

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
OCTOBER 27, 2003**

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:00 p.m. Brother Stolle 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, and Ray Linseisen.

Councilmember absent was: Domingo Montalvo, Jr.

Staff members present were: City Manager, Andres Garza, Jr., Finance Director Joyce Vasut, Deputy City Secretary Lisa Stavena, Community Services Director Jo Knezek, Building Official Ronnie Bollom, EMS Director John Kowalik, Fire Chief David Copeland, and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp Wharton Journal-Spectator, David Schroeder with WEDCo, Carlos Cotton, Larry Sitka, Lewis Fortenberry, I.O. Coleman, Jr., Johnnie Lee Roberts, Billie Jones, Ellis Hurd, Carol Miller, Andrew Garza, III, Lewis Edwards, Barbara Ray, Linda Lathon, Leo Wisniesky, Saim Eriskin, Calvin Green, Jim Beason, Becky Samuelson, Jim Cody, Jo Ann Padia, Ramon Padia, Earlean Phillips, Robert Phillips, Mike Feyen, Jim Beason, Eunice Jackson and Brother Stolle.

The third item on the agenda was Public Comments. Mr. Saim Erikson addressed the City Council and stated that the same individual receiving a pay increase should not approve the increase. He stated that what was done in the past could happen again. He also asked if the City of Wharton had a Master Plan.

Ms. Carol Miller addressed the City Council and stated that at the City Council meeting of October 13, 2003, she was informed that the Freedom Festival did not use City of Wharton letterhead; however, it was used. She stated that it was unethical and illegal. She stated that Councilmember Domingo Montalvo, Jr. lied under oath and the citizens expected honesty. She stated that the City Councilmembers could be voted in or voted out; however, the City Manager and City Attorney could not be voted by the citizens. She then publicly asked the City Manager and Councilmember Domingo Montalvo, Jr. to resign their positions.

Mr. Lewis Edwards addressed the City Council and stated that his residence on Mahan received flooding water on October 9, 2003. He requested the City of Wharton build a big drainage ditch, like Wal-Mart had done, for the water to be directed into the Colorado River. He stated that the manhole could not take that large amount of water. He stated that when the water rises, water backed up into his shower. Councilmember Darryl Darnell stated that a backflow preventor could be installed on the sewer line at his residence.

Mr. Andrew Garza, III addressed the City Council and stated that he was with the Wharton Youth Advisory Commission and publicly thanked City Attorney Paul Webb for donating \$500

in order for several members to attend the Third Annual Youth Advisory Summit in Killeen, Texas. He then presented a certificate to Mr. Paul Webb for his generous donation. Reverend Eddie Brinkley addressed the City Council and questioned the elevation project at the westend of the City. He stated that the City was awarded a grant from the 1998 flood; however, no update had been given and requested a memorandum from City Manager Andres Garza, Jr. on the timeline of implementation.

Ms. Barbara Ray addressed the City Council and stated that she resides on W. Milam, which her home was to be raised from the 1998 flood. She stated that that she lost everything including her new furniture. She stated that she was still waiting for her house to be raised. No action was taken.

The fourth item on the agenda was the Wharton Moment. Councilmember V. L. Wiley, Jr. publicly welcomed Reverend Amos Jerwayne Kemper, Sr. of St. Stephens Missionary Baptist Church to the community and looked forward to working with him. No action was taken.

The fifth item on the agenda was to review and consider the City of Wharton Financial Report for the month of September 2003. Finance Director Joyce Vasut presented a financial report for the month of September 2003 to the City Council and stated that the auditors would be reviewing the year end financials. The total ad valorem taxes collected were \$1,724,846. She said the sales tax receipts for the month of August was \$110,344 with \$73,563 going to the City and \$36,781 going to WEDCo. The TexPool balance for September was \$1,502,792.63 with an average monthly yield of 1.0609%. After some discussion, Councilmember Don Mueller made a motion to approve the financial report for the month of September 2003 as presented. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 82 Traffic, Article VI Parking, 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 Severability, and setting an effective date. City Manager Andres Garza, Jr. stated that on October 14, 2003, Councilmember Ken Freese and himself had met with Mr. Galen W. Privitt, Principal of C. W. Dawson Elementary School and discussed the possibility of the City of Wharton designating a portion of MLK Blvd. as an established drop-off and pick-up zone for the elementary school. He then presented a copy of the letter dated October 14, 2003 from Mr. Privitt formally requesting the drop-off / pick-up zone designation. On October 15, 2003, a copy of the letter was forwarded to Police Chief Tim Guin for his review. He stated that Chief Guin informed him that the State of Texas did not regulate the establishment of such zones and that a municipality may designate such zones as part of the ordinance. Mr. Garza then presented a copy of a map indicating the location of the proposed zone and a copy of a draft ordinance establishing the drop-off / pick-up zone. Mr. Garza stated that the 4<sup>th</sup> graders were picked up at the gymnasium, 5<sup>th</sup> graders were picked up at the office area, and the 6<sup>th</sup> graders were picked up at the 6<sup>th</sup> grade building. He stated that the problem was that the vehicles were parking along the street. Councilmember Ken Freese stated that Officer Steve Johnson had spoke with the parents regarding parking along the street, but their response was that there was no sign and they were not willing to move. Councilmember V. L. Wiley, Jr. stated that Dawson Elementary School was in District No. 1 and he was not notified and requested that he be notified when problems occurred in District No. 1. After some discussion, Councilmember Ken Freese made a motion to authorize City Manager Andres Garza, Jr., City Attorney Paul Webb, Police Chief Tim Guin, and Dawson Principal Galen Privitt to review and make any necessary

changes to the ordinance and present them at the next regular City Council meeting.  
Councilmember Don Mueller seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider an ordinance approving the 2003 Chamber of Commerce & Agriculture Holiday Parade Permit and authorizing the Police Department to redirect traffic. City Manager Andres Garza, Jr. presented a draft copy of the ordinance approving the 2003 Chamber of Commerce & Agriculture Holiday Parade Permit and authorizing the Police Department to redirect traffic and a map indicating the parade route. After some discussion, Councilmember Ray Linseisen made a motion to approve Ordinance No. 2003-11, which read as follows:

**CITY OF WHARTON  
ORDINANCE NO. 2003 - 11**

**AN ORDINANCE APPROVING THE 2003 CHAMBER OF COMMERCE & AGRICULTURE HOLIDAY PARADE PERMIT AND AUTHORIZING THE POLICE DEPARTMENT TO REDIRECT TRAFFIC.**

**WHEREAS,** the Wharton Chamber of Commerce and Agriculture has filed an application for a parade permit with the City of Wharton Police Department as required under the City of Wharton Code of Ordinances, Chapter 82, Article III, Sec. 82-91; and

**WHEREAS,** the requested parade route requires the City of Wharton to close State Highway 60 (Burlson Street and Milam Street) from its intersection with Alabama Road and Polk Street; and

**WHEREAS,** the closure of State Highway 60 will be for a time of less than four (4) hours; and

**WHEREAS,** the closure will require the detouring of all traffic according to the map (Attachment A) attached to this ordinance; and

**WHEREAS,** the routing of all traffic will include truck traffic to Alabama Road which is prohibited by ordinance; and

**WHEREAS,** the City Council wishes to suspend for the duration of the parade the enforcement of said ordinance of trucks traveling on Alabama Road; and

**WHEREAS,** if there are any other ordinances that would be violated because of the re-routing of all traffic their suspension is hereby authorized.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS,** that:

**Section I.** The parade permit for the Wharton Chamber of Commerce and Agriculture is hereby approved.

**Section II.** The parade route is hereby approved as detailed in the attached map (Attachment A) which is hereby made part of this ordinance.

**Section III.** The closure of all streets as indicated in said map identified in Section II are hereby authorized.

**Section IV.** The traffic detour plan as identified in Section III above is hereby approved.

**Section V.** The Chief of Police and City Staff are hereby authorized to make the necessary expenditures needed to ensure the safety of the public.

**Section VI.** This ordinance shall become effective on the 25<sup>th</sup> day of November 2003 and remain in effect until such time that the parade concludes.

**Passed, Approved and Adopted this 27<sup>th</sup> day of October 2003.**

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST**

\_\_\_\_\_  
**JOYCE VASUT**  
City Secretary

Councilmember Ken Freese seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider a request by Wharton County Junior College for City of Wharton assistance to reconstruct Horton Foote Road. City Manager Andres Garza, Jr. stated that Mr. Mike Feyen, WCJC Director of Facilities Maintenance requested the City's assistance in reconstructing Horton Foote Road. Public Works Director Phil Bush prepared a cost estimate of materials needed to assist in the reconstruction, which totaled \$4,596.00. The City's assistance would be in the form of labor and equipment, which could be done under the City's Street Improvement Program currently underway. He stated that after reviewing the estimate, Mr. Feyen submitted the letter formally requesting the City's assistance. He said that although the street was on Junior College property, the street had been used by the public to access Junior College Blvd. from Pioneer Street. He said WCJC was willing to reimburse the City for the cost of materials if the City supplied the labor and equipment. Mr. Garza then presented a copy of a map indicating the road location. He stated that the City Staff was recommending approval. Mr. Mike Feyen addressed the City Council and stated that WCJC was requesting the City to furnish the labor and equipment for reconstructing Horton Foote Road. After some discussion, Councilmember Ken Freese made a motion to approve the request by Wharton County Junior College for City of Wharton assistance to reconstruct Horton Foote Road. Councilmember Darryl Darnell seconded the motion. Councilmembers V. L. Wiley, Jr., Darryl Darnell, Ken Freese, Don Mueller, and Ray Linseisen voted for the motion. Mayor Bryce D. Kocian abstained. The motion carried.

The ninth item on the agenda was to review and consider the Wharton Economic Development Corporation Lodging Project incentive for development at U.S. Highway 59 and FM 102. City Manager Andres Garza, Jr. stated that the Wharton Economic Development Corporation Board of Directors had approved \$100,000 toward a Holiday Inn Express facility to be located at U.S. Highway 59 and FM 102. He stated that the expenditure was over \$50,000 and required City Council approval. WEDCo Executive Director David Schroeder addressed the City Council and stated that the Lodging Project would host 60 rooms for a Holiday Inn Express, costing \$3,500,000 and providing eleven jobs with a payroll of \$180,000 per year. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the Wharton Economic Development Corporation Lodging Project incentive for development at U.S. Highway 59 and FM 102 for the Holiday Inn Express Project in the amount of \$100,000.00 as recommended by the WEDCo Board. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider a request by Ms. Mary Hughes c/o Linda Lathon for an interior side yard set back and a front yard setback variance to construct a 16 x 19.2 feet carport at 904 West Burleson Street, Cline, Block 1, Lots 13 and 14. City Manager Andres Garza, Jr. presented a copy of the request by Ms. Mary Hughes c/o Linda Lathon for an interior side yard set back and a front yard setback variance to construct a 16 x 19.2 feet carport at 904 West Burleson Street, Cline, Block 1, Lots 13 and 14. Ms. Linda Lathon addressed the City Council and requested a variance for the construction of a carport. Building Official Ronnie Bollom informed the City Council that construction had started and that the fee for the permit would be doubled. Mayor Bryce D. Kocian asked if the adjacent lot was vacant. Mr. Bollom stated that the lot was vacant and the carport was built at a zero lot line. City Manager Andres Garza, Jr. asked if the water from the roof would drain on the adjacent property owner's lot. After some discussion, Councilmember Ken Freese made a motion to approve the request by Ms. Mary Hughes c/o Linda Lathon for an interior side yard set back and a front yard setback variance to construct a 16 x 19.2 feet carport with a gutter in order for the water to drain on the property at 904 West Burleson Street, Cline, Block 1, Lots 13 and 14. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider a request by Mr. Leo Wisniesky and wife for a side street setback variance for the placement of a 12 x 26 feet carport at 1224 Westgate Drive, Briargrove Sec. 1, Block 2, Lot 7. City Manager Andres Garza, Jr. presented a copy of the request by Mr. Leo Wisniesky and wife for a side street setback variance for the placement of a 12 x 26 feet carport at 1224 Westgate Drive, Briargrove Sec. 1, Block 2, Lot 7. Mr. Leo Wisniesky addressed the City Council and stated that he was requesting a variance for the construction of a carport. Building Official Ronnie Bollom informed the City Council that the carport would be utilized for a recreational motor home. He stated that a carport for a recreational motor home was also placed on the property across the street. After some discussion, Councilmember Darryl Darnell made a motion to approve the request by Mr. Leo Wisniesky and wife for a side street setback variance for the placement of a 12 x 26 feet carport at 1224 Westgate Drive, Briargrove Sec. 1, Block 2, Lot 7. Councilmember Don Mueller seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider a request by Ms. Olivia Gonzales for a Temporary Permit for Possession/Consumption of Alcoholic Beverages at City Parks. City Manager Andres Garza, Jr. presented a copy of the application submitted by Ms. Olivia Gonzales for Temporary Permit Possession/Consumption of Alcoholic Beverages in Certain Parks. He

then presented a copy of the memorandum dated October 16, 2003 from Police Chief Tim Guin indicating that the application appears to comply with the City of Wharton Ordinance No. 2002-22. After some discussion, City Manager Don Mueller made a motion to approve the request by Ms. Olivia Gonzales for a Temporary Permit for Possession/Consumption of Alcoholic Beverages at City Parks for the period of November 15, 2003 from 8:00 a.m. to 5:00 p.m. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The thirteenth item on the agenda was to review and consider a recommendation from the Planning Commission regarding the request by Domino's Pizza and Brite Lite Signs for a variance to place a freestanding commercial sign along East Boling Highway. City Manager Andres Garza, Jr. stated that the Planning Commission had met on Monday, October 27, 2003 to consider the request by Domino's Pizza and Brite Lite Signs for a variance to place a freestanding commercial sign along East Boling Highway. He then presented a copy of the Planning Commission recommendation. Mr. Garza also presented a copy of the memorandum dated October 23, 2003 from Building Official Ronnie Bollom regarding the request. Mr. Jim Beason addressed the City Council and stated that he was the Domino's Coordinator and requested a variance for placement of a sign along East Boling Highway. He stated that Brite Lite Signs would be the installer; however, Domino's Pizza would be the owner of the sign. Mr. Beason then stated that the placement of the signs show an increase in sales compared to the locations where signs were not installed. After some discussion, Councilmember Don Mueller made a motion to approve the request by Domino's Pizza and Brite Lite Signs for a variance to place a freestanding commercial sign along East Boling Highway. Councilmember Darryl Darnell seconded the motion. All voted in favor.

The fourteenth item on the agenda was to review and consider City Council authorization to submit a request to the Texas Department of Transportation for access to U.S. Highway 59 from County Road No. 467 for the Texas Capital Fund Jrs Texas Best Smokehouse Project. City Manager Andres Garza, Jr. presented a copy of the letter dated October 24, 2003 from Mr. Don Naiser, P.E. who was assisting Jrs Texas Best Smokehouse Project. He stated that the City of Wharton submitted an application on the company's behalf to the Texas Department of Agriculture – Texas Capital Fund for funding. The company was requesting the City to submit a request to the Texas Department of Transportation access for their business. Mr. Garza stated that the property was in the city limits. He stated that Carlos Cotton, P.E. with Jones & Carter, Inc. was looking at the construction requirement of accelerating lanes, since the Texas Department of Transportation was requesting both the north and south bound lanes be constructed. After some discussion, Councilmember Ken Freese made a motion to approve authorization to submit a request to the Texas Department of Transportation for access to U.S. Highway 59 from County Road No. 467 for the Texas Capital Fund Jrs Texas Best Smokehouse Project. Councilmember Don Mueller seconded the motion. All voted in favor.

The fifteenth item on the agenda was to review and consider the Update on the City of Wharton, Texas Department of Public Safety, Division of Emergency Management Hazard Mitigation Grant Program. City Manager Andres Garza, Jr. stated that the City of Wharton had two housing programs under the Texas Division of Emergency Management Hazard Mitigation Grant Program (HMGP). He stated that the Unmet Housing Needs program provided for the construction of nine (9) new homes, which would be built to provide housing for people whose house was flooded in October 1998. The City had submitted the agreement for State (ORCA) approval. Once the City received the executed agreement, work would begin in accordance with

the executed contract. Mr. Garza stated that the home elevation program was designed to assist home owners to elevate their houses at or above the base flood elevation. He stated that on October 9, 2003, he had met with Mr. Greg Pekar, Interim Hazard Mitigation Officer for the State and requested clarification on the assistance program. He said he learned that the City of Wharton was the only City in the State to undertake a housing elevation project through the Texas Division of Emergency Management. He said there were several questions regarding the program that he had asked for written clarification and assurance. He said that once the City began the project, the City would be required to advance the funding for these projects. He stated that the City needed to be assured reimbursement would be made back to the City by FEMA. Mr. Garza also requested assurance that certain testing requirements would be reimbursable. He stated that he was awaiting a written response. Community Services Director Jo Knezek informed the City Council that the City applied for two grants with the same listing of the 50 homes; however, 9 of the 50 homes would be reconstructed. She stated that the State had no guidelines for the elevation grant, and the City had been awaiting for the guidelines. Councilmember Don Mueller stated that the City could reimburse the property owner when the state reimbursed the City. City Manager Andres Garza, Jr. stated that would be a financial burden on the property owners. Mayor Bryce D. Kocian stated that the City would pay the contractor, then would be reimbursed. City Manager Andres Garza, Jr. stated that the City would have to pay the contractor completing work on private property. He also stated that asbestos and lead would have to be removed, but was unsure of the degree of removal. Councilmember V. L. Wiley, Jr. stated that if a house was constructed before 1990, lead would be present. Councilmember Ray Linseisen stated that the city budget would be drained until reimbursement by the state. Carlos Cotton, P. E. with Jones & Carter, Inc. informed the City Council that this would be the first elevation grant given. No action was taken.

The sixteenth item on the agenda was to review and consider the Utility Easement Agreement between the City of Wharton and the Hawes Estate. City Manager Andres Garza, Jr. stated that during the September 22, 2003 regular Wharton City Council meeting, the City Council authorized the City Staff to pursue a utility easement agreement between the City and the Hawes Estate for the Hinze's Waterline Phase III Project. The City Staff presented a draft copy of the standard utility easement to the trustees of the Hawes Estate; however, the trustees requested that certain items be outlined in more detail including construction of a fence. He then presented a copy of the agreement that was executed by the Hawes Estate. After some discussion, Councilmember Don Mueller made a motion to approve the Utility Easement Agreement between the City of Wharton and the Hawes Estate. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The seventeenth item on the agenda was to review and consider the request for City Councilmember attendance:

- A. Houston-Galveston Home Rule Cities Caucus on November 6, 2003. City Manager Andres Garza, Jr. stated that Councilmember V. L. Wiley, Jr. was requesting City Council approval to attend the Houston-Galveston Home Rule Cities Caucus on November 6, 2003 in Houston, Texas. He then presented information regarding the caucus. After some discussion, Councilmember Darryl Darnell made a motion to approve the request for Councilmember V. L. Wiley, Jr. to attend the Houston-Galveston Home Rule Cities Caucus on November 6, 2003. Councilmember Ray Linseisen seconded the motion. All voted in favor.
- B. Texas Municipal League 2003 Annual Conference in San Antonio, Texas, November 19 through November 22, 2003. City Manager Andres Garza, Jr. stated that Councilmembers

Domingo Montalvo, Jr. and V. L. Wiley, Jr. were requesting City Council approval to attend the Texas Municipal League 2003 Annual Conference in San Antonio, Texas, November 19 – 22, 2003. He then presented information regarding the conference. After some discussion, Councilmember Darryl Darnell made a motion to approve the request for Councilmembers Domingo Montalvo, Jr. and V. L. Wiley, Jr. to attend the Texas Municipal League 2003 Annual Conference in San Antonio, Texas, November 19 – 22, 2003. Councilmember Don Mueller seconded the motion. All voted in favor.

The eighteenth item on the agenda was to review and consider the City Council authorization to proceed with In-House Improvements to the Wharton Civic Center. City Manager Andres Garza, Jr. stated that during the October 13, 2003 regular Wharton City Council meeting, the City Council approved to accept the offer of \$157,950.11 from F. W. Walton, Inc. for damages the Wharton Civic Center had incurred. He said the City Staff was requesting City Council approval to proceed with In-House Improvements to the Civic Center. He stated that the City Staff would work with Architect Barnaby Evans to prepare the necessary work schedules and bid packages for construction, i.e. carpet installation, painters, wall paper hanging; some of the scheduled work would be handled by City employees. Facilities Maintenance Director Bob Baker, Community Services Director Jo Knezek and Building Official Ronnie Bollom would be working as a team to insure the improvements were undertaken. He stated that approval was recommended. After some discussion, Councilmember Don Mueller made a motion to authorize the City Staff to proceed with In-House Improvements to the Wharton Civic Center. Councilmember Ken Freese seconded the motion. All voted in favor.

The nineteenth item on the agenda was to review and consider Travel Reimbursement for City Manager. City Manager Andres Garza, Jr.'s presented a copy of the request for travel reimbursement for the period October 8-22, 2003 in the amount of \$424.90 for City Council review. After some discussion, Councilmember Don Mueller made a motion to approve the travel reimbursement for City Manager Andres Garza, Jr. for the period October 8-22, 2003 in the amount of \$424.90. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The twentieth item on the agenda was to review and consider the City Council, Committee, Commissions, and Boards Reports:

- A. Beautification Commission meeting held October 8, 2003.
  - B. Building Standards Commission meeting held October 16, 2003.
  - C. City Council Streets & Drainage Committee meeting held October 20, 2003
  - D. Wharton Economic Development Corporation Public Hearing held October 10, 2003.
  - E. Wharton Economic Development Corporation meeting held October 21, 2003.
  - F. Planning Commission meeting to be held October 27, 2003.
- City Manager Andres Garza, Jr. presented the reports to the City Council. No action was taken.

The twenty-first item on the agenda was to review and consider the City Manager's Reports:

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| A. Police Department.                     | I. Engineer/Planning Department.                   |
| B. City Secretary/Personnel.              | J. Facilities Maintenance Department.              |
| C. Municipal Court.                       | K. Community Services Department/<br>Civic Center. |
| D. E.M.S. Department.                     | L. Wharton Municipal Pool.                         |
| E. Fire Department Incidents/Inspections. | M. Wharton Regional Airport.                       |
| F. Code Enforcement Department/Weedy Lot. | N. Legal Department.                               |
| G. Water & Sewer Department.              |  |

**H. Public Works Department.**

City Manager Andres Garza, Jr. presented the reports to the City Council. No action was taken.

The twenty-second item on the agenda was adjournment. After some discussion, Councilmember Don Mueller made a motion to adjourn. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The meeting was adjourned at 8:29 p.m.

**CITY OF WHARTON, TEXAS**

**By:**

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**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

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**JOYCE VASUT**  
City Secretary