

**MINUTES
OF
CITY OF WHARTON
SPECIAL CITY COUNCIL MEETING
SEPTEMBER 15, 2003**

Mayor Bryce D. Kocian declared a Special Meeting duly open for the transaction of business at 7:00 P.M. Councilmember Don Mueller led the opening devotion and then Mayor Bryce D. Kocian led the pledge of allegiance.

Councilmembers present were: Mayor Bryce D. Kocian , Councilmembers V. L. Wiley, Jr., Darryl Darnell, Ken Freese, Don Mueller, Domingo Montalvo, Jr. and Ray Linseisen.

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, Deputy City Secretary Lisa Stavena, Assistant to City Manager Jackie Jansky, and Fire Chief David Copeland.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, Garland Novosad, I.O. Coleman, Jr., Johnnie Roberts, Lewis Fortenberry, Robert Fortenberry, Chester Houston, Naomi Kemp, Maurice Gage, Lynda Nichols, Loretta Craft, Bobbie Patterson, Sil Kalmus, Mattie Peterson, Magnolia Heard, Addie Plummer, Saim Eriskin, Sarah Butler, Carol Miller, Tommie Turner, Earlean Phillips, Barbara Ray, Eunice Jackson, Carolyn Haywood, Deloris Ailmore, Earnestine Brown, Castella Hohn, Ellis Hurd, E. L. Brinkley, Jr., Pat Joyce, Ed Joyce, Leigh Freudensprung, Mildred Scarlett, Thelma Turner, Johnnie Woods, Betty Well, McKinley Well, Jr., James Curtis, and Anopawuia Spinks.

The third item discussed on the agenda was review and consider an ordinance calling for a Special Recall Election for a City Officer on a Petition of Voters, Recall Petition No. 2003-01; Providing for the Date, Time, and Place of the Election, the Appointment of Election Officers and Clerks, Early Voting, Notice of the Election, and Making Election Returns. City Attorney Paul Webb addressed the City Council and stated that he reviewed Chapter 277 of the Election Code, statutes, and case laws. He stated that he reviewed a February 2002 case from the Court of Appeals in San Antonio, which stated that as long as a governing body was able to verify the eligibility of the voters without all of the information as required by Chapter 277 of the Election Code; the purpose of the verification requirement was satisfied. The Supreme Court in Texas had ruled that the decisions include that verification purposes were served; petition signatures were valid even if they omit certain information required by the Election Code. The rationale does not invalidate a petitioner's signature if the signer provides enough information to allow verification of the signers voting

eligibility for a particular election. He stated in the case from San Antonio, the recall petition contained three things: signature, address, and voters registration number, which was enough information to allow verification of the signers' voter eligibility. The court stated that the petition was not invalid. He stated that the City of Wharton's petition had the same information as the San Antonio petition. Mr. Webb stated that he had no concern about the petition based upon the cases. He stated that the issue of whether the petition was valid or not was not an issue for City Council to discuss or look into. He stated that the City Council has other obligations, which were listed in the City Charter. He stated that once the petition has been certified by the city clerk, the City Council shall call an election. Mr. Webb stated that it was his understanding that there was a letter prepared by the five people who were responsible for the petition.

Councilmember Ken Freese read the letter dated September 13, 2003 presented by Merrell Barfield, Jr., Clay Richardson, Lou Ann Toney, Jeanene Merka, and Patsy Ovalle, and requesting to withdraw the petition. The letter stated the following:

"We the undersigned sealed that the citizens of Wharton, Council District #2 has spoken. A number close to 100, said enough is enough by signing this petition. If we had kept gathering signatures for the allotted thirty days, many more citizens would have signed. Mr. Darnell through his actions and statements continues to be an embarrassment to the City of Wharton, and its citizens. Yet, we do not wish to cause the City of Wharton the added cost and negative publicity required to pursue the recall. With the City Election just months away, we feel that the voters of District #2 would have sent the message to Mr. Darnell. Therefore, it is our request that the petition to recall Mr. Darnell be withdrawn at this time."

Councilmember Darryl Darnell stated that the Court of Appeals ruling on certain case law only have authority within their district. He stated that Wharton was in the Houston Court of Appeals District. He then stated that he contacted the Secretary of State's Office, and spoke to Ms. Elizabeth Hanshaw Wind, Legal Division Director, which reviewed and stated that the Recall Petition did not meet the requirements of Chapter 277 of the Election Code, and should not be certified and accepted by the City Secretary.

City Attorney Paul Webb stated that the City Council had no authority to decide whether the petition was valid or not. Mr. Webb stated that the Charter states, the City Council shall call an election.

Mayor Bryce D. Kocian stated that a letter was presented from the five people who were responsible for the petition. After some discussion, Councilmember Ken Freese made a motion to honor the request of the five persons who were responsible for the recall petition; to take no action on the recall petition; nor to set an election date. Councilmember Don Mueller seconded the motion. All voted in favor.

The fourth item discussed on the agenda was Public Comments. Ms. Carol Miller addressed the City Council regarding the recall. She stated she knows that this country was still based on democracy. She stated that she had no respect for any of the Councilmembers. She stated that no one acts in a professional way, and this recall was absolutely crazy. She stated that Councilmember Darryl Darnell helped the community. She stated that additional police officers were needed, but the City could not afford them; however, the City Manager received an

increase in pay. She asked whether someone was trying to hide something. She stated that she had seen a lot of corrupt things, and she hoped that was not the case here.

Mr. Chester Houston addressed the City Council regarding the recall and stated that he was dumbfounded by the recall. He stated that the City Councilmembers were making a decision for Councilmember Darryl Darnell to be condemned. He stated that no one was perfect, and such action may cause a domino effect.

Mr. Johnnie Roberts addressed the City Council regarding the recall and stated that he was a tax payer in the City of Wharton. He stated that the recall for the City of Wharton was a big negative for future growth, and present growth. He said who would want to locate in a city where government was only fair to a part of the city and not all of it. He stated that Councilmember Darryl Darnell was trying to do his job and be fair for all. He stated that he felt that the recall does not build a city, but kills a city.

Ms. Barbara Ray addressed the City Council regarding the recall. She stated that she was a taxpayer residing at 1612 W. Milam Street. She stated that she does not get treated right, and that she will fight for the rights for blacks, while the City Council fights for white. She stated that she was tired of being mistreated. She stated that if the Councilmembers did not want to be fair, then they needed to get off the City Council.

Mr. Garland Novosad addressed the City Council and stated that he withdrew request to speak and expressed his appreciation that the City Council took no action on the petition and wished it never happened.

Mr. I.O. Coleman, Jr. addressed the City Council regarding the recall and asked how the City could fund a recall when the budget had to be cut. He stated that the money could be used to do more positive things for the community. He stated that last week he had asked about a map that had the Councilmembers for District #1 and #2 incorrect. He stated that he was advised that it was a mistake, but not whether it was intentional or not. He stated that he also had the notice for the City Council meeting, which stated, that persons with disabilities who plan to attend the meeting and who may need auxiliary aids or services have five work days to notify the City. He stated that the meeting was posted on September 12, 2003, which would not allow for five days of notice.

Ms. Anopawuia Spinks addressed the City Council and stated that she was speaking to the City Council on behalf of rights. She stated that sometimes in politics, people lose focus of what was right and wrong. She stated that some were in office for greed, to try to take other people's property, which her property was taken. She stated that she has rights. She stated that she found no fault in Councilmember Darryl Darnell. She asked the City Council to stand up and be men, not white, nor black, nor brown; but men.

The fifth item on the agenda was adjournment. Councilmember Don Mueller made the motion to adjourn. Councilmember Ray Linseisen seconded the motion. All voted in favor.

City of Wharton
Special City Council Meeting
September 15, 2003

The meeting adjourned at 7:23 p.m.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

JOYCE VASUT
City Secretary