

AGENDA

**FLOWER MOUND TOWN COUNCIL
REGULAR MEETING AND WORK SESSION**

5/21/20

**FLOWER MOUND TOWN HALL, 2121 CROSS TIMBERS ROAD
FLOWER MOUND, TEXAS**

6:00 P.M.

An agenda information packet is available online at www.flower-mound.com/AgendaCenter

There will be limited seating in Jody Smith Hall to allow for social distancing

Meeting participants may be asked to wait in the lobby until their name is called

Comments regarding any item on this agenda can be sent to the Mayor/Town Council by
Emailing: Towncouncil@flower-mound.com or Calling: 972.874.6005

Please silence or turn off all electronic devices in Jody Smith Hall

A. CALL REGULAR MEETING TO ORDER

B. INVOCATION

C. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND TO THE TEXAS FLAG

"Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."

D. PUBLIC COMMENT

To speak to Council during public comment, please fill out a [comment form](#).

- Speakers are limited to 3 minutes, a tone will sound at 30 seconds left and when time has expired
- Please state your name and address when speaking

The purpose of this item is to allow the public an opportunity to address the Town Council on issues that are not indicated as a "Public Hearing" on this agenda. Issues regarding daily operational or administrative matters should first be dealt with by calling Town Hall at 972-874-6000 during business hours.

E. ANNOUNCEMENTS

1. Announce recent and upcoming civic and social events.

F. FUTURE AGENDA ITEMS

The purpose of this item is to allow the Mayor and members of Council an opportunity to bring forward items they wish to discuss at a future meeting, with the understanding a consensus of Council is needed in order for that item to be placed on a future agenda and in accordance with the Town Council Agenda Setting Policy (Ord. 65-15).

G. COORDINATION OF CALENDARS

1. A regular meeting is scheduled for Monday, June 1.

H. CONSENT ITEM

This part of the agenda consists of non-controversial or "housekeeping" items required by law. Items may be removed from Consent by any Councilmember by making such request prior to a motion and vote.

1. Consider approval of the minutes from a regular meeting of the Town Council held on May 18, 2020.

I. ADJOURN REGULAR MEETING

J. CALL WORK SESSION TO ORDER

2. Discuss and receive direction on regulating short-term rentals.

K. CLOSED MEETING

The Town Council to convene into closed meeting pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, for consultation with attorney, as follows:

- a. Consultation with Attorney.

Pursuant to Section 551.071 of the Texas Government Code, the Town Council reserves the right to consult in a closed meeting with its attorney and to receive legal advice regarding any item listed on this agenda.

L. RECONVENE

The Town Council to reconvene into an open meeting to take any action deemed necessary as a result of the closed meeting.

M. ADJOURN WORK SESSION

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: May 18, 2020, at 3:30 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

The Flower Mound Town Hall and Jody Smith Hall are wheelchair accessible. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting by contacting Theresa Scott, Town Secretary, at (972) 874-6076.



TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: May 21, 2020

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on May 18, 2020.

BACKGROUND INFORMATION: The Town Council held a regular meeting on May 18, 2020.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure/(Revenue):

Account Number(s):

Finance Review by: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes 5.18.20

DRAFT MOTION: Move to approve as presented in the agenda caption.

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 18TH DAY OF MAY 2020, IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:00 P.M.

[Click here](#) for meeting video link (subject to change)

The Town Council met in a regular meeting with the following members present:

Steve Dixon	Mayor
Sandeep Sharma	Mayor Pro Tem
Claudio Forest	Deputy Mayor Pro Tem
Jim Pierson	Councilmember Place 1
Jim Engel	Councilmember Place 4

with the following member absent:

Ben Bumgarner	Councilmember Place 3
---------------	-----------------------

constituting a quorum with the following members of the Town Staff participating:

Anne Carnes	Executive Assistant
Theresa Scott	Town Secretary (participating remotely solely for the purpose of transcribing the minutes)
Bryn Meredith	Town Attorney
Jimmy Stathatos	Town Manager
Debra Wallace	Deputy Town Manager/CFO
Tommy Dalton	Assistant Town Manager
Lexin Murphy	Director of Planning Services
Brandon Barth	Emergency Manement Officer
James Hoefert	Environmental Review Analyst

A. CALL MEETING TO ORDER

Mayor Dixon called the regular meeting to order at 6:00 p.m.

B./C. INVOCATION/PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND THE TEXAS FLAG

Chaplain Will Langstaff gave the invocation and Mayor Dixon led the pledges.

D. PUBLIC COMMENT

Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.

	Speaker names and address	Subject (as written on the form)
1.	Paul Stone, 4100 Broadway	Tom Webb

E. ANNOUNCEMENTS

Councilmember Pierson mentioned that Councilmember Bumgarner is not present in the meeting and pointed out that the Town doesn't have the technology to have both a live and remote meeting simultaneously and he would like to see that change in the future.

Several members of Council commented about:

- Appreciation for having a live meeting
- Some of the positive things happening in the community during the pandemic
- Importance of shopping local to support businesses in Town because many of them are struggling
- Appreciation for Town staff and all the work being done during the pandemic

F. TOWN MANAGER'S REPORT

There was an update and/or discussion on the following topics:

1. Financial update

Ms. Wallace provided an update on the Town's financial position due to the impact of COVID 19

and she responded to the following questions from Council:

- Is sales tax received quarterly and is there a reporting delay

2. Capital Improvement projects

Mr. Stathatos provided an update on the following projects:

- Morriss Road improvements
- Hwy. 377 improvements

3. Economic Development projects

Mr. Stathatos reported on various new business openings and announced a grant opportunity for certain businesses impacted by COVID 19

Mr. Barth provided a statement of fact regarding Government Abbott's new executive order.

G. FUTURE AGENDA ITEMS

1. There were no request for future agenda items.

H. COORDINATION OF CALENDARS

Mayor Dixon announced the following upcoming meetings:

1. A regular meeting & work session is scheduled for Thursday, May 21.
2. A regular meeting is scheduled for Monday, June 1.

I. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on April 20, 2020.
2. Consider approval of a resolution nominating a candidate for appointment to the Denco Area 9-1-1 District Board of Managers.

RESOLUTION NO. 06-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, NOMINATING ONE CANDIDATE TO A SLATE OF NOMINEES FOR THE BOARD OF MANAGERS OF THE DENCO AREA 9-1-1 DISTRICT.

3. Consider approval of a resolution supporting Lewisville Mayor Rudy Durham as the region's primary member and Highland Village Mayor Charlotte Wilcox as the region's alternate member to the North Central Texas Council of Governments Regional Transportation Council (RTC).

RESOLUTION NO. 07-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPOINTING A PRIMARY MEMBER AND AN ALTERNATE MEMBER TO THE REGIONAL TRANSPORTATION COUNCIL.

4. Consider approval of a resolution authorizing the Town to join with the Steering Committee of Cities Served by Oncor to deny Oncor Electric Delivery Company LLC's application for approval to amend its distribution cost recovery factor.

RESOLUTION NO. 08-20

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS FINDING THAT ONCOR ELECTRIC DELIVERY COMPANY LLC'S APPLICATION FOR APPROVAL TO AMEND ITS DISTRIBUTION COST RECOVERY FACTOR TO INCREASE DISTRIBUTION RATES WITHIN THE TOWN SHOULD BE DENIED; AUTHORIZING PARTICIPATION WITH ONCOR CITIES STEERING COMMITTEE; AUTHORIZING THE HIRING OF LEGAL COUNSEL AND CONSULTING SERVICES; FINDING THAT THE TOWN'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

5. Consider approval of an increase to the annual purchase contract for Utility Cut Repairs from Apex Concrete Construction, Inc., from \$65,000.00 to a new total of \$120,000.00.
6. Consider Approval of a Farm Lease Agreement between the Town of Flower Mound and the Wayne Haynes Estate for the lease of Town Property located at 10300 Dunham Road; and authorize the Mayor to execute same on behalf of the Town.
7. Consider approval of a Professional Services Agreement with Plummer Associates, Inc., Inc. for development of a Utility Services Risk and Resiliency Assessment in the amount of \$44,935.00; and authorization for the Mayor to execute same on behalf of the Town.
8. Consider approval of the furnishing and installation of Phoenix G2 - Automated Fire Station Alerting System for Fire Station No. 7 in the amount of \$53,742.06; and authorization for the Mayor to execute same on behalf of the Town.

9. Consider approval of an amendment to the agreement with LexisNexis for the Desk Officer Reporting System authorized by the Mayor on August 21, 2017, which will reduce the future cost charged to citizens for subsequent reports of previously purchase reports, and which will automatically extend the original contract set to expire on August 21, 2022, by a continuous extension of 12 months, unless terminated; and authorization for the Mayor to execute same on behalf of the Town.
10. Consider approval of a resolution authorizing the submission of a grant application with the Office of the Governor for the 2020 Coronavirus Emergency Supplemental Funding (CESF) Program; authorizing the Town Manager to act on behalf of the Town of Flower Mound in all matters related to the application; authorizing acceptance of funds if awarded; and pledging that if funding for this project is received, the Town will comply with all project requirements of the Office of the Governor.

RESOLUTION NO. 09-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION FOR THE CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING (CESF) PROGRAM FOR THE BENEFIT OF THE TOWN OF FLOWER MOUND FOR FISCAL YEAR 2020; ACCEPTING GRANT FUNDS IF AWARDED; AUTHORIZING THE TOWN MANAGER TO ACT ON BEHALF OF THE TOWN OF FLOWER MOUND AS THE GRANTEE'S OFFICIAL; AND PLEDGING THAT IF FUNDING IS AWARDED THE TOWN OF FLOWER MOUND WILL COMPLY WITH ALL GRANT REQUIREMENTS INCLUDING THE RETURN OF ALL FUNDING RECEIVED IN THE EVENT OF LOSS OR MISUSE OF THE FUNDS.

Deputy Mayor Pro Tem Forest moved to approve by consent Items 1 – 10, as presented in the agenda caption. Mayor Pro Tem Sharma seconded the motion. Each item, as approved by consent, is restated above, and if applicable, the Ordinance or Resolution caption for each, for the record.

VOTE ON MOTION:

AYES: SHARMA, FOREST, ENGEL, PIERSON

NAYS: NONE

ABSENT: BUMGARNER

Motion passed

J. REGULAR ITEMS

11. Consider approval of a resolution to further extend the Town disaster declaration beyond May 18, 2020, and discussion regarding disaster mitigation measures associated therewith.

Staff Presentation

Mr. Meredith provided background information regarding the declaration and he, or Mr. Stathatos responded to the following questions from Council:

- Clarification regarding the reason why the declaration should be continued
- Does the Town have a number as to what funds would be received from FEMA or the state

Council Discussion

There was Council discussion regarding:

- Let the citizens decide for themselves what they determine is safe
- Let the Governor continue to be the driving force behind what is best for Texas
- If the declaration is not needed to be reimbursed then there is no need to have an additional document and to simply let it expire

No action taken by Council since there was consensus to let the declaration expire.

12. Consider approval of a Professional Services Agreement with Mesa Design Associates, Inc., for the design services associated with the Peters Colony Memorial Park project, in the amount of \$194,730.00; and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Ms. Wallace provided background information regarding the item and she, or Mr. Meredith responded to the following questions from Council:

- Does staff have any concerns regarding funding the rest of the park and the associated maintenance given the timing of next year
- If \$200k is approved for the design what is the actual park going to cost
- Will there be an impact to other future projects planned
- Clarification regarding the use of 4B funds
- When will the Town have the sales tax numbers
- How long would the design process take to complete
- Clarification regarding the calculations for the project

Council Discussion

There was Council discussion regarding:

- Concerns regarding spending money on a plan for a park that we don't know if we'll have the funds for
- How the funds might be needed elsewhere (if the state suspends statutes as it relates to how 4B dollars can be spent)
- How the parks is an important amenity for the community; however, without knowing the real impact of the sales tax, it's difficult to move forward with spending two million dollars for a park that doesn't exist

Deputy Mayor Pro Tem Forest moved to postpone item 12 to June 15, 2020. Councilmember Pierson seconded the motion.

VOTE ON MOTION:

AYES: FOREST, SHARMA, ENGEL, PIERSON

NAYS: NONE

ABSENT: BUMGARNER

Motion passed (to postpone)

13. Consider approval of the purchase and installation of eleven LED scoreboards for the Bakersfield Park baseball fields, from Nevco Sports LLC, through the Texas Local Government Purchasing Cooperative, in the amount of \$77,968.40.

Staff Presentation

Ms. Wallace provided background information regarding this item.

Council Discussion

There was Council discussion regarding:

- Importance of having working scoreboards

Mayor Pro Tem Sharma moved to approve as presented. Councilmember Engel seconded the motion.

VOTE ON MOTION:

AYES: PIERSON, ENGEL, SHARMA, FOREST

NAYS: NONE

ABSENT: BUMGARNER

Motion passed

14. Public Hearing to consider an ordinance amending the zoning (Z19-0007- Smith Tract) from Agricultural District (A) uses to Single Family District-10 (SF-10) uses. The property is generally located north of Spinks Road and west of Gerault Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its April 13, 2020, meeting) (The Town Council moved on April 20, 2020, to postpone until the May 18, 2020, meeting.)
15. Consider a request for a Development Plan (DP19-0007 – Smith Tract) to develop a residential subdivision with an exception to the access management policy and criteria, regarding driveway spacing, contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances, and subject to the terms and conditions in the attached Development Agreement and authorization for Mayor to execute same on behalf of the Town. The property is generally located north of Spinks Road and west of Gerault Road. (The Planning and Zoning Commission recommended approval by a vote of 5 to 1 at its April 13, 2020, meeting) (The Town Council moved on April 20, 2020, to postpone until the May 18, 2020, meeting.)

Mayor Dixon opened items 14 and 15 at the same time.

Staff Presentation

Ms. Murphy gave a presentation for items 14 and 15 identifying or noting:

- General and detailed location
- Land use and zoning
- Exception request
- Site photos
- Zoning exhibit
- Development plan
- Landscape details

- Park request

and she, Ms. Wallace, or Mr. Meredith responded to the following questions from Council:

- Where is the board on board fence
- General traffic concerns and clarification regarding the future use of Avionics Road
- Possibility of moving the Avionics median cut (extend the turn lane and remove the median)
- Financial expenditure for adjusting the turn lane
- Legalities associated with straight zoning and how no conditions can be added

Applicant Presentation

Mike Boswell, Toll Brothers, 2665 Virginia Parkway, Flower Mound
Casey Ross, Kimley-Horn, 6100 Warren Parkway, Frisco

Mr. Boswell and Mr. Ross gave a presentation identifying or noting:

- Communication plan
- Today: What the plan looks like
- Questions along the way
- Fencing
- Variance request/variance added (traffic)
- Park adjacencies
- Giving back
- Trees
- Proposed product

and they responded to the following questions from Council:

- Clarification regarding traffic through Shadowridge and the possibility that traffic will cut through this neighborhood
- What are the concerns regarding the creation of the median cut

Mayor Dixon opened the Public Hearing for item 14 at 7:48 p.m.

The following individuals either spoke in support or opposition, or had questions / comments related to the item: *Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.*

Support: Comments/Questions	Opposition: Comments/Questions	Question(s)/Comments Only
Reggie Smith, 1500 Spinks Rd	None	None

Mayor Dixon closed the Public Hearing for item 14 at 7:51 p.m

Council Discussion

How the 100 ft opening in the median might create more problems than it would solve.

Item 14:

Councilmember Pierson moved to approve as presented. Deputy Mayor Pro Tem Forest seconded the motion.

ORDINANCE NO. 09-20

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 12.699 ACRES OF LAND SITUATED IN THE W. H. GIBSON SURVEY, ABSTRACT NUMBER 464, FROM AGRICULTURAL DISTRICT (A) USES TO SINGLE FAMILY RESIDENTIAL DISTRICT-10 (SF-10) USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

Motion passed

AYES: FOREST, SHARMA, ENGEL, PIERSON

NAYS: NONE

ABSENT: BUMGARNER

Item 15:

Councilmember Engel moved to approve as presented. Deputy Mayor Pro Tem Forest seconded the motion.

VOTE ON MOTION:

Motion passed

AYES: PIERSON, ENGEL, SHARMA, FOREST

NAYS: NONE

ABSENT: BUMGARNER

16. Public Hearing to consider a request for a Master Plan Amendment (MPA19-0004 – Mustang Creek Assisted Living) to amend Section 1.0, Land Use Plan, of the Master Plan to change the current land use designation from Flood Plain to Low Density Residential uses, and consider adopting an ordinance providing for said amendment. The property is generally located north of College Parkway, east of Timberland Parkway and south of Locke Drive. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 24, 2020, meeting.)
17. Public Hearing to consider a request for rezoning (ZPD19-0012 – Mustang Creek Assisted Living) from Planned Development District-49 (PD-49) with Single Family Detached (Medium Density) (SFDM) uses to Planned Development District-176 (PD-176) with Single Family Estate (SF-E) uses and a nursing or congregate care facility, with a request for an exception to Section 82-302, Compatibility buffer, of the Code of Ordinances, and with certain waivers, exceptions and modifications to the Code of Ordinances, and consider adopting an ordinance providing for said amendment. The property is generally located north of College Parkway, east of Timberland Parkway and south of Locke Drive. (The

Planning and Zoning Commission recommended approval by a vote of 5 to 1 at its February 24, 2020, meeting.)

18. Public Hearing to consider an application for a tree removal permit for five (5) specimen trees on property proposed for development as Mustang Creek Assisted Living. The property is generally located north of College Parkway, east of Timberland Parkway and south of Locke Drive. (The Environmental Conservation Commission recommended approval to remove four (4) of the eight (8) specimen trees requested for removal by a vote of 5-1-0 at its February 4, 2020, meeting).

Mayor Dixon opened items 16 – 18 at the same time.

Staff Presentation

Ms. Murphy gave a presentation for items 16 – 18 identifying or noting:

- General and detailed location
- Land use and zoning
- Conceptual site plan
- Site photos
- Landscape plan
- Trees
- Proposed elevations

and she, Mr. Hoefert, Mr. Dalton, or Mr. Meredith responded to the following questions from Council:

- Why the two trees couldn't be saved
- Clarification that the slope exception waiver component of the case requires a unanimous vote of the Council members present
- Clarification regarding the zoning request (single family estate versus medium density)
- The legalities associated with precedent as it relates to land use
- Allowable uses currently in existence or in the vicinity

Applicant Presentation

Joe Helmsberger Kimley-Horn, 260 East Davis St, McKinney
Renee Ramsey, CEO Mustang Creek Enterprises, 500 Legacy Drive, Plano
Jennifer Alford, Cross Timbers Architects, 4315 Windsor Centre Trail, Flower Mound

Ms. Ramsey, Mr. Helmsberger, or Ms. Alford gave a presentation identifying or noting:

- Background information about Mustang Creek
- FAQ's
- Housing types
- Animated video (travel path)
- Setbacks and adjacencies
- Tree removal request

and they responded to questions from Council regarding:

- Clarification regarding the slope exception request

Mayor Dixon informed the applicant that the project will need four (4) votes to pass given it is a Master Plan Amendment (MPA) and he offered them the option to postpone the item to a future date when all members of Council are present.

Ms. Ramsey pointed out the Master Plan seems obsolete and it needs to be changed since it doesn't apply anymore. For this reason she opted to have the item go forward; however, indicated she would like to reserve the right to change her mind later.

Mayor Dixon opened the Public Hearing for items 16 – 18 at 8:38 p.m.

The following individuals either spoke in support or opposition, or had questions / comments related to the item: *Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.*

Support: Comments/Questions	Opposition: Comments/Questions	Question(s)/Comments Only
Anne Scales, 3017 High Chapparral Dr	Bill Elton, 5228 Timber Park Dr	None
Doug Fulmer, 5313 Townsend Dr		
Cindy Neander, 3004 High Chapparral Dr		
Bill Jander, 5108 Timber Haven Ct		
Angie Cox, 7616 Emerson Ln		

Mayor Dixon closed the Public Hearing for items 16 – 18 at 8:51 p.m.

Council Discussion

There was Council discussion regarding:

- Concerns regarding a departure from the Master Plan to place a designation that is not consistent with the surrounding property

At 9:20 p.m. the applicant requested to have the MPA item postponed to June 1, 2020. There was Council consensus to do so.

Deputy Mayor Pro Tem Forest moved to postpone items 16, 17, and 18, to June 1, 2020. Councilmember Engel seconded the motion.

VOTE ON MOTION:
AYES: FOREST, SHARMA, ENGEL, PIERSON
NAYS: NONE
ABSENT: BUMGARNER

Motion passed (to postpone)

L./M. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 9:20 p.m. on May 18, 2020, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, and 551.087 for consultation with attorney, and to discuss matters relating to real property, and economic development negotiations, and reconvened into an open meeting at 9:57 p.m. on May 18, 2020, to take action on the items as follows:

- a. Consultation with Attorney.

No action taken.

- b. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights-of-way, cultural arts center, and/or other municipal purposes and all matters incident and related thereto

Councilmember Pierson moved to approve the acquisition of the drainage easement as discussed in closed session. Deputy Mayor Pro Tem Sharma seconded the motion.

VOTE ON MOTION:

Motion passed

AYES: PIERSON, ENGEL, SHARMA, FOREST

NAYS: NONE

ABSENT: BUMGARNER

- c. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, and performance related to certain incentive agreements.

No action taken.

N ADJOURN REGULAR MEETING

Mayor Dixon adjourned the meeting at 9:58 p.m. on May 18, 2020, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

STEVE DIXON, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 2

WORK SESSION ITEM

DATE: May 21, 2020

FROM: Tommy Dalton, Assistant Town Manager

ITEM: Discuss and receive direction on regulating short-term rentals.

BACKGROUND INFORMATION: On February 3, 2020, Town Council denied an ordinance amending the Land Development Regulations (LDR19-0006 – Short-Term Rentals) to create a definition and define the standards and review process for Short-Term Rentals (STR). That ordinance would've required a Specific Use Permit for STRs.

During the Council deliberation, staff was directed to bring back a work session discussion on STRs and discuss adopting a permitting process or a ban.

Attachment 1 is a draft STR permitting ordinance that was prepared following the February 3, 2020, denial of the SUP ordinance. The Town Attorney provided the Council with a confidential attorney-client privileged communication regarding this draft ordinance on February 12, 2020. That communication was resent to the Council for convenience ahead of the work session.

On February 17, 2020, the Council clarified the direction from the February 3, 2020, meeting. The general takeaway was there was interest in implementing a permitting process.

Council requested data on the number of STRs known to be operating. Given the current COVID-19 pandemic potentially skewing data in relation to how many STRs operate in the Town, staff recommends using the data previously provided to Town Council on January 10, 2020, as a more typical indicator of STR activity in the Town. In total, there were six known addresses that operated as an STR. That information was resent to the Council for convenience ahead of the work session.

It's important to note that if the Council decides to move forward with a permitting ordinance, no board feedback is required since the ordinance amends Subpart A (general ordinances), which contain administrative and not legislative ordinances of the Town. The consideration of the attached draft ordinance also does not require a public hearing. However, the Mayor and Council could direct staff to make it a public hearing on the agenda.

ALTERNATIVES/OPTIONS: Staff is seeking direction on regulating STRs. Staff will implement the direction of the Council.

ATTACHMENTS:

1. Draft STR Permitting Ordinance

**TOWN OF FLOWER MOUND, TEXAS
ORDINANCE NO. _____**

AN ORDINANCE OF TOWN COUNCIL THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 18, "BUSINESSES" OF THE TOWN'S CODE OF ORDINANCES, TO CREATE A DEFINITION AND DEFINE THE STANDARDS AND REVIEW PROCESS FOR SHORT-TERM RENTALS; AMENDING APPENDIX A, "FEE SCHEDULE," PROVIDING FOR ADMINISTRATIVE FEES ASSOCIATED WITH PERMITTING AND INSPECTION OF SHORT-TERM RENTAL PROPERTIES; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and,

WHEREAS, the Town Council finds and determines that regulations related to short-term rental uses should be adopted to define short-term rentals, establish standards for operation and appropriate review processes applicable to such uses, and establish commensurate permitting and inspection fees; and,

WHEREAS, the purpose of the regulations set forth herein is to provide a procedure to allow the rental of private residences to visitors on a short term basis, while ensuring that such rental use does not create adverse impacts to residential neighborhoods due to excessive traffic and noise, and, additionally, to ensure that the number of occupants within such rental units do not exceed the design capacity of the structure to cause health and safety concerns, and that minimum health and safety standards are maintained in such units to protect visitors from unsafe or unsanitary conditions; and,

WHEREAS, the Town Council finds that the amendment to Chapter 18, as outlined herein, is in the best interest of the Town of Flower Mound and will promote the health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public.

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

SECTION 1

That Chapter 18 of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to add a new Article XII "*Short-Term Rentals*," which shall read as follows:

“ARTICLE XII. - SHORT-TERM RENTAL

Sec. 18-570. - Purpose of article.

The purpose of the regulations set forth herein is to provide a procedure to allow the rental of private residences to visitors on a short term basis, while ensuring that such rental use does not create adverse impacts to residential neighborhoods due to excessive traffic, noise, and density and, additionally, to ensure that the number of occupants within such rental units do not exceed the design capacity of the structure to cause health and safety concerns, and that minimum health and safety standards are maintained in such units to protect visitors from unsafe or unsanitary conditions.

Sec. 18-571. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Department shall mean the Building Inspections Department of the Town.

Director shall mean the Building Official of the Town or their designated representative.

Fire Marshal shall mean the Fire Marshal of the Town or their designated representative, including any code official of the Town.

Permit shall mean the permit issued pursuant to the terms of this Article authorizing the operation of a short-term rental.

Short-Term Rental means the rental for compensation, of any residence or residential structure, or a portion of a residence or residential structure, located within a zoning district where the residential use is lawful, for the purpose of overnight lodging for a period of not more than thirty (30) days. A Short-Term Rental is also known as a tourist home or tourist house, but shall not include a hotel, motel, extended stay hotel/motel, boardinghouse, or roominghouse.

Sec. 18-572. – Short-Term Rental Permit Application.

No person shall hereafter advertise, offer to rent or rent, lease, sublease, license or sublicense a residential property within the Town as a short-term rental for which a permit application has not been properly made and filed with the Department, and a permit issued. A permit application shall be made upon forms furnished by the Town for such purpose and shall specifically require the following minimum information:

- (1) The name, address, contact information, and signature of the owner of the premise (or signed owner authorization, on a form provided by the Town);

- (2) The name, address, and phone number of the 24-hour contact;
- (3) The registration number for the Town of Flower Mound Hotel Occupancy Tax as required by Section 18-573 (13), below;
- (4) A parking plan of the premises identifying the location of parking spaces to be used in conjunction with the short-term rental, in relation to the residence;
- (5) A dimensioned floor plan of the proposed short-term rental identifying bedrooms, other living spaces and emergency evacuation routes;
- (6) The name, contact information, and rules for the applicable homeowners' association (HOA), if any;
- (7) Proof of host protection or liability insurance, which shall include the following:
 - a. The Town, its officials, employees, agents and officers shall be named as an "additional insured" on all policies; and
 - b. Each policy shall be endorsed to provide the Town with a minimum of a 30-day notice of cancellation, non-renewal, and/or material change in policy terms or coverage; provided, however, a minimum 10-days' notice shall be required in the event of non-payment of premium;
- (8) A current tax certificate(s) indicating all taxes for the subject property have been paid to the current year (available from Denton Central Appraisal District). Tax statements printed from the DCAD website (pdf) are acceptable in lieu of the original certificate(s);
- (9) A copy of the proposed host rules for the short-term rental; and
- (10) A statement that the owner of the short-term rental complies with and will continue to comply with the standards and other requirements of this article.

Sec. 18-573. – Regulations.

- (a) *Maximum stay.* It shall be unlawful for an owner to rent or lease a short-term rental for a period of more than thirty (30) days.
- (b) *Occupancy.* The maximum number of persons permitted to stay in a short-term rental is limited to two (2) persons per bedroom, plus two (2) additional persons, while not exceeding a total of twelve (12) persons in the

cumulative.

- (c) *Parking restrictions.* Parking is restricted to the number of spaces associated with the residential structure, either the driveway and garage, or by location or number assigned to a specific unit.
- (d) *Life Safety.*
 - (1) The *short-term rental* must be equipped with:
 - a. Working smoke detectors, with a minimum of one on each floor level and one in each room used as a bedroom, as well as a minimum of one working carbon monoxide detector; and
 - b. A minimum of one 2A:10B:C type fire extinguisher (a standard five-pound extinguisher) properly mounted within seventy-five (75) feet of all portions of the structure on each floor.
 - (2) All gas appliances shall be properly ventilated outside the home.
 - (3) Emergency escape openings shall comply with the Town's currently adopted International Residential Code (IRC), with at least one emergency escape opening for each bedroom opening directly to the outdoors.
 - (4) An evacuation plan shall be posted in each bedroom.
 - (5) Any room that does not comply with subsection (d) *Life safety*, of this section shall not be used as a bedroom, and where equipped with a door, shall remain locked at all times when the dwelling is being used as a short-term rental. Any non-compliant bedroom shall not be included in the maximum occupancy calculation for the short-term rental, nor be advertised as a bedroom.
- (e) *Conduct on premises.* Each short-term rental owner and occupant shall comply with all requirements of the Town Code. In addition, the following shall be unlawful:
 - (1) Use of amplified sound, excessive noise or other disturbances outside the short-term rental structure between the hours of 10:00 p.m. and 7:00 a.m. (pursuant to Section 34-181 of the Code) including, but not limited to, the following outside areas: decks, portals, porches, balconies, patios, hot tubs, pools, saunas or spas;
 - (2) Sleeping outdoors;

- (3) Placing, or allowing to be placed, waste or recycling receptacles at the designated pickup location prior to 8:00 a.m. on the day before pickup or failing to remove waste and recycling receptacles by 8:00 a.m. on the day following the designated pickup day (pursuant to Section 34-81 – 82 of the Code);
 - (4) Advertising or promoting a special event, or permitting the advertising or promotion of a special event (including, but not limited to, a banquet, wedding, reception, reunion, bachelor, bachelorette party, concert, or similar activity that would assemble large numbers of invitees) to be held on the premises; and
 - (5) Using or permitting the use of the short-term rental for the purpose of: housing sex offenders; operating a structured sober, recovery or other purpose living home or similar enterprise; selling illegal drugs; selling alcohol or another activity that requires a permit or license under the Alcoholic Beverage Code; or operating as a sexually oriented business.
- (f) *Signage.* On-premise signage advertising or identifying the short-term rental, shall not be permitted.
- (g) *Advertising.* The owner of a short-term rental shall not advertise or promote, or allow another to advertise or promote the short-term rental without including the occupancy limits and parking standards for the listing.
- (h) *Local Contact.* An owner must designate the name and contact information of a local responsible party who can be contacted regarding immediate concerns and complaints from the public. Said individual must be available in person or by phone at all times while occupants are on the premises of the short-term rental. If called, a local responsible party must be able to, and shall be present at the premises, within one (1) hour of receiving a call from the Director. A local responsible party must be authorized to make decisions regarding the premises and its occupants.
- (i) *Occupant Notification Packet.* The owner/operator shall post in a conspicuous location of the dwelling, a packet containing, at a minimum, the following information:
- (1) Maximum number of occupants;
 - (2) Location of required off-street parking, other available parking and prohibition of parking on landscaped areas or on the street;
 - (3) Quiet hours and noise restrictions;

- (4) List of HOA rules, if applicable;
 - (5) 24-hour local contact person and phone number;
 - (6) Property cleanliness requirements;
 - (7) Waste pick-up requirements, including location of waste and recycling receptacles;
 - (8) Flooding hazards and evacuation routes, as well as information on the emergency siren system;
 - (9) Emergency and non-emergency numbers; and
 - (10) Notice that failure to conform to the occupancy and parking requirements constitutes a violation of the Town Code and an occupant or visitor may be cited.
- (j) *Rental agreement notification.* The rental agreement between the owner/operator of the short-term rental and the renter shall include, by attachment, all of the information provided in the occupant notification packet.
- (k) *Changes in ownership.* The purchaser of a short-term rental shall provide the Director with current application materials required by Section 18-572, revised to include any new information associated with the change in ownership, within thirty (30) days of the closing date for the purchase of the short-term rental.
- (l) *Hotel occupancy taxes.* The owner of the short-term rental property shall register with the Town of Flower Mound Finance Department to pay hotel occupancy taxes, prior to the date that the short-term rental permit application is submitted.
- (m) *Request for occupancy history.* Upon request of the Director the owner of a premises used as a short-term rental shall remit, within thirty (30) days, an accounting of all rental activity and the hotel occupancy taxes paid therefor.
- (n) *Right to inspect premises.*
- (1) *Inspections.* The Fire Marshal shall perform periodic inspections of each short-term rental property to ensure compliance with this ordinance and other applicable laws. For the purpose of performing inspections, the fire marshal may enter, examine, and survey, at all reasonable times, all buildings, dwelling units, guest rooms, and the premises used as a short-term rental property. An owner or other

authorized individual may refuse to consent to an inspection conducted by the Fire Marshal. If consent is refused, the Fire Marshal may seek an administrative search warrant authorized by Article 18 of the Texas Code of Criminal Procedure "Search Warrant" and the Town of Flower Mound Code of Ordinances.

- (2) The Town may perform the following inspections:
- a. *Annual fire inspection.* The Fire Marshal may perform annual fire inspections of the short-term rental property.
 - b. *Repeat inspections.* If, upon completion of an inspection, the premises are found to be in violation of one or more provisions of this Section, the Town shall provide written notice of such violation and shall set a re-inspection date. If a property fails to pass an inspection, a re-inspection fee will be charged after the third re-inspection of the premises. A property cannot be occupied as a short-term rental while its status with the Fire Marshal's Office is noted as being in violation.
 - c. *Fire extinguishers.* The owner/operator is responsible for obtaining annual independent inspections of the fire extinguishers in compliance with the Town regulations.
 - d. *Change in ownership inspection.* As part of the change in ownership process for a short-term rental the Fire Marshal shall conduct an inspection to verify compliance with this article.

Sec. 18-574. – Permit term, fees.

- (a) All permits issued under this Article shall be valid for a period of one year from the date of its issuance.
- (b) The fee for permitting of a short-term rental shall be as established in Appendix A of this Code.

Sec. 18-575. – Repeat offenses.

- (a) If the Director finds that the owner, operator or person in control of a short-term rental failed to comply with any requirement of this article, at least twice within a 12-month period, the Director may revoke an existing permit; or may deny an application to renew a permit. No new permit may be sought for the subject property, for a period of 12 months, following a denial or revocation pursuant to this section.

- (b) If a property is the subject of three or more violations of Town Code, state or federal law within the previous 24-month period, the Director may: revoke an existing permit; may deny an application for an original permit; or, may deny an application to renew a permit, based on: (1) the frequency of any repeated violations; (2) whether a violation was committed intentionally or knowingly; and (3) any other information that demonstrates the degree to which the owner or occupant has endangered public health, safety, or welfare. No new permit may be sought for the subject property, for a period of 12 months following the denial or revocation pursuant to this section.
- (c) A permit applicant may appeal the Director's decision to revoke an existing permit or deny an application, in accordance with the process set forth in section 18-576 of this article.

Sec. 18-576. – Appeals.

- (a) The revocation of a permit or the denial of an application for a permit to operate a short-term rental, by the Director, may be appealed to the Town Manager in accordance with the provisions of this section.
- (b) An appeal filed under this section must be filed with the Director no later than the 20th day following the date on which the permit was revoked or denied. The appeal must identify each alleged point of error, facts and evidence supporting the appeal, reasons why the action of the Director should be modified or reversed, and must be sworn.
- (c) The Town Manager or a designee shall, not later than the 10th day after the date the notice of appeal is filed, hear the appeal, and may affirm, modify or reverse a permit revocation or application denial.
- (d) The Town Manager or designee shall give written notice of a decision on an appeal to the appellant.
- (e) An appellant who seeks judicial review of the Town Manager's review on appeal must file a petition with a court of competent jurisdiction not later than the 30th day after receipt of the notice of the decision.

Sec. 18-577. – Enforcement.

- (a) If the owner of the short-term rental property fails or refuses to comply with the standards contained herein, the Town may initiate enforcement action against the property owner including, but not limited to, the immediate issuance of a citation.
- (b) *Prima Facie evidence of a Short-term rental use.* Any advertisement, whether it be online or in print, promoting the availability of a property within

the Town for rent for a period of thirty days (30) or less, shall constitute prima facie evidence of the property’s use as a short-term rental.”

SECTION 2

That Appendix A, “Fee Schedule,” of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to add a fee of \$100.00 for a short-term rental inspection, under the Fire Department Fee Schedule list, to be inserted numerically as (14), and read as follows:

“Appendix A. – Fee Schedule

Fire Department Fee Schedule

- (14) Short-term rental inspection 100.00
- (15) Operational permits annual (maximum of four permits per business) 75.00
- (16) Tent (per tent fee) 50.00
- (17) After hours inspections (per hour or portion of an hour—Minimum 2 hours) 60.00

***”

SECTION 3

That Appendix A, “Fee Schedule,” of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to add a fee of \$200.00 for a short-term rental permit, under the “Chapter 18. Businesses” Schedule list, to be inserted numerically as follows:

“Appendix A. – Fee Schedule

Code Section Number	Description
18-574	Short-term Rental Permit Fee

A nonrefundable fee for administration of the application shall be charged. Such fee shall be paid at the time the application is made and shall not be returned to the applicant, regardless of whether a permit is issued.

Short-term Rental Permit..... \$200.00”

SECTION 4

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the Town of Flower Mound, Texas, as amended, except when the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 5

It is hereby declared to be the intention of the Town Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any section, paragraph, sentence, clause, or phrase 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 sections, paragraphs, sentences, clauses, and phrases of this Ordinance, since the same would have been enacted by the Town Council without the incorporation in this Ordinance of any such unconstitutional section, paragraph, sentence, clause or phrase.

SECTION 6

Any person, firm, or corporation who violates any provision of this Ordinance as adopted by the Town Council of the Town of Flower Mound shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine as provided in Section 1-13 of the Code of Ordinances of the Town of Flower Mound. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

SECTION 7

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Code of Ordinances as amended or revised herein, or any other ordinances affecting the matters regulated herein which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 8

The Town Secretary of the Town of Flower Mound is hereby directed to publish the caption in the official newspaper of the Town of Flower Mound as required by Section 3.07 of the Charter of the Town of Flower Mound.

SECTION 9

This Ordinance shall be in full force and effect from and after the date of its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _ TO _, ON THIS THE ___ DAY OF FEBRUARY, 2020.

APPROVED:

Steve Dixon

Steve Dixon, **MAYOR**

ATTEST:

Theresa Scott, **TOWN SECRETARY**

DRAFT