

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
JULY 8, 2002**

Mayor Garland S. Novosad declared a Regular Meeting duly open for the transaction of business at 7:02 p.m. Councilmember Donald Muller led the opening devotion and then Mayor Garland S. Novosad led the pledge of allegiance.

Councilmembers present were: Mayor Garland S. Novosad, Councilmembers Darryl Darnell, Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Bryce D. Kocian.

Councilmember absent was: V. L. Wiley, Jr.

Staff members present were: City Manager, Andres Garza, Jr., Finance Director Joyce Vasut, Assistant to City Manager Jackie Wheeler, Police Chief Tim Guin, Public Works Director Phillip Bush, Building Official Ronnie Bollom, EMS Director John Kowalik, Facilities Maintenance Director Bob Baker, Community Services Director Jo Knezek, Fire Chief David Copeland, and City Attorney Paul Webb.

Visitors present were: Ron Sanders Wharton Journal-Spectator, Paul Daly, KULP Radio, David Schroeder with WEDCo, Lewis Fortenberry, Kristi Kocian, Brooke Hlavinka, Anthony Rachunek, Karen Novosad, Lane Johnston, A. J. Rath, Billie Jones Chamber of Commerce, Carlos P. Cotton, Lynda Nichols, Reb Burgert, Glenn Erdelt, Betty Mueller, Ray Roberson, Garland Mann, Susan Freese, Anne Montalvo, R.C. Harrison, Jr., R. L. Abbott, Raymond Fisher, Josh O' Connor, Eric Johnson, Willie Wilkes, Candyce Burnes, Beverly Baker, Jim Butler, and I. O. Coleman, Jr.

The second item discussed on the agenda was public comments. There were no public comments. No action was taken.

The third item discussed on the agenda was Wharton Moment. Councilmember Ken Freese stated he requested the item for Wharton Moment be placed on City Council agendas during the time that former Mayor Joel D. Williams held office to epitomize the moment that an event occurred in the City. He stated that the Wharton Freedom Festival was one of the biggest showcases for the City and that the economic impact could not be measured. He said that the 2002 Freedom Festival would have brought many citizens and tourists had the weather cooperated and that the planning for the event took year around planning. Councilmember Freese publicly thanked the Freedom Festival Committee Members who were already planning

the 2003 event. He said that it took a lot of cooperation, dedication, and hard work. Mayor Garland S. Novosad thanked the Freedom Festival Committee Members and stated that the City Council applauds them for their efforts.

The fourth item discussed on the agenda was to review and consider reading of the minutes from the regular meetings held June 10, 2002 and June 24, 2002. After some discussion, Councilmember Donald Muller made a motion to approve the minutes as amended. Councilmember Ken Freese seconded the motion. All voted in favor.

The fifth item on the agenda was to review and consider the proposed Local Committee on People with Disabilities. City Manager Andres Garza, Jr. presented the City Council with information regarding the establishment of a Local Committee on People with Disabilities. He said that the City had established a Mayor's Committee on People with Disabilities under the Governors Committee in the late 1980's to early 1990's. He said that the City Staff had researched information on establishing such a committee from the cities of Austin, College Station, and Bryan, which was also included in their packets. City Manager Garza said that a resolution could be adopted that would set the number of committee members and establish the committee. Mayor Garland S. Novosad stated that Mr. Willie Wilkes had previously chaired the prior committee along with Mr. Skip Holman and recommended that Mr. Wilkes chair the new committee. Mr. Wilkes addressed the City Council and stated that he would be willing to participate. City Manager Andres Garza, Jr. stated that the committee would need to be formally created. He also said that the City Staff could assist with a self-evaluation of all City buildings. After some discussion, no action was taken.

The sixth item discussed on the agenda was to review and consider events and organizations in the City of Wharton:

A. City of Wharton's relationship with the Freedom Festival and other organizations.

Mayor Garland S. Novosad requested Finance Director to explain the finances involved with the Freedom Festival and other organizations. Finance Director Joyce Vasut addressed the City Council and stated that occasionally the funds for different events and organizations simply pass through the City. She said that there was a separate general ledger account that was set up and all deposits were recorded in that account. She said event organizers would then contact the City and request the amount in the account. Ms. Vasut stated that the City had no control over where funds in the events general ledger accounts were spent. She said that the Freedom Festival used the funds on what was needed. Ms. Vasut stated that this same procedure was used for the Wharton Little League. She further stated that the procedure was explained to the City's auditors who indicted that they did not have a problem with how the City accounted for the funds. Ms. Vasut said that the City contributed \$1,000.00 for sponsorship for the Freedom Festival and \$1,200.00 for security. She said that the Freedom Festival organizers contracted with City Police Officers who were paid directly by the Freedom Festival. City Manager Andres Garza, Jr. stated that this was the third year the City assisted with the Freedom Festival through donations as well as the use of Riverfront Park, assistance through the Facilities Maintenance Department, Public Works Departments, and other City Departments. Councilmember Domingo Montalvo, Jr.

stated that the Freedom Festival would not have happened without the sponsorship of the City, Chamber of Commerce, and through large contributions made by citizens and businesses.

Councilmember Darryl Darnell stated that he had concerns regarding the accounting procedures for the money raised for the Freedom Festival. He said the Freedom Festival had its own bank account and did not see the need to run the money through the City. He further stated that a written agreement was needed to ensure how the City's donation was spent. Councilmember Domingo Montalvo, Jr. stated that the money donated to the Freedom Festival was spent legally and that if questions were raised they should be brought to a member of the Freedom Festival Committee. After some discussion, Councilmember Don Mueller made a motion that any organization's request for funds must be brought to the Finance Committee prior to City Council action. Councilmember Darryl Darnell seconded the motion. All voted in favor.

B. Insurance Liability requirements for events held on City Property. No action was taken.

The seventh item discussed on the agenda was to review and consider preliminary / final replats of Lots 4 & 5, Kelving Way Estates. City Manager Andres Garza, Jr. stated that Mr. Raymond Harrison and Attorney Larry Wadler had requested the Planning Commission and City Council to consider replatting Lots 4 & 5, Kelving Way Estates. He said they were requesting approval to increase the size of Lot 4 by twelve feet thus decreasing Lot 5 to eighty feet. Building Official Ronnie Bollom stated that the Planning Commission considered the request during the Planning Commission meeting held earlier that day. He said that the Planning Commission voted to recommend City Council approval to replat the properties. After some discussion, Councilmember Don Mueller made a motion to approve the Planning Commission's decision to re-plat Lots 4 & 5, Kelving Way Estates. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The eighth item discussed on the agenda was to review and consider the powers and duties of the Wharton Regional Airport Board as authorized by the City Code of Ordinances in operation of the City of Wharton Airport. Mayor Garland Novosad stated that Section 6-40 of the City's Code of Ordinances gave the Airport Board full authority to act with full power and authority and that the City Council may be dictating to the Airport Board more than they should. He stated that the City Council was not as familiar with Federal Aviation Administration's rules as pilots were. He said that he believed the City Council was tending to direct the Airport Board Members in matters they should not. City Councilmember Domingo Montalvo, Jr. stated that in the past there was a tremendous conflict of interest and the City Council was there to provide a balance. He said that people at the airport were using the hangars for storage of items other than aircraft. He said the airport should be used for the whole community. He further stated there was a need to be fair and equitable and the City Council was there to assist the Wharton Regional Airport Board and not just one segment. Councilmember Darryl Darnell asked if any of the attending Airport Board Members had any comments. Wharton Regional Airport Board Member Garland Mann addressed the City Council and stated that he thought he saw a shift in the way people view the airport and he thought the City had a viable way to help the community. He said that

due to the shift in the City Council, instead of being a viable part of the infrastructure, he said the airport was being supported by the thirty hangar tenants. He also said the Airport Board Members looked to the City Council for guidance. After some discussion, no action was taken.

The ninth item discussed on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 82 Traffic, Article IV. Parking, Section 82-132 No Parking Zones – West Milam Street and Nelson Lane – All Times: Providing that a violation of the ordinance or any part of the Code as adopted hereby shall constitute a penalty upon conviction of a fine; Providing for Separability; and setting an effective date. City Manager Andres Garza, Jr. presented the City Council with the letter dated June 11, 2002 from Ms. Kim Person with Schlumberger requesting the West side of Nelson Lane be designated a no parking zone at its intersection with Highway 102. He also presented the memorandum dated July 5, 2002 from Police Chief Tim Guin recommending the request be granted. Councilmember Don Mueller asked if only one side of Nelson Lane would be designated as no parking. City Manager Garza stated that only one side would be designated as no parking and that he recommended approval. After some discussion, Councilmember Don Mueller made a motion to approve the City of Wharton Resolution No. 2002-13, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2002-13**

AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 82 TRAFFIC, ARTICLE IV. PARKING, SECTION 82-132 NO PARKING ZONES – ALL TIMES; PROVIDING THAT A VIOLATION OF THE ORDINANCE OR ANY PART OF THE CODE AS ADOPTED HEREBY SHALL CONSTITUTE A PENALTY UPON CONVICTION OF A FINE; PROVIDING FOR SEPARABILITY; AND SETTING AN EFFECTIVE DATE.

BE IT ORDAINED by the City Council of the City of Wharton, Texas:

Chapter 82 Traffic, Article IV. Parking is amended to read as follows:

Sec. 82-132. No Parking Zones – All Times.

The following no parking zones, in addition to those established by authority of the council and not in conflict with this section, are established in the city:

North Abell Street, both sides, from its intersection with Ahldag Avenue to its intersection with East Belle Avenue.

West Alabama Street, from a point of its intersection with North Polk Street, in a westerly direction to North Richmond Road.

Bailey Street, north side, from a point 216 feet west of its intersection with Outlar Street for a distance of 449 feet in a westerly direction; such no parking zone extending from a point 30 feet east of the bus entrance to a point 30 feet west of the bus exit.

East Belle Avenue, south side, from its intersection with North Abell Street to its intersection with Alabama Road.

East Belle Avenue, south side of 100 block east, beginning at a point 140 feet from its intersection with North Fulton Street and continuing in an easterly direction for 56 feet.

East Boling Highway, FM 1302, both sides, in the 900 block from Pioneer Avenue and extending east to Alabama Road.

West Boling Road, FM Road 1301, north side, at a point beginning 142.75 feet west of its intersection with North Fulton Street in a westerly direction a distance of 78 feet.

Briar Lane, beginning at its intersection with Price Drive and continuing in a westerly direction 20 feet on the side of the street across from the Holy Family Catholic Church.

Briar Lane, northeast side, at its intersection with Hodges Lane to include the width of Hodges Lane at such intersection plus a distance of 20 feet on each side of the intersection.

Burleson Street, north side, from its intersection with North Richmond Road to its intersection with Resident Street (except the block on Burleson Street between Houston Street and Fulton Street where parking on both sides shall be permitted).

FM 102, north side, for a distance of 120 feet on both the east and west sides of its intersection with Regional Medical Drive.

FM 102, south side, for a distance of 120 feet on both the east and west sides of its intersection with Mattie Street.

Fulton Street, on the east side of the 200 block of Fulton Street on the north line of the New Hope Baptist Church property to the south line of the Rob Hamilton property shall be a no parking area seven days a week and 24 hours per day, except for duly authorized personnel of the city fire department and city ambulance service as they may be permitted under the rules and regulations of these particular departments.

Mattie Street, with Hendon Street.

West Milam Street, north side, from the 900 block to the 1100 block.

West Milam Street, both sides beginning at the intersection of Outlar Street and continuing to the culdesac or pedestrian entrance of Harris Park.

Nelson Lane, the west side of Nelson Lane beginning at the intersection of FM 102 and extending a distance of 265 feet south.

Mockingbird Street, both sides, from its intersection with Pecan Street to its intersection with Rusk Street.

Price Drive, beginning at its intersection with Briar Lane and continuing in a northerly direction 20 feet on the side of the street across from the Holy Family Catholic Church.

Regional Medical Drive from its intersection at FM 102 to its intersection with the east frontage road of U.S. Highway 59.

Resident Street, west side, from its intersection with Burleson Street to its intersection with Milam Street.

Richmond Road, both sides, from the south city limits at its intersection with the Colorado River and continuing in a northerly direction to the intersection of North Richmond Road with FM 1301.

North Richmond Road, within 36 feet of either side of the centerline of the street beginning at a point 400 feet north of its intersection with FM 1301 and continuing in a northerly direction to the city limit line.

Rusk Street, east side, from a point of its intersection with Mockingbird Lane in a southerly direction to a point perpendicular from the intersection of Kelly Street.

North Rusk Street, in the 100 block, from East Milam Street and extending north to East Caney Street.

North Sheppard Street, east side, to its intersection at West Caney Street.

South Sheppard Street, west side, to its intersection at Burleson Street.

Speed Street, west side, from a point at its intersection with Center Street in a southerly direction to its intersection with Alabama Street.

West Stadium Road, from its intersection with FM 1301 to its intersection with Barfield Road.
State Highway 1301, both sides, from its intersection with Pioneer Street to its intersection with Alabama Road.

Sunny Lane, north side, from its intersection with Alabama Road in a southerly direction a distance of 130 feet.

Sunny Lane, both sides, from its intersection with Alabama Road to its intersection with Oriole Lane.

Penalty and Fines for Violations

Any person who shall violate any parking provision shall be fined not more than \$30.00 for each violation.

Separability

If any court of competent jurisdiction rules that any section, subsection, sentence, clause, phrase, or portion of this ordinance is invalid or unconstitutional, any such portion shall be deemed a separate, distinct, and independent provision, and any such ruling shall not affect the validity of the remaining portions hereof.

Effective Date

This ordinance shall be effective on July 19, 2002 at 12:01 a.m.

Passed and Approved by the City Council of the City of Wharton, Texas this 8th day of July 2002.

CITY OF WHARTON

By: _____
GARLAND S. NOVOSAD
Mayor

ATTEST

JOYCE VASUT
City Secretary

APPROVED AS TO FORM

PAUL WEBB
City Attorney

Published in the Wharton Journal Spectator Saturday, July 13, 2002 and Saturday, July 20, 2002.

Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

The eleventh item discussed on the agenda was to review and consider the request by Mr. Anthony Rachunek, P.E. for a complete copy of the City of Wharton's mapping data. City Manager Andres Garza, Jr. presented the City Council with a copy of the letter dated May 31, 2002 from Mr. Anthony Rachunek, P.E. requesting a copy of the City's current mapping data that was developed through cooperation of LCRA. City Manager Garza also presented a copy of his letter dated June 14, 2002 to City Attorney Paul Webb advising him of Mr.

Rachunek's request. City Manager Garza stated that City Attorney Paul Webb advised him that Mr. Rachunek would be responsible for all reproduction costs and that a disclaimer for the City of Wharton should be included on all information forwarded to Mr. Rachunek. Councilmember Darryl Darnell asked why it took so long to grant the request. City Manager Garza stated that all information needed to be researched and that it was then forwarded to City Attorney Paul Webb for his opinion. City Manager Garza further stated that he brought the request to the City Council for their consideration and approval. After some discussion, no action was taken.

The twelfth item discussed on the agenda was to review and consider the request by Mr. Larry Sitka, Sign Contractor, for a variance from the standard setback requirements to place a permitted sign on North Richmond Road. City Manager Andres Garza, Jr. presented a copy of Mr. Larry Sitka's request to place a portable sign for sixty (60) days with a zero (0) lot line setback off of North Richmond Road, due to the recent construction of North Richmond Road. He said that the Planning Commission did not hear the request from Mr. Sitka due to the variance request being a zero (0) lot line set back. Building Official Ronnie Bollom stated the portable sign would be placed in front of Sklar's Frozen Food Mart to help advertise the business. He said that Mr. Sitka would be donating the sign for sixty (60) days to help Ms. Sklar. After some discussion, Councilmember Ken Freese made a motion to grant the request by Mr. Larry Sitka to place a sign for sixty (60) days with a zero (0) lot line setback off of North Richmond Road in accordance with Police Chief Tim Guin's recommendation on the placement of the sign. Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

The thirteenth item discussed on the agenda was to review and consider the recommendation by the Consultant Selection Committee:

- A. Procurement of Engineering Services for the City of Wharton Public Works Floodproofing and Internal Drainage Modification Projects.
- B. Request to begin negotiations with an engineering firm(s) for professional engineering services for the City of Wharton Public Works Floodproofing and Internal Drainage Modification Projects.

City Manager Andres Garza, Jr. stated the Consultant Selection Committee met Tuesday, July 2, 2002 to hear presentations from Freese & Nichols, Jones & Carter, Inc. and Rachunek & Associates, Inc. He said the Consultant Selection Committee then ranked each firm using guidelines adopted by the City Council and the ranking order was as follows:

Project 1 – Wastewater Treatment Plant No. 1

- 1. Jones & Carter, Inc.
- 2. Freese & Nichols
- 3. Rachunek & Associates

Project 2 – Wastewater Treatment Plant No. 2

- 1. Jones & Carter, Inc.
- 2. Freese & Nichols

3. Rachunek & Associates

Project 3 – Milam Pump Station, Alabama Stop Log, Hwy. 102 Flap Gate, Could, Alabama and Vahala Water Supply

1. Jones & Carter, Inc.
2. Freese & Nichols
3. Rachunek & Associates

City Manager Garza told the City Council that the Consultant Selection Committee was requesting City Council authorization to begin the negotiation process with Jones & Carter, Inc., the highest ranking firm. He said that if negotiations for a contract fail with Jones & Carter then the negotiations would cease; and the process would begin with the next highest ranked firm. After some discussion, Councilmember Don Mueller made a motion to begin negotiations with Jones & Carter, Inc. for professional engineering services for the City of Wharton Public Works Floodproofing and Internal Drainage Modification Projects. Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

The fourteenth item discussed on the agenda was to review and consider the City of Wharton Hinze's Waterline Project:

- A. Request for the City Staff to continue with Phase II of the Hinze's Waterline Project along Halford Road.
- B. Procurement of Engineering Services for Phase II of the Hinze's Waterline Project – Amendment to existing contract with Rachunek & Associates.

City Manager Andres Garza, Jr. stated that the City Council had authorized the City's Public Works Department to construct the twelve inch waterline in-house. He said the original estimated cost of \$435,000 was used to establish a contracted price to Halford Road, however, the Department had been able to realize some savings that would enable the project to continue. City Manager Garza said the City Staff was requesting authorization to proceed with the project in-house to Highway 60 only. He further stated that he had discussed Phase II of the Hinze's Water line project with Mr. Anthony Rachunek, P.E. and engaged in negotiations with him for the Phase II engineering services. City Manager Garza said that Mr. Rachunek submitted his proposal in the lump sum amount of \$6,500.00 and that he recommended approval.

City Manager Garza further stated that once Phase II of the project nears completion, Phase III would be brought to the City Council for authorization. He also said that the City had been approached by residents along Wilke Road south of Halford requesting the extension of the line approximately 2000 feet. He said that he felt that if customers could be placed on the line, especially in that location, it would help the system circulate the water in the line. He said that if not enough water was circulating in the system, a more frequent flushing schedule must be implemented. City Manager Garza said the City Staff was preparing a cost estimate for the line extension along Wilke Road and that once cost estimates were determined, he would meet with residents to see if the extension was possible.

Councilmember Don Mueller asked where the plans and specifications were for Phase I of the Hinze's Waterline Project. Mr. Anthony Rachunek stated that the only thing that was needed was the plans for Phase II of the project. After some discussion, Don Mueller made a motion for the City Staff to proceed with Phase II of the Hinze's Waterline Project and to engage the professional engineering services of Rachunek & Associates, Inc. for the lump sum amount of \$6,500.00. Councilmember Ken Freese seconded the motion. All voted in favor.

The fifteenth item discussed on the agenda was to review and consider the resolution authorizing the exemption process for primarily charitable organizations provided by House Bill 1689. City Manager Andres Garza, Jr. presented a copy of the memorandum dated June 11, 2002 from Wharton County Appraisal District Chief Appraiser Larry Holub regarding House Bill 1689 effective September 1, 2001. He said House Bill 1689 authorizes a local option property tax exemption for organizations engaged primarily in charitable activities. After some discussion, Councilmember Bryce D. Kocian made a motion to approve the City of Wharton Resolution No. 2002-34, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2002-34**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHARTON,
TEXAS, AUTHORIZING THE EXEMPTION PROCESS FOR PRIMARILY
CHARITABLE ORGANIZATIONS PROVIDED BY HOUSE BILL 1689.**

WHEREAS, the Texas Legislature adopted House Bill 1689, effective September 1, 2001, to authorize a local option property tax exemption for organizations engaged primarily in charitable activities, and

WHEREAS, the City Council of the City of Wharton hereby authorizes the Exemption Process for Primarily Charitable Organizations provided by House Bill 1689, and

WHEREAS, an organization is required to apply for a "determination letter" from the Comptroller's office, which the Comptroller has 90 days to determine if the organization is eligible.

WHEREAS, the Comptroller will send the organization a letter stating "the organization is engaged primarily in performing functions, and is eligible for an exemption" if the organization meets all requirements, and

WHEREAS, the organization files an exemption application with the chief appraiser.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. That the City of Wharton City Council hereby authorizes the Exemption Process for Primarily Charitable Organizations provided by House Bill 1689.

Section II. That the organizations must follow the procedures in order to receive the exemption.

Passed, Approved, and Adopted this 8th day of July 2002.

CITY OF WHARTON, TEXAS

By: _____
GARLAND S. NOVOSAD
Mayor

ATTEST:

JOYCE VASUT
City Secretary

Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The sixteenth item discussed on the agenda was to review and consider authorizing City Manager Andres Garza, Jr. to execute the U.S. Department of Agriculture Production Flexibility Contract in order to allow Mr. Obie Williams to be eligible for the farm program. City Manager Andres Garza, Jr. presented copies of letters from Mr. Brian Zwahr with the Wharton County Farm Service Agency – United State Department of Agriculture requesting the City of Wharton to execute a contract in order to allow Mr. Obie Williams to be eligible for the farm program. City Manager Garza said Mr. Zwahr had informed him that the acreage which was bought by the Wharton Economic Development Corporation and given to the City along Halford Road was a single tract under the production flexibility contract the previous year and was not divided after it was placed in the City's name. He said that the program was for the whole tract. After some discussion, Councilmember Don Mueller made a motion to authorize City Manager Andres Garza, Jr. to execute the U.S. Department of Agriculture Production Flexibility Contract in order to allow Mr. Obie Williams to be eligible for the farm program for balance of the property that he owns. Councilmember Ken Freese seconded the motion. All voted in favor.

The seventeenth item discussed on the agenda was Executive Session: City Council may adjourn into an Executive Session in accordance with Section 551.071 of the Government Code, Revised Civil Statutes of Texas. Final action, decision or vote, if any with regard to any matter considered in Executive Session shall be made in Open Meeting.

A. Discussion: Pending Litigation with Kent Hunt. City Attorney Paul Webb was unavailable during the meeting. The Executive Session was deferred to the next regular City Council meeting to be held July 22, 2002. No action was taken.

The eighteenth item discussed on the agenda was Return to Open Session: Action on items discussed in Executive Session.

A. Review and Consider: Pending Litigation with Kent Hunt. No action was taken.

The nineteenth item discussed on the agenda was roll call and excused absences. Councilmember Ken Freese made a motion to excuse Councilmember V. L. Wiley, Jr. from the meeting. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The twentieth item on the agenda was adjournment. Councilmember Don Mueller made a motion to adjourn the meeting. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The meeting was adjourned at 8:21 p.m.

CITY OF WHARTON, TEXAS

By:

GARLAND S. NOVOSAD
Mayor

ATTEST:

JOYCE VASUT
City Secretary