



TO: Mayor and Councilmembers
FROM: City Manager John Moran
DATE: August 9, 2011
SUBJECT: PUBLIC HEARING – To consider, discuss and act upon Ordinance # O-2011-0823-002 to amend Section 11, "Landscape Regulations," of the Comprehensive Zoning Ordinance by deleting said section in its entirety and replacing it with a new Section 11 entitled "Landscape Regulations"

Ordinance attached

- ACTION:**
- 1) Open Public Hearing and call time
 - 2) Ask for those **FOR** the Landscape Regulations Ordinance
 - 3) Ask for those **OPPOSED** to the Landscape Regulations Ordinance
 - 4) Close the Public Hearing and call time
 - 5) Open the discussion to the Council.
 - 6) Council to approve or disapprove Ordinance # O-2011-0823-002

(V - A)

**CITY OF FARMERSVILLE
ORDINANCE NO. O-2011-0823-002**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE, AS HERETOFORE AMENDED, THROUGH THE AMENDMENT OF SECTION 11, "LANDSCAPE REGULATIONS," BY DELETING SAID SECTION IN ITS ENTIRETY AND REPLACING IT WITH A NEW SECTION 11 ENTITLED "LANDSCAPE REGULATIONS"; REPEALING ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, after public notice and public hearing as required by law, the Planning and Zoning Commission of the City of Farmersville, Texas, has recommended the amendment of Section 11 of the Comprehensive Zoning Ordinance, entitled "Landscape Regulations" by deleting said section in its entirety and replacing it with a new Section 11 entitled "Landscape Regulations"; and

WHEREAS, all legal requirements, conditions, and prerequisites have been complied with prior to this recommended text amendment coming before the City Council of the City of Farmersville; and

WHEREAS, the City Council of the City of Farmersville, after notice and public hearing as required by law and upon due deliberation and consideration of the recommendation of the Planning and Zoning Commission and of all testimony and information submitted during said public hearings, the City Council is of the opinion and finds that the change of such zoning text will not be detrimental to the public health, safety, or general welfare of the citizens of the City, and will promote the best and most orderly development of the property affected thereby, and as well the owners and occupants thereof, and the City generally; **NOW, THEREFORE**,

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

SECTION 1. Findings Incorporated

All of the above premises are hereby found to be true and correct legislative and factual determinations of the City of Farmersville and they are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. Amendment to Section 11, “Landscape Regulations,” of the Comprehensive Zoning Ordinance by deleting said section in its entirety and replacing it with a new Section 11 entitled “Landscape Regulations”

From and after the effective date of this Ordinance, Section 11 of the Comprehensive Zoning Ordinance, entitled “Landscape Regulations” is hereby deleted in its entirety and replaced with a new Section 11 entitled “Landscape Regulations” to read as follows:

“SECTION 11: Landscape Regulations

11-A. PURPOSE: It is the purpose of this section to establish certain regulations pertaining to landscaping within the City of Farmersville. These regulations provide standards and criteria for new landscaping which are intended to promote the value of property, enhance the welfare, and improve the physical appearance of the City.

11-B. SCOPE: The standards and criteria contained within this section are deemed to be minimum standards and shall apply to all new construction or any existing development, which is altered by increasing the floor area by 30 percent or more of the originally approved floor area, either by a single expansion or by the cumulative effect of a series of expansions.

1. All existing structures, which are a conversion or change in use requiring the expansion of or significant improvements to meet parking standards shall upgrade landscaping on the site and meet these requirements to the extent practical. The Planning & Zoning Commission shall have the ability to waive landscape requirements on a case-by-case basis if unique circumstances exist on the property that makes application of these regulations unduly burdensome on the applicant. Requested waivers of specific portions of these regulations may be granted only if there will be no adverse impact on current or future development and will have no adverse impact on the public health, safety, and general welfare.

2. Uses within the downtown CA - Central Area District shall be exempt from the landscape requirements set forth herein, unless it is determined by the Building Official that these standards are achievable and would contribute to the historic appearance and/or qualities that are inherent to the district.

11-C. ENFORCEMENT: The provisions of this section shall be administered and enforced by the Building Official or his designee.

1. If, at any time after the issuance of a Certificate of Occupancy, the approved landscaping is found to be in nonconformance to the standards and criteria as approved on the landscape plan, the Building Official shall issue notice to the owner, citing the violation and describing what action is required to comply with this section.

2. The owner, tenant, or agent shall make reasonable progress within the first thirty (30) days from the date of said notice to restore the landscaping as required and shall have a total of ninety (90) days to completely restore the landscaping as required.

3. Two thirty (30) day extensions may be granted by the Building Official upon the applicant's request if a hardship due to extreme seasonal conditions can be demonstrated by the owner, tenant, and/or agent.

4. If the landscaping is not restored within the allotted time, such person shall be in violation of this Ordinance.

11-D. PERMITS

1. No permits shall be issued for building, paving, grading or construction until a Landscape Plan is submitted and approved by the Building Official or his designee. In the event that the proposed development requires an approved subdivision plat, site plan, or development plan, no final approval shall be granted unless a Landscape Plan is submitted and approved.

2. Prior to the issuance of a Certificate of Occupancy for any building or structure, all screening and landscaping shall be in place in accordance with the Landscape Plan and a digital copy of the landscaping as installed shall be provided to the planning department for permanent record.

3. In any case in which a Certificate of Occupancy is sought at a season of the year in which the Building Official determines that it would be impractical to plant trees, shrubs, or grass, or to lay turf, a Certificate of Occupancy may be issued notwithstanding the fact that the landscaping required by the Landscape Plan has not been completed, provided the applicant deposits cash in an escrow account with the City in the amount equal to 120% of the estimated cost of installing such landscaping which escrow will remain in effect until the landscape plan is installed and accepted or approved by the City. Such escrow deposit shall be conditioned upon the installation of all landscaping required by the plan within six (6) months of the date of

the application and shall give the applicant the right to draw upon the escrow deposit to complete the said landscaping.

4. Failure to timely install the landscaping required by the landscape plan within six (6) months of the date of the application shall be deemed a violation of this chapter and the Certificate of Occupancy may be revoked without liability to the City. The Building Official shall have the right to determine the landscaping required at the time the certificate of occupancy is issued.

11-E. LANDSCAPE PLANS: Prior to the issuance of a building, paving, grading or construction permit for any use other than uses within the downtown CA - Central Area District, a Landscape Plan shall be submitted to the City for approval. The Building Official or a designee shall review such plans and shall approve same if the plans are in accordance with the criteria of these regulations. If the plans are not in accord, they shall be disapproved and shall be accompanied by a written statement setting forth the changes necessary for compliance.

Landscape Plans shall be prepared by a landscape architect or landscape contractor who belongs to a bona fide nurseryman's association. Landscape Plans shall, at a minimum, contain the following information:

1. Minimum scale of one inch equals fifty feet or the same scale as the associated site plan;
2. The location, size, and species of all trees to be preserved and planted – tree stamps shall not be used unless they indicate the true size and location of trees;
3. The location of all plant and landscaping material to be used including plants, paving, benches, screens, fountains, statues, earthen berms, ponds (to include depth of water), or other landscape features (except that the location of plants and landscaping materials may be generalized on a conceptual landscape plan);
4. The species, size, spacing and quantities of all plant material to be used in a tabular form (except that conceptual landscape plans may provide general plant types in-lieu-of species);
5. An affidavit on the plan stating that all required landscape areas shall be provided with an automatic underground irrigation system with rain and freeze sensors and evapotranspiration (ET) weather based controllers and said irrigation system shall be designed by a qualified professional and installed by an irrigator licensed by the State of Texas;

6. Layout and description of irrigation, sprinkler or water systems including placement of water sources;
7. Description of maintenance provisions for the Landscape Plan;
8. The person responsible for the preparation of the landscape plan, including affidavit of their qualifications to prepare said plan;
9. The mark indicating north;
10. The date of the landscape plan, including any revision dates;
11. The planting details percentage of total site in permanent landscaping;
12. The percentage of street yard in permanent landscaping;
13. The dimensions of all landscape areas;
14. The number of required trees and number of trees provided;
15. The location of all existing and planned overhead and underground utilities shall be shown on the landscape plan or on an accompanying utility plan drawn at the same scale, if necessary for clarity; and
16. Additional information as deemed necessary to adequately evaluate the landscape plan.

11-F. MAINTENANCE: The owner, tenant and his or their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping. All required landscaping shall be maintained in a neat and orderly manner at all times. This shall include mowing of grass six inches (6") or higher, edging, pruning, fertilizing, watering, weeding, and other such activities common to the maintenance of landscaping. Landscaped areas shall be kept free of trash, litter, weeds and other such material or plants not a part of the landscaping. All plant materials shall be maintained in a healthy and growing condition as is appropriate for the season of the year. Plant materials which die shall be replaced with plant material of similar variety and size within the time period provided by Section 11-C.

11-G. GENERAL STANDARDS:

1. The following criteria and standards shall apply to landscape materials and installation. For the purposes of this section, the term "caliper" shall be defined as the diameter measurement of a tree trunk.

a. Quality. Plant materials used in conformance with the provisions of his section shall conform to the standards of the American Standards for Nursery Stock, or their equal. Grass seed, sod and other material shall be clean and free of weeds and noxious pests and insects.

b. Open Areas. Required landscaped open areas shall be completely covered with living plant material.

c. Ornamental Trees. Trees referred to in this section shall be chosen from the approved plant palette located in Table 1. Trees shall have an average spread or crown of greater than fifteen feet (15') at maturity. Trees having lesser average mature crown of fifteen feet (15') may be substituted by grouping the same so as to create the equivalent of fifteen feet (15') of crown width. At time of planting, ornamental trees shall be approximately two inches (2") in caliper, measured six inches (6") above the ground, and a minimum of six feet (6') in height.

d. Canopy Trees. Canopy trees shall have a minimum spread of crown of 25 feet at maturity. Canopy trees shall be a minimum of two inches (2") in caliper as measured six inches (6") above the ground and eight feet (8') in height at the time of planting.

e. Shrubs. Shrubs not of the dwarf variety shall be a minimum of one foot (1') in height when measured immediately after planting and shall be chosen from the approved plant palette located in Table 1. Shrubs acceptable for six foot (6') screening, where installed, shall be a minimum of three feet (3') in height when measured immediately after planting and shall be planted no further apart than three feet (3') on center unless otherwise approved by the Building Official, and maintained so as to form a continuous, unbroken, solid visual screen which will be six feet (6') high within two (2) years after time of planting.

f. Hedges where installed for buffering or screening purposes shall be planted and maintained so as to form a continuous, unbroken, solid visual screen which will be three feet (3') high within one (1) years after time of planting.

g. Evergreen vines. Evergreen vines not intended as ground cover shall be a minimum of two feet (2') in height immediately after planting and may be used in conjunction with fences, screens, or walls to meet screening requirements as specified herein and as

approved by the Building Official. Vine material shall be chosen from the approved plant palette located in Table 1.

h. Ground Cover. Ground cover used in lieu of grass, in whole or in part, shall be planted in such a manner as to present a finished appearance and reasonably complete coverage within one year of planting. Groundcover material shall be chosen from the approved plant palette located in Table 1.

i. Lawn Grass. Grass areas may be sodded, plugged, sprigged, hydro-mulched, or seeded except that solid sod shall be used in swales, berms, or other areas subject to erosion. Grass areas shall be established with 100% coverage and 70% density with an approved perennial grass prior to the issuance of a Certificate of Occupancy.

j. Credit for Existing Trees. Any trees preserved on a site meeting the specifications herein shall be credited toward meeting the tree requirement of any landscaping provision of this section. Trees of exceptional quality due to size, large canopy cover, trunk diameter, rareness, age or species may, at the discretion of the Building Official, be credited as two (2) trees to meet the minimum requirement.

2. All required landscape areas shall be provided with an automatic underground irrigation system, except for required landscaping in single-family or two-family developments. Any new irrigation system installed on or after September 1, 2007, must be equipped with rain and freeze sensors and an evapotranspiration (ET) weather based controller. Said irrigation system shall be designed by a qualified professional and installed by a licensed irrigator after receiving a permit, as may be required under the construction code. Irrigation systems shall comply with the City of Farmersville's Water Conservation Ordinance as it exists or may be amended.

3. Earthen berms shall have side slopes not to exceed 3:1 (three feet of horizontal distance for each one foot of height). All berms shall contain necessary drainage provisions, as may be required by the Building Official.

4. No tree shall be planted closer than four feet (4') to a right-of-way line nor closer than eight feet (8') to a public utility line (water or sewer), unless no other alternative is available. Further, a landscape area in which trees are to be provided shall not conflict with a utility easement, unless no alternative is available.

5. No tree that has a mature height of twenty-five feet (25') or greater shall be planted beneath an existing or proposed overhead utility line. Where canopy trees are required adjacent to or underneath overhead utility lines, ornamental trees (approximately two inches (2") in caliper as measured six inches (6") above the ground) shall be provided instead of the required canopy trees.

6. All landscape areas shall be protected by a monolithic curb or wheel stops and remain free of trash, litter, and car bumper overhangs.

11-H. MINIMUM LANDSCAPING REQUIREMENTS:

1. For all non-residential and multiple family parcels, at least 15 percent of the street yard shall be permanent landscape area. The term "street yard" shall be defined as the area between the front property line and the minimum front set back line.

2. For all non-residential and multiple family parcels located at the intersection of two dedicated public streets (rights-of-way), a 30 foot corner clip shall be provided adjacent and parallel to the right-of-way dedication as a landscape buffer, which can be counted toward the 15 percent requirement.

3. For all non-residential and multiple family parcels, a minimum of 10 percent of the entire site shall be devoted to living landscape, which shall include grass, ground cover, plants, shrubs, or trees.

4. For all non-residential and multiple family parcels, developers shall be required to plant one canopy tree per 40 linear feet, or portion thereof, of street frontage. These required trees must be planted within the associated landscape setback along thoroughfares, unless otherwise approved by the Building Official or his designee. Trees may be grouped or clustered to facilitate site design.

5. Landscape areas within parking lots must be at least one parking space in size (162 square feet).

6. No landscape area counting toward minimum landscaping requirements shall be less than 25 square feet in area or less than five feet (5') in width.

7. For all non-residential and multiple family parcels, internal landscape areas shall:

- a. Have a landscaped area with at least one tree within 65 feet of every parking space; and

- b. Have a minimum of one tree planted in the parking area for every 10 parking spaces within parking lots with more than 20 spaces.
8. Within parking lots, landscape areas with curbs and gutters must be provided to define parking areas and assist in clarifying appropriate circulation patterns.
9. A landscape island shall be located at the terminus of each parking row, and should contain at least one canopy tree.
10. All existing trees that are to be considered for credit shall be provided with a permeable surface (a surface that does not impede the absorption of water) within a minimum five foot (5') radius from the trunk of the tree. All new trees shall be provided with a permeable surface within a minimum 2 ½ foot (2.5') radius from the trunk of the tree.
11. At least 75 percent (75%) of the frontage of parking lots, adjacent to a public right-of-way, within the street yard shall be screened from public streets with evergreen shrubs attaining a minimum height of three feet (3'), an earthen berm of a minimum height of three feet (3'), a low masonry wall of a minimum height of three feet (3'), or a combination of the above with a minimum combined height of three feet (3'). A wall used for parking lot screening should be accompanied with landscape planting in the form of low shrubs and groundcover to soften the appearance of the wall.
12. A minimum of 50 percent (50%) of the total trees required for the property shall be canopy trees as specified on the approved plant list (see the approved plant palette located in Table 1).
13. Necessary driveways from the public right-of-way shall be allowed through all required landscaping areas in accordance with City regulations. Shared driveways shall be allowed through perimeter landscape areas.
14. For all non-residential and multiple family parcels, whenever an off-street parking area or vehicular use area abuts an adjacent property line, a perimeter landscape area at least five feet (5') wide shall be maintained along and between the edge of the parking area and the adjacent property line.
15. Whenever a non-residential use, mobile home use, or multiple family use is adjacent to a property used or zoned for single-family or

duplex residential uses, the more intensive land use shall provide a landscaped area of at least ten feet (10') in width along the common property line planted with one canopy tree for each 40 linear feet or portion thereof of adjacent exposure. These trees may not be clustered.

16. For all single-family and duplex parcels, builders shall be required to plant two canopy trees per lot, prior to obtaining a certificate of occupancy. At least one of the trees shall be located in the front yard. An existing quality tree of approximately four-inch caliper size located on the lot may be counted towards the requirement for an approximately two-inch caliper tree, if appropriate tree protection measures have been followed.

17. For all townhome parcels a minimum of 20 square feet of useable open space shall be required per townhome unit. This additional open space shall not include the parkland dedication requirement as outlined in section 4.4 of the Subdivision Ordinance, any required landscape areas as outlined in this section, or any required spacing between buildings. Open space pockets shall be designed to be located over the entire site in order to break up density and serve the entire development. Open space pockets shall be required to be a minimum of 1,000 square feet and a maximum of 2,000 square feet for townhome developments over 50 units. The applicant may request an increase in the maximum allowed useable open space requirement with site plan approval.

11-I. TREE PRESERVATION:

(1) Any trees preserved on a site meeting the herein specifications may be credited toward meeting the tree requirement of any landscaping provision of this section for that area within which they are located, according to the following table:

<i>Caliper of existing tree</i>	<i>Credit against tree requirement</i>
6" to 8"	2 trees
9" to 15"	3 trees
16" to 30"	4 trees
31" to 46"	5 trees
47" or more	8 trees

For purposes of this section, caliper measurement shall be taken at a height of 4 ½ feet (4.5') above the ground, and shall be rounded to the nearest whole number.

(2) Existing trees may receive credit if they are not on the City's approved plant material list but approved by the Building Official or designee; however, trees must be located within the landscape area to which credit is applied.

(3) Any tree preservation proposed shall designate the species, size, and general location of all trees on the conceptual or general landscape plan. The species, size, and exact location shall be shown on the landscape plan.

(4) During any construction or land development, the developer shall clearly mark all trees to be maintained and may be required to erect and maintain protective barriers around all such trees or groups of trees. The developer shall not allow the movement of heavy equipment or the storage of equipment, materials, debris, or fill to be placed within the drip line of any trees. This is not intended to prohibit the normal construction required within parking lots.

(5) During the construction stage of development, the developer shall not allow cleaning of equipment or material under the canopy of any tree or group of trees to remain. Neither shall the developer allow the disposal of any waste material such as, but not limited to, paint, oil, solvents, asphalt, concrete, mortar, etc., under the canopy of any tree or groups of trees to remain. No attachment or wires of any kind, other than those of a protective nature, shall be attached to any tree.

11-J. SIGHT DISTANCE AND VISIBILITY:

(1) Rigid compliance with these landscaping requirements shall not be such as to cause visibility obstructions and/or blind corners at intersections. Whenever an intersection of two or more streets or driveways occur, a triangular visibility area, as described below, shall be created. Landscaping within the triangular visibility area shall be designed to provide unobstructed cross visibility at a level between two feet (2') and seven feet (7'). Trees may be permitted in this area provided they are trimmed in such a manner that no limbs or foliage extend into the cross visibility area.

(2) In the event other visibility obstructions are apparent in the proposed landscape plan, as determined by the Building Official, the requirements set forth herein may be modified to eliminate the conflict.

**TABLE 1
PLANT PALETTE**

Overstory Trees: Range: 30' - 60'

Bald Cypress	<i>Taxodium distichum</i>
Cedar Elm	<i>Ulmus cressifolja</i>
Pecan	<i>Carya illinoensis</i>
Chinese Pistache	<i>Pistacia chinensis</i>
Bur Oak	<i>Quercus macrocarpa</i>
Shumard's Oak	<i>Quercus Shumardii</i>
Sweet Gum	<i>Liquidambar styraciflua</i>
Catalpa	<i>Catalpa bignonioides</i>
Honey Locust Green	<i>Gleditsia triacanthos</i>
Ash	<i>Fraxinus pennsylvanica</i>
Live Oak	<i>Quercus virginiana</i>
Western Soapberry	<i>Sapindus drummondii</i>

Accent Trees: 10' - 20'

Redbud	<i>Cercis canadensis</i>
Crape Myrtle	<i>Lagerstroemia indica</i>
Yaupon Holly	<i>Ilex vomitoria</i>
Bradford Pear	<i>Pyrus calleryana 'Bradford'</i>
Texas Sophora	<i>Sophora affinis</i>
Wild Plum	<i>Prunus americana</i>
Crap Apple	<i>Malus angustifolia</i>
Deciduous Holly	<i>Ilex decidua</i>
Flameleaf Sumac	<i>Rhus Copallina</i>
Cherry-Laurel	<i>Prunus caroliniana</i>
Chaste Tree	<i>Vitex Agnus-castus</i>

Shrubs: Range: 3' - 5'

Dwarf Crape Myrtle	<i>Lagerstroemia indica nana</i>
Dwarf Burford Holly	<i>Ilex comuta 'Barfordii Nana'</i>
Dwarf Chinese Holly	<i>Ilex comuta 'Rotunda'</i>
Dwarf Yaupon Holly	<i>Ilex vomitoria 'Nana'</i>
Fraser's Photinia	<i>Photinia Fraseri</i>
Purple Sage	<i>Leucophyllum frutescens</i>
Purple Leaf Japanese Barberry	<i>Berberis Thunbergii</i>
	<i>'Atropurpurea'</i>
Pampas Grass	<i>Cortaderia Selloana</i>
Nandina	<i>Nandina domestica</i>
Juniper Supp.	<i>Juniperus chinensis</i>
Cattail	<i>Typha latifolia</i>

Ground Cover: Range: 18”

Juniper Supp.

Juniperus horizontalis
or procumbens

Periwinkle

Vinca major

Liriope

Liriope Muscari

Asian Jasmine

Trachyclopermun asiaticum

Vines:

Coral Honeysuckle

Lonicera sempervirens

Carolina Yellow Jessamine

Gelsemium sempervierns

Lady Banksia Rose

Rosa Banksiae

Cross Vine

Bignonia Capreolata Clematis

Sweet Autumn Clematis

Paniculata

SECTION 3. Cumulative Repealer

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated shall continue to be governed by the provisions of such Ordinance and for that purpose the Ordinance shall remain in full force and effect.

SECTION 4. Savings

All rights and remedies of the City of Farmersville are expressly saved as to any and all violations of the provisions of any Ordinances 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 5. Severability

It is hereby declared to be the intention of the City Council of the City of Farmersville that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by valid judgment or final decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance,

since the same would have been enacted by the City Council without incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 6. Governmental Immunity

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Farmersville in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

SECTION 7. Injunctions

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Farmersville in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Farmersville.

SECTION 8. Engrossment and Enrollment

The City Secretary of the City of Farmersville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date clause in the minutes of the City Council of the City of Farmersville and by filing this Ordinance in the Ordinance records of the City.

SECTION 9. Penalty

Any person, firm or corporation violating any of the provisions or terms of this Ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Farmersville, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.

SECTION 10. Effective Date

This Ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

PASSED on first reading on the 9th day of August, 2011, and second reading on the 23rd day of August, 2011 at properly scheduled meetings of the City Council of the City of Farmersville, Texas, there being a quorum present, and approved by the Mayor on the date set out below.

APPROVED THIS ____ DAY OF _____, 20____.

APPROVED:

BY: _____
Joseph E. Helmberger, P.E., Mayor

ATTEST:

Edie Sims, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Alan D. Lathrom, City Attorney



TO: Mayor and Councilmembers
FROM: City Manager John Moran
DATE: August 9, 2011
SUBJECT: PUBLIC HEARING – To consider, discuss and act upon Ordinance # O-2011-0823-003 to amend Section 17, "Fence and Wall Regulations," of the Comprehensive Zoning Ordinance by deleting said Section in its entirety and replacing it with a new Section 17 entitled "Fences, Walls and Screening Requirements"

Ordinance attached

- ACTION:**
- 1) **Open Public Hearing and call time**
 - 2) **Ask for those FOR the Fence and Wall Regulations Ordinance**
 - 3) **Ask for those OPPOSED to the Fence and Wall Regulations Ordinance**
 - 4) **Close the Public Hearing and call time**
 - 5) **Open the discussion to the Council.**
 - 6) **Council to approve or disapprove Ordinance # O-2011-0823-003**

(V - B)

**CITY OF FARMERSVILLE
ORDINANCE NO. O-2011-0823-003**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE, AS HERETOFORE AMENDED, THROUGH THE AMENDMENT OF SECTION 17, "FENCE AND WALL REGULATIONS," BY DELETING SAID SECTION IN ITS ENTIRETY AND REPLACING IT WITH A NEW SECTION 17 ENTITLED "FENCES, WALLS, AND SCREENING REQUIREMENTS"; REPEALING ORDINANCES IN CONFLICT HERewith; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, after public notice and public hearing as required by law, the Planning and Zoning Commission of the City of Farmersville, Texas, has recommended the amendment of Section 17 of the Comprehensive Zoning Ordinance, entitled "Fence and Wall Regulations" by deleting said section in its entirety and replacing it with a new Section 17 entitled "Fences, Walls and Screening Requirements"; and

WHEREAS, all legal requirements, conditions, and prerequisites have been complied with prior to this recommended text amendment coming before the City Council of the City of Farmersville; and

WHEREAS, the City Council of the City of Farmersville, after notice and public hearing as required by law and upon due deliberation and consideration of the recommendation of the Planning and Zoning Commission and of all testimony and information submitted during said public hearings, the City Council is of the opinion and finds that the change of such zoning text will not be detrimental to the public health, safety, or general welfare of the citizens of the City, and will promote the best and most orderly development of the property affected thereby, and as well the owners and occupants thereof, and the City generally; **NOW, THEREFORE,**

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

SECTION 1. Findings Incorporated

All of the above premises are hereby found to be true and correct legislative and factual determinations of the City of Farmersville and they are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. Amendment to Section 17, “Fence and Wall Regulations,” of the Comprehensive Zoning Ordinance by deleting said section in its entirety and replacing it with a new Section 17 entitled “Fences, Walls, And Screening Requirements”

From and after the effective date of this Ordinance, Section 17 of the Comprehensive Zoning Ordinance, entitled “Fence and Wall Regulations” is hereby deleted in its entirety and replaced with a new Section 17 entitled “Fence, Wall and Compatibility Requirements” to read as follows:

“SECTION 17: FENCES, WALLS, AND SCREENING REQUIREMENTS

In any zoning district where a wall, fence or screening separation is erected, the following standards for height and design shall be observed:

17-A. Height of Fence or Wall

1. Any fence or wall erected on the property line and located to the rear of the minimum required front yard line as determined by the provisions of Section 9-D shall not exceed eight feet (8’) in height above the adjacent grade.
2. Any fence or wall erected on the property line and located between the front property line and minimum required front yard line as determined by the provisions of Section 9-D or within the minimum required front yard space shall not exceed four feet (4’) in height above the adjacent grade.
3. No fence, screening wall, or other visual barrier shall be located or placed so that it obstructs the vision of a motor vehicle driver approaching any street, alley or drive intersection. At all street intersections clear vision shall be maintained across the lot for a distance of at least fifteen feet (15’) back from the property corner along both streets.
4. All fences, walls, screening walls, and other visual barriers require permits.

17-B. Screening Walls or Visual Barriers

1. Any screening wall or fence authorized by or required under the provisions of this Section 17 shall be constructed of:
 - (a) Brick masonry, stone masonry, or other architectural masonry finish;
 - (b) Tubular steel (primed and painted) or wrought iron fence with masonry columns spaced a maximum of 20 feet (20’) on center with structural supports spaced every ten feet (10’), and with sufficient evergreen landscaping to create a screening effect;

(c) Alternate equivalent screening, upon approval by the Planning and Zoning Commission and/or City Council, depending on which body has the final approval authority as indicated in Section 18 through the site plan process; or

(d) A six foot (6') tall living plant screen, upon approval by the Planning and Zoning Commission and/or City Council, depending on which body has the final approval authority as indicated in Section 18 through the site plan process and which living plant screen meets the following requirements:

(i) The plant material shall be evergreen shrubs of a density that will not permit through-passage;

(ii) The plant material shall be acceptable for a six foot (6') tall living plant screen;

(iii) The plant material shall be a minimum of three feet (3') in height when measured immediately after planting and shall be planted no further apart than three feet (3') on center, unless otherwise approved by the Building Official;

(iv) The plant material shall be maintained so as to form a continuous, unbroken, solid visual screen that exhibits the same year-round screening characteristics as a solid brick/masonry screening wall; and

(v) The plant material shall be at least six feet (6') tall within two (2) years after time of planting.

2. All required screening devices must be equally finished on both sides.

3. All openings in the surface for passage shall be equipped with gates equal in height and screening characteristics to the fence or wall.

4. Prior to the issuance of an occupancy permit, all approved screening devices must be in place.

5. All screening devices shall be permanently and continually maintained in a neat and orderly manner as a condition of use. The occupancy permit may be revoked by the Building Official for failure to adequately maintain such screening device.

17-C. Applicability

Screening devices shall be placed and maintained in the following locations:

1. Along any property line or district boundary between nonresidential development adjacent to or separated only by an alley from developed residential property, regardless of the zoning on the property, or vacant land zoned or designated on the comprehensive master plan for residential use. The owner, developer and/or operator of the

nonresidential development shall be responsible for and shall build and maintain the required screening device on the said nonresidential development side of the property line dividing the nonresidential use from the single-family or two-family residential use.

2. Along any property line or district boundary between multifamily development adjacent to or separated only by an alley from developed single-family detached or attached or any two-family residences, regardless of the zoning on the property, or vacant land zoned or designated on the comprehensive master plan for single-family detached or attached or two-family residences. The owner, developer and/or operator of the multifamily development shall be responsible for and shall build and maintain the required screening device on the said multifamily development side of the property line dividing the multifamily use from the single-family or two-family residential use.

3. Open Storage is not allowed in any district, except in the Light Industrial Districts 1 and 2. Open storage of materials, equipment, or commodities in the Light Industrial Districts 1 and 2 shall be screened from the view of adjacent property or public right-of-way by a screening wall or fence, (at least six foot (6') and no greater than eight foot (8') in height), or by a building(s), except as specifically listed in Section 4.. Materials, equipment, or commodities shall be stacked no higher than one foot below the top of the screening wall or visual barrier.

4. Garbage, trash, sanitation, or refuse containers including, but not limited to, dumpsters and trash compactors (collectively "Dumpsters") shall be screened on all sides. Screening materials shall be masonry and the same color as the exterior walls of the main structure. A solid metal gate shall be provided. Dumpsters shall not be located in front of the main building unless no other option is available. Gates shall be kept closed except when in use for access.

5. Dumpster container enclosures shall be subject to the following design specifications.

(a) Single container enclosures shall be a minimum of twelve feet (12') wide by fourteen feet (14') deep, as measured from the inside of the enclosure's walls.

(b) Double container enclosures shall be a minimum of 25.5 feet wide by fourteen feet (14') deep, as measured from the inside of the enclosure's walls.

(c) Trash compactor enclosures and all other enclosure types shall be constructed to the minimum specifications provided by the City's official garbage and refuse contractor.

(d) All enclosure types shall be required to provide a minimum of forty feet (40') of straight backing, as measured from the front gates of the enclosure, to accommodate a sanitation truck's

maneuverability. If special circumstances prevent straight backing from being provided, the Building Official shall have the authority in consultation with the City's official garbage and refuse contractor to approve angled or alternative backing movements.

(e) All enclosure types shall be required to provide a 24' vertical clear zone, unless otherwise approved by the Building Official.

6. All wrecking yards, junkyards, or salvage yards shall be fenced on all sides and shall be screened from view from the public right-of-way and from adjacent residential property.

7. Loading docks or structures, bays, and bay doors shall be screened from view from the public right-of-way, from adjacent residential property, and from adjacent non-residential property, other than industrial. The required screening device adjacent to a non-residential property, other than industrial, may be waived with site plan approval if it is determined that the location of the proposed loading docks, bays or bay doors in relation to the adjacent development's site layout is not detrimental. Bays in any retail district or retail "PD" district shall be oriented away from the street frontage.

8. Display of new vehicles, or used vehicles not defined as junked vehicles under this Zoning Ordinance, need not be screened if they are, in the opinion of the Building Official, maintained in a neat and orderly manner.

9. Mechanical and heating and air conditioning equipment in nonresidential and multifamily uses shall be screened from view from the public right-of-way and from adjacent residential property. For such equipment located on the roof of a nonresidential or multifamily structure, the screening of the equipment shall be a minimum of one foot higher than the height of the equipment.

10. At motor vehicle service or repair facilities or automotive paint and body repair shops, vehicles awaiting repair for more than 24 hours or after the close of business shall be screened from view from public right-of-way and from adjacent residential property. Parking spaces used for the overnight storage of vehicles awaiting repair must be screened in accordance with the requirements of this section.

11. Parking lots shall meet the screening requirements of this Section 11.

12. The foregoing requirements shall be in addition to all other screening requirements set out in this Zoning Ordinance."

SECTION 3. Cumulative Repealer

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in

force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated shall continue to be governed by the provisions of such Ordinance and for that purpose the Ordinance shall remain in full force and effect.

SECTION 4. Savings

All rights and remedies of the City of Farmersville are expressly saved as to any and all violations of the provisions of any Ordinances 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 5. Severability

It is hereby declared to be the intention of the City Council of the City of Farmersville that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by valid judgment or final decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance, since the same would have been enacted by the City Council without incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 6. Governmental Immunity

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Farmersville in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

SECTION 7. Injunctions

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Farmersville in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Farmersville.

SECTION 8. Engrossment and Enrollment

The City Secretary of the City of Farmersville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date clause in the minutes of the City Council of the City of Farmersville and by filing this Ordinance in the Ordinance records of the City.

SECTION 9. Penalty

Any person, firm or corporation violating any of the provisions or terms of this Ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Farmersville, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.

SECTION 10. Effective Date

This Ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

PASSED on first reading on the 9th day of August, 2011, and second reading on the 23rd day of August, 2011 at properly scheduled meetings of the City Council of the City of Farmersville, Texas, there being a quorum present, and approved by the Mayor on the date set out below.

APPROVED THIS ____ DAY OF _____, 20 ____.

APPROVED:

BY: _____
Joseph E. Helmberger, P.E., Mayor

ATTEST:

Edie Sims, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Alan D. Lathrom, City Attorney



TO: Mayor and Councilmembers

FROM: City Manager John Moran

DATE: August 9, 2011

SUBJECT: PUBLIC HEARING – To consider, discuss and act upon Ordinance # O-2011-0823-004 to amend Section 9, "Area Regulations," of the Comprehensive Zoning Ordinance by amending Section 9-J, "Exterior Construction," by amending Paragraph No. 1 thereof to avoid any unintended conflicts with section 9-K regarding structures in the Commercial (C) and Highway Commercial (HC) zoning districts, and by amending Section 9-K, "Building Facade Regulations for the Commercial (C) and Highway Commercial (HC) Districts," by adding a new Paragraph No. 9 to allow limited waivers for expansion or reconstruction of existing buildings, by adding a new Paragraph No. 10 to recognize and permit meritorious exceptions, and by adding a new Paragraph No. 11 to allow variances from the exterior construction standards of Sections 9-J and 9-K regarding Highway Commercial construction materials

Ordinance attached

ACTION: 1) Open Public Hearing and call time

2) Ask for those FOR the Exterior Construction and Building Façade Regulations Ordinance

3) Ask for those OPPOSED to the Exterior Construction and Building Façade Regulations Ordinance

4) Close the Public Hearing and call time

5) Open the discussion to the Council.

6) Council to approve or disapprove Ordinance # O-2011-0823-004

(V - C)

**CITY OF FARMERSVILLE
ORDINANCE # O-2011-0823-004**

AN ORDINANCE OF THE CITY OF FARMERSVILLE, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE, AS HERETOFORE AMENDED, THROUGH THE AMENDMENT OF SECTION 9, "AREA REGULATIONS," BY AMENDING SECTION 9-J, "EXTERIOR CONSTRUCTION," BY AMENDING PARAGRAPH NO. 1 THEREOF TO AVOID ANY UNINTENDED CONFLICTS WITH SECTION 9-K REGARDING STRUCTURES IN THE COMMERCIAL (C) AND HIGHWAY COMMERCIAL (HC) ZONING DISTRICTS, AND BY AMENDING SECTION 9-K, "BUILDING FACADE REGULATIONS FOR THE COMMERCIAL (C) AND HIGHWAY COMMERCIAL (HC) DISTRICTS," BY ADDING A NEW PARAGRAPH NO. 9 TO ALLOW LIMITED WAIVERS FOR EXPANSION OR RECONSTRUCTION OF EXISTING BUILDINGS, BY ADDING A NEW PARAGRAPH NO. 10 TO RECOGNIZE AND PERMIT MERITORIOUS EXCEPTIONS, AND BY ADDING A NEW PARAGRAPH NO. 11 TO ALLOW VARIANCES FROM THE EXTERIOR CONSTRUCTION STANDARDS OF SECTIONS 9-J AND 9-K; REPEALING ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING A PENALTY OR FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, after public notice and public hearing as required by law, the Planning and Zoning Commission of the City of Farmersville, Texas, has recommended the amendment of Section 9-J of the Comprehensive Zoning Ordinance, entitled "Exterior Construction" and the amendment of Section 9-K of the Comprehensive Zoning Ordinance, entitled "Building Facade Regulations for the Commercial (C) and Highway Commercial (HC) Districts"; and

WHEREAS, all legal requirements, conditions, and prerequisites have been complied with prior to this recommended text amendment coming before the City Council of the City of Farmersville; and

WHEREAS, the City Council of the City of Farmersville, after notice and public hearing as required by law and upon due deliberation and consideration of the recommendation of the Planning and Zoning Commission and of all testimony and information submitted during said public hearings, the City Council is of the opinion and finds that the change of such zoning text will not be detrimental to the public health, safety, or general welfare of the citizens of the City, and will promote the best and most orderly development of the property affected thereby, and as well the owners and occupants thereof, and the City generally; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, THAT:

SECTION 1. Findings Incorporated

All of the above premises are hereby found to be true and correct legislative and factual determinations of the City of Farmersville and they are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. Amendment of Section 9, "Area Regulations," by amending Section 9-J, "Exterior Construction," by amending Paragraph 1 thereof to avoid any unintended conflicts with section 9-K regarding structures in the Commercial (C) and Highway Commercial (HC) zoning districts

From and after the effective date of this Ordinance, Section 9 of the Comprehensive Zoning Ordinance, entitled "Area Regulations," is hereby amended by amending Section 9-J, entitled "Exterior Construction," by amending Paragraph No. 1 thereof as follows:

"1. In the O, NS, GR, C, CA, HC or PD Districts, exterior wall construction shall be of such material as is required to conform to the building code for the particular use or occupancy, provided that the exterior of all structures shall be one hundred percent (100%) masonry, exclusive of doors and windows unless a waiver, meritorious exception or variance under Section 9-K of this ordinance is approved."

SECTION 3. Amendment of Section 9, "Area Regulations," by amending Section 9-K, "Building Facade Regulations for the Commercial (C) and Highway Commercial (HC) Districts," by adding a new Paragraph No. 9 to allow limited waivers for expansion or reconstruction of existing buildings, by adding a new Paragraph No. 10 to recognize and permit meritorious exceptions and by adding a new Paragraph No. 11 to allow variances from the exterior construction standards of sections 9-J and 9-K

"9. Limited waivers for expansion or reconstruction of existing buildings. The Planning and Zoning Commission may, upon request by the applicant, authorize a waiver from specific requirements for exterior materials set out in Sections 9-J and 9-K of this ordinance, if:

- a. strict compliance with these standards would result in significantly inconsistent appearance between existing and proposed sections of the building; or,
- b. if the proposed expansion or reconstruction has been mandated as a condition to the applicant's ability to continue operating a franchise, or license, to conduct business in the existing building; and
- c. the expansion or reconstruction does not increase the square footage of the existing building by more than fifty percent (50%); and

- d. the applicant proposes the use of high quality materials in the expansion or reconstruction of the existing building that significantly improve the quality and appearance of the existing building.

The applicant shall submit detailed information to the City Manager as required in Paragraph No. 10 of this section regarding meritorious exceptions. The City Manager shall review the application, prepare a report of findings and refer the request for a waiver to the Planning and Zoning Commission for a decision according to procedures outlined in Paragraph No. 10 of this section. The applicant may appeal the decision of the Planning and Zoning Commission to the City Council according to the procedures outlined in Paragraph No. 10 of this section regarding meritorious exceptions.

10. Meritorious exception. It is not the intent of this section to discourage innovation. An architectural and site design that does not conform with the specific requirements of this section, but which has merit by making a positive contribution to the visual environment and which is appropriate to the site and use, may be submitted for consideration as a meritorious exception. Such proposals shall be fairly and seriously considered by the Planning and Zoning Commission through the approval process outlined in this Paragraph.

- a. An applicant for a meritorious exception shall submit:
 - (i) All items required for the review of required architectural and site standards;
 - (ii) A written description of the nature of the meritorious exception and the compelling reasons that prevent the applicant from meeting the minimum standards set forth herein; and
 - (iii) Color renderings of all elevations.
- b. The application for a meritorious exception shall be reviewed by the City Manager and a report of findings shall be prepared and submitted to the Planning and Zoning Commission. If the applicant is not in agreement with the decision of the Planning and Zoning Commission, the applicant may, within 21 days of the Planning and Zoning Commission action, request in writing to the City Manager that the meritorious exception be appealed to the City Council. Prior to consideration of an application for a meritorious exception, the Planning and Zoning Commission shall hold a public hearing, with notice given according to the procedure for a change in a zoning district location or boundary. In considering the request, the Planning and Zoning Commission shall consider the following factors in determining the extent of any exception granted:
 - (i) The extent to which the application meets other specific standards of this Section 9;

- (ii) The extent to which the application meets the spirit and intent of this Section 9 through the use of building materials, colors, and facade design to create a building of exceptional quality and appearance;
 - (iii) The positive or negative impact of the proposed project on surrounding property use and property values, in comparison to the expected impact of a project, which could be built in conformance with the standards of this Section 9; and
 - (iv) The extent to which the proposed project accomplishes city goals as stated in the comprehensive plan or other approved document.
- c. A meritorious exception shall not be granted to serve solely as a convenience to the applicant, or for reasons related solely to economic hardship.

11. Variances. When a property owner can show that a strict application of the terms of this Section 9 relating to architectural or site standards will impose upon him unusual and practical difficulties or particular hardship, including instances where an applicant has previously built in strict conformance with approved architectural and site standards plans and such approval was erroneously granted by the City Manager or his designee, a variance from the strict application of this section may be granted by the Board of Adjustment; provided that:

- a. The variance requested is in harmony with the general purpose and intent of this section;
- b. The Board of Adjustment is satisfied that a granting of such variance will not merely serve as a convenience to the applicant, but will alleviate a demonstrable and unusual hardship or difficulty; and
- c. The Board of Adjustment is satisfied that there will be no adverse impact on surrounding property.

SECTION 4. Cumulative Repealer

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated shall continue to be governed by the provisions of such Ordinance and for that purpose the Ordinance shall remain in full force and effect.

SECTION 5. Savings

All rights and remedies of the City of Farmersville are expressly saved as to any and all violations of the provisions of any Ordinances 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 6. Severability

It is hereby declared to be the intention of the City Council of the City of Farmersville that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by valid judgment or final decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance, since the same would have been enacted by the City Council without incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 7. Governmental Immunity

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Farmersville in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

SECTION 8. Injunctions

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Farmersville in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Farmersville.

SECTION 9. Engrossment and Enrollment

The City Secretary of the City of Farmersville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date clause in the minutes of the City Council of the City of Farmersville and by filing this Ordinance in the Ordinance records of the City.

SECTION 10. Penalty

Any person, firm or corporation violating any of the provisions or terms of this Ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Farmersville, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.

SECTION 11. Effective Date

This Ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

PASSED on first reading on the 9th day of August, 2011, and second reading on the 23rd day of August, 2011 at properly scheduled meetings of the City Council of the City of Farmersville, Texas, there being a quorum present, and approved by the Mayor on the date set out below.

APPROVED THIS ____ DAY OF _____, 20____.

APPROVED:

BY: _____
Joseph E. Helmberger, P.E., Mayor

ATTEST:

Eddie Sims, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Alan D. Lathrom, City Attorney