543 of the Transportation Code, if the peace officer personally witnesses the violation, or from issuing the violator a citation and notice to appear as provided by Chapter 543.

(3) The City may not be impose a civil penalty under this section on the owner of a

motor vehicle if the operator of the vehicle was arrested or was issued a citation and notice to appear by a peace officer for the same violation of Section 544.007(d) of the Texas Transportation Code recorded by a photographic traffic signal enforcement system.

(4) If the owner of the motor vehicle fails to timely pay the amount of the civil penalty imposed against the owner:

- a. an arrest warrant may not be issued for the owner; and
- b. The imposition of the civil penalty may not be recorded on the owner's driving record.

(5) Notice of Subsection (4) above must be included in the notice of violation, required by Subsection (c)(2).

(g) Traffic Safety Fund.

(1) Not later than the 60th day after the end of the City's fiscal year, after deducting amounts the City is authorized by subsection (2) below to retain, the City shall:

- a. send fifty percent (50%) of the revenue derived from civil or administrative penalties collected by the City under this section to the comptroller for deposit to the credit of the regional trauma account established under Section 782.002 Texas Health and Safety Code; and
- b. deposit the remainder of the revenue in a special account in the City's treasury that may be used only to fund police related programs and/or purchase of equipment.

(2) The City may retain an amount necessary to cover the costs of:

- a. purchasing or leasing equipment that is part of or used in connection with the photographic traffic signal enforcement system in the City;
- b. Installing the photographic traffic signal enforcement system at sites in the City, including the costs of installing cameras, flashes, computer equipment, loop sensors, detectors, utility lines, data lines, poles and mounts, networking equipment, and associated labor costs.
- c. operating the photographic traffic signal enforcement system in the City, including the costs of creating, distributing, and delivering violation notices, review of violations conducted by City employees, the processing of fine payments and collections, and the costs associated with administrative adjudication and appeals; and
- d. maintaining the general upkeep and functioning of the photographic traffic signal enforcement system.

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 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 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.

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 7TH DAY OF APRIL, 2009.

PASSED AND ADOPTED ON THIS THE 21ST DAY OF APRIL, 2009

- 20. Discuss and Consider Adoption on Second Reading of Ordinance No. 2405 - Amending Chapter 5, Business Regulations, Section 15, Wrecker Service, Subsection F. Police Pulls.**

ORDINANCE NO. 2405

AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY TEXAS AMENDING CHAPTER 5, BUSINESS REGULATIONS, SECTION 15, WRECKER SERVICE, SUBSECTION F, POLICE PULLS; 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 5, Business Regulations, Section 15, Wrecker Service, Subsection F, Police Pulls, shall be amended as follows:

- F. Police pulls.**

All police department-initiated, non-consent tows, including, but not limited to, police department-initiated non-consent tows for failure to maintain financial responsibility (FMFR) shall be undertaken by contacting the wrecker company on the top of the public service referral towing rotation listing with the owner/operator of the vehicle towed being subject to the fee schedule listed in subsection E above together with an additional Administrative Fee of \$10.00 to be collected by the applicable wrecker company and remitted to the Terrell Police Department as a part of the Weekly Reports specified in Paragraph G below. The towed vehicle shall be stored within the corporate limits of the City of Terrell, be subject to all applicable city sales taxes, and shall not be released without the following information being supplied to the owner of the wrecker company or his/her designated representative in accordance with applicable state law.

- A. Proof of ownership (title or other applicable documentation);
- B. Proof of financial responsibility (liability insurance);

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 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 THE 7TH DAY OF APRIL, 2009.
PASSED AND ADOPTED THIS the 21ST DAY OF APRIL, 2009.

END OF CONSENT AGENDA

21. Receive City Manager's Reports and Correspondence: Special Joint Meeting - Thursday, April 23, 2009 – 6:30 p.m.

City Manager Torry Edwards presented Reports and Correspondence to Council.

22. Adjourn into Executive Session In Accordance with Section 551.071 of the Texas Government Code to Discuss Section 551.071 – Consultation with Attorney.

This item was passed.

23. Reconvene into Regular Session and Consider Action, if Any, on Item Discussed in Executive Session.

This item was passed.

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