

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. 35-92

AN ORDINANCE AMENDING CHAPTER 9 AND CHAPTER 12 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY THE ADDITION THERETO OF A SECTION 17.00 TO SAID CHAPTER 9 AND A SECTION 5.00 TO SAID CHAPTER 12, BOTH RELATIVE TO THE ESTABLISHMENT AND CREATION OF MANDATORY HOMEOWNERS' ASSOCIATIONS FOR RESIDENTIAL SUBDIVISIONS; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, THAT:

SECTION 1

From and after the effective date of this Ordinance, Chapter 9 of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended by the addition thereto of a Section 17.00, which section shall read as follows:

**"§17.00 MANDATORY HOMEOWNERS' ASSOCIATIONS**

**§17.01 Town May Require Mandatory Homeowners' Associations**

- (a) When a residential subdivision contains streets, sewers, sewage treatment facilities, water supply systems, drainage systems or structures, parks, landscaping systems or landscape elements or features (including fountains and statues), landscape irrigation systems, screening walls, living screens, buffering systems, subdivision entryway features (including monuments or other signage), or other physical facilities or grounds held in common and necessary or desirable for the welfare of the area or subdivision, or that are of common use or benefit and which are not or cannot be satisfactorily maintained by the Town or another public agency, the Town may require the establishment and creation of a mandatory homeowners' association to assume and be responsible for the continuous and perpetual operation, maintenance and supervision of such facilities, structures, improvements, systems, areas or grounds.
- (b) If the establishment and creation of a mandatory homeowners' association is required by the Town, a copy of the agreements, covenants and restrictions establishing and creating the association must be approved by the Town Attorney and Town Council prior to the approval of the final plat of the subdivision and must be filed of record with said final plat in the Map and Plat Records of Denton County, Texas. Said final plat shall clearly identify all facilities, structures, improvements, systems, areas or grounds that are to be operated, maintained and/or supervised by said association.

- (c) Such mandatory homeowners' associations shall be responsible for the continuous and perpetual operation, maintenance and/or supervision of landscape systems, features or elements located in parkways, common areas, between screening walls or living screens and adjacent curbs or street pavement edges, adjacent to drainageways or drainage structures, or at subdivision entryways. Subdivision entryway treatments or features shall not be allowed unless a mandatory homeowners' association as required herein is established and created. The Town shall be responsible for all median maintenance and all paving maintenance (except for private streets or roads) and the repair of landscape systems, features or elements damaged by Town-initiated utility work in dedicated easements. Other damage occurring during utility repairs will be the responsibility of the appropriate utility company.
- (d) All facilities, structures, improvements, systems, areas or grounds that are to be operated, maintained and/or supervised by a mandatory homeowners' association, other than those located in public easements or right-of-ways, shall be dedicated by easement or deeded in fee simple ownership interest to said association. Such easements or ownership shall be clearly identified on the final plat of the applicable subdivision.

**§17.02 Agreements, Covenants and Restrictions for Mandatory Homeowners' Associations**

At a minimum, the agreements, covenants and restrictions establishing and creating a mandatory homeowners' association required herein shall contain and/or provide for the following:

- (a) Definitions of terms contained therein;
- (b) Provisions acceptable to the Town for the establishment and organization of the mandatory homeowners' association and the adoption of by-laws for said association, including provisions requiring that the owner(s) of any lot or lots within the applicable subdivision and any successive buyer(s) shall automatically and mandatorily become a member of the association;
- (c) The initial term of the agreements, covenants and restrictions establishing and creating the association shall be for a twenty-five (25) year period and shall automatically renew for successive ten (10) year periods, and the association may not be dissolved without the prior written consent of the Town;
- (d) Provisions acceptable to the Town to ensure the continuous and perpetual use, operation, maintenance, and/or supervision of all facilities, structures, improvements, systems, areas or grounds that are the responsibility of the association and to establish a reserve fund for such purposes;

- (e) Provisions prohibiting the amendment of any portion of the association's agreements, covenants or restrictions pertaining to the use, operation, maintenance and/or supervision of any facilities, structures, improvements, systems, areas or grounds that are the responsibility of the association without the prior written consent of the Town;
- (f) The right and ability of the Town or its lawful agents, after due notice to the association, to remove any landscape systems, features or elements that cease to be maintained by the association; to perform the responsibilities of the association if the association fails to do so in compliance with any provisions of the agreements, covenants or restrictions of the association or of any applicable Town codes or regulations; to assess the association for all costs incurred by the Town in performing said responsibilities if the association fails to do so; and/or to avail itself of any other enforcement actions available to the Town pursuant to state law or Town codes or regulations; and
- (g) Provisions indemnifying and holding the Town harmless from any and all costs, expenses, suits, demands, liabilities or damages, including attorney's fees and costs of suit, incurred or resulting from the Town's removal of any landscape systems, features or elements that cease to be maintained by the association or from the Town's performance of the aforementioned operation, maintenance or supervision responsibilities of the association due to the association's failure to perform said responsibilities."

## SECTION 2

From and after the effective date of this Ordinance, Chapter 12 of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended by the addition thereto of a Section 5.00, which section shall read as follows:

### "§5.00 MANDATORY HOMEOWNERS' ASSOCIATIONS

#### **§5.01      Town May Require Mandatory Homeowners' Associations**

- (a) When a residential subdivision contains streets, sewers, sewage treatment facilities, water supply systems, drainage systems or structures, parks, landscaping systems or landscape elements or features (including fountains and statues), landscape irrigation systems, screening walls, living screens, buffering systems, subdivision entryway features (including monuments or other signage), or other physical facilities or grounds held in common and necessary or desirable for the welfare of the area or subdivision, or that are of common use or benefit and which are not or cannot be satisfactorily maintained by the Town or another public agency, the Town may require the establishment and creation of a mandatory

homeowners' association to assume and be responsible for the continuous and perpetual operation, maintenance and supervision of such facilities, structures, improvements, systems, areas or grounds.

- (b) If the establishment and creation of a mandatory homeowners' association is required by the Town, a copy of the agreements, covenants and restrictions establishing and creating the association must be approved by the Town Attorney and Town Council prior to the approval of the final plat of the subdivision and must be filed of record with said final plat in the Map and Plat Records of Denton County, Texas. Said final plat shall clearly identify all facilities, structures, improvements, systems, areas or grounds that are to be operated, maintained and/or supervised by said association.
- (c) Such mandatory homeowners' associations shall be responsible for the continuous and perpetual operation, maintenance and/or supervision of landscape systems, features or elements located in parkways, common areas, between screening walls or living screens and adjacent curbs or street pavement edges, adjacent to drainageways or drainage structures, or at subdivision entryways. Subdivision entryway treatments or features shall not be allowed unless a mandatory homeowners' association as required herein is established and created. The Town shall be responsible for all median maintenance and all paving maintenance (except for private streets or roads) and the repair of landscape systems, features or elements damaged by Town-initiated utility work in dedicated easements. Other damage occurring during utility repairs will be the responsibility of the appropriate utility company.
- (d) All facilities, structures, improvements, systems, areas or grounds that are to be operated, maintained and/or supervised by a mandatory homeowners' association, other than those located in public easements or right-of-ways, shall be dedicated by easement or deeded in fee simple ownership interest to said association. Such easements or ownership shall be clearly identified on the final plat of the applicable subdivision.

**§ 5.02      Agreements, Covenants and Restrictions for  
Mandatory Homeowners Associations.**

At a minimum, the agreements, covenants and restrictions establishing and creating a mandatory homeowners' association required herein shall contain and/or provide for the following:

- (a) Definitions of terms contained therein;
- (b) Provisions acceptable to the Town for the establishment and organization of the mandatory homeowners' association and the adoption of by-laws for said association, including provisions requiring that the owner(s) of any

lot or lots within the applicable subdivision and any successive buyer(s) shall automatically and mandatorily become a member of the association;

- (c) The initial term of the agreements, covenants and restrictions establishing and creating the association shall be for a twenty-five (25) year period and shall automatically renew for successive ten (10) year periods, and the association may not be dissolved without the prior written consent of the Town;
- (d) Provisions acceptable to the Town to ensure the continuous and perpetual use, operation, maintenance, and/or supervision of all facilities, structures, improvements, systems, areas or grounds that are the responsibility of the association and to establish a reserve fund for such purposes;
- (e) Provisions prohibiting the amendment of any portion of the association's agreements, covenants or restrictions pertaining to the use, operation, maintenance and/or supervision of any facilities, structures, improvements, systems, areas or grounds that are the responsibility of the association without the prior written consent of the Town;
- (f) The right and ability of the Town or its lawful agents, after due notice to the association, to remove any landscape systems, features or elements that cease to be maintained by the association; to perform the responsibilities of the association if the association fails to do so in compliance with any of the agreements, covenants or restrictions of the association or of any applicable Town codes or regulations; to assess the association for all costs incurred by the Town in performing said responsibilities if the association fails to do so; and/or to avail itself of any other enforcement actions available to the Town pursuant to state law or Town codes or regulations; and
- (g) Provisions indemnifying and holding the Town harmless from any and all costs, expenses, suits, demands, liabilities or damages, including attorney's fees and costs of suit, incurred or resulting from the Town's removal of any landscape systems, features or elements that cease to be maintained by the association or from the Town's performance of the aforementioned operation, maintenance or supervision responsibilities of the association due to the association's failure to perform said responsibilities."

### SECTION 3

All ordinances, orders or resolutions heretofore passed and adopted by the Town Council of the Town of Flower Mound, Texas, are hereby repealed to the extent that said ordinances, orders or resolutions, or parts thereof, are in conflict herewith.

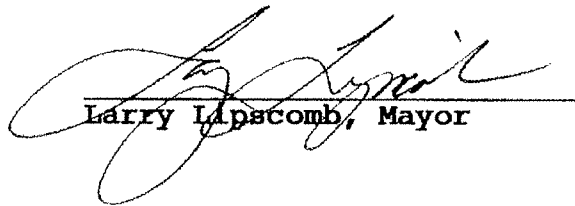
SECTION 4

If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 5

This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the Town of Flower Mound, Texas.

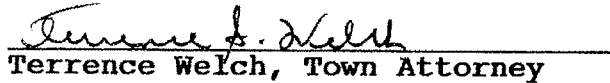
PASSED, APPROVED AND ADOPTED THIS 20th DAY OF JULY, 1992.

  
Larry Lipscomb, Mayor

ATTEST:

  
Ruth DeShaw, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

  
Terrence Welch, Town Attorney