

MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
MARCH 14, 2005

Mayor Bryce D. Kocian declared a Regular 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., David Samuelson, Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen.

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., City Secretary Lisa Stavena, Assistant to City Manager Jackie Jansky, Building Official Assistant Lori Jaquez, Community Services Director Jo Knezek, Police Chief Tim Guin, and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, Lewis Fortenberry, and Carlos Cotton.

The third item on the agenda was the Public Comments. No comments were given. No action was taken.

The fourth item on the agenda was Wharton Moment. Councilmember V. L. Wiley, Jr. publicly wished his wife, Mary Nell Wiley, Happy Birthday. Councilmember Ken Freese publicly commended the Wharton High School Tennis Team for receiving 4th place in the State tournament. He stated that all players were also honor students. No action was taken.

The fifth item on the agenda was to review and consider the reading of the minutes from the regular meetings held February 14, 2005 and February 28, 2005 and the Special Meeting held February 10, 2005. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the Wharton City Council minutes of the regular meetings held February 14, 2005 and February 28, 2005 and the Special Meeting held February 10, 2005 as presented. Councilmember Ray Linseisen 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 18, Building and Construction, Article V. Electrical Code; 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; and setting an effective date. City Manager Andres Garza, Jr. stated that the City of Wharton Electrical Board met on Tuesday, March 8, 2005 and was recommending the City Council amend the City of Wharton Code of Ordinances, Chapter 18,

Building and Construction, Article V. Electrical Code. He then presented a copy of the memorandum dated March 8, 2005 from Electrical Board Chairman Wayne Adam recommending the City Council approve adopting the 2005 National Electrical Code with its latest revisions. He also presented a draft ordinance amending the Code. Building Official Ronnie Bollom informed the City Council that the State would adopt the 2005 code at a later time; however, the City could adopt the code prior to the state adoption of the code. After some discussion, Councilmember Don Mueller made a motion to approve Ordinance No. 2005-003, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2005-003**

AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 18, BUILDING AND CONSTRUCTION, ARTICLE V. ELECTRICAL CODE; 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 AND SETTING AN EFFECTIVE DATE.

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

WHEREAS, it is the desire of the City of Wharton to adopt, in all respects, the National Electrical Code, 2005 Edition with its latest revisions.

DIVISION 1. ADOPTION OF THE TEXAS ELECTRICAL SAFETY AND LICENSING ACT.

Sec. 18-137. Codes and Rules adopted.

- (a) The Administrative Rules of the Texas Department of Licensing and Regulation 16 Texas Administrative Code, Chapter 73 are here by adopted, except insofar as they may conflict with provisions of this article.
- (b) Effective April 1, 2005 the City of Wharton adopts the National Electric Code, 2005 Edition with its latest revisions except insofar as it does not conflict with amendments to the City of Wharton Code of Ordinances Sec. 18-254 through Sec. 18-260.
- (c) Any person violating any provision of these Rules and Regulations shall be subject to the penalties as provided in section 1-5 of this Code of Ordinances. (Ord. No. 1997-01, 1-13-97; Ord. No. 1999-05, 8 I, 4-15-99; Ord. No. 2002-05, 3-11-02)

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 to be a separate, distinct, and independent provision, and any such ruling shall not affect the validity of the remaining portions hereof.

Fine and Penalty for Violations

Section 18-145 Any person violating any of the terms or provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than \$100.00 nor more than the maximum provided in Section 1-5 for each offense. If the terms or provisions of this article are violated

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by any corporation or firm, the officers and agents actively in charge of the business of such corporation or firm and person actually performing the work for such corporation or firm shall be subject to the penalties provided in this section.

Effective Date

This Ordinance shall become effective on the 1st day of April 2005.

Passage and Approval

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on the 14th day of March 2005.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA
City Secretary

APPROVED AS TO FORM:

PAUL WEBB
City Attorney

Published in the Wharton Journal Spectator on Wednesday, March 16, 2005 and Wednesday, March 23, 2005.

Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider a recommendation by the Beautification Commission to require all multi-dwelling residences and apartment complexes to maintain enclosed solid waste pick-up areas. City Manager Andres Garza, Jr. presented a copy of the memorandum dated January 11, 2005 from Beautification Commission Chairman Lewis Fortenberry recommending the City Council consider requiring all multi-dwelling residences and apartment complexes to maintain enclosed solid waste pick-up areas. He then presented a copy of the letter dated February 7, 2005 from the Beautification Commission outlining their request. Commissioner Walter Garrett addressed the City Council and stated the Beautification Commission recommended all multi-dwellings should maintain enclosed-area trash bins for heavy-duty trash. He said the enclosed-area trash bins would conceal the contents of the heavy-duty trash to be picked up and that the area should be enclosed in privacy fencing that is at least two feet higher than the dumpster. He further stated that the heavy-duty trash was referred to as furniture, large appliances, bedding, automotive equipment and other large items that would not fit into the standard dumpsters for regular household garbage. Mr. Garrett stated that the heavy-duty items posed a threat to safety and was unsightly blemishes to the neighborhoods. Mr. Garza stated that under the current ordinance, Waste Management would charge additional fees for commercial pick-up of bulky waste; however residential customers were not charged. Councilmember Don Mueller stated that the City Staff would need to send an information letter regarding the charge for pick-up. Mr. Garza stated that an amendment to Waste Management

contract would need to be approved. Mr. Garrett stated that multi-dwelling would consist of more than five units under one roof. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to authorize the City Staff to draft an ordinance with the request by the Beautification Commission. Councilmember Ken Freese seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider an update on the City of Wharton Home Elevation Project. City Manager Andres Garza, Jr. stated that the Home Elevation Project bid opening date was scheduled March 10, 2005 at 2:00 p.m.; however, the City of Wharton did not receive any bids from contractors. He stated that the City Staff had re-published a notice soliciting bids from contractors a fourth time in the Wharton Journal Spectator with a bid opening date of March 28, 2005 at 10:00 a.m. He stated that on March 9, 2005, he was notified by Mr. Greg Pekar, Director of the Governor's Division of Emergency Management that the elevation project should not be affected by the IRS ruling. He stated that the City could proceed with the project without tax consequences to the residents. He then presented a copy of his letter dated March 7, 2005. He stated that the City of Wharton would not make any representation to participants regarding the IRS ruling from the State. He stated that the City of Wharton would follow the IRS ruling, thus submitting 1099 forms to the participants unless otherwise instructed by the IRS. Councilmember V. L. Wiley, Jr. asked about the other participants who withdrew from the program due to the IRS ruling. City Manager Garza stated that it was a voluntary program and the participants had withdrawn voluntarily. He said that if the City Council allowed the participants who had withdrawn voluntarily to re-enter the program, then the scoring process in the guidelines would have to be used to score all participants. Councilmember Domingo Montalvo, Jr. stated if the City allowed more participants in the program, then the three existing property owners might not receive funding for their structures after the prioritization scoring. He stated that the IRS had not removed the tax requirement, only the State. Councilmember V. L. Wiley, Jr. stated that other participants of the Home Program were not taxed; however, the Home Elevation Program would be taxed which was not fair to the participants. Councilmember Don Mueller stated that the City started with 51 homes in the program, then 10 homes, and now 3 homes. Councilmember David Samuelson stated that the funding would not allow for 10 homes. Mr. Garza stated that City of Wharton's standpoint on the IRS ruling was that the City would not make any representation; therefore the property owner would need to contact a tax accountant. After some discussion, no action was taken.

The ninth item on the agenda was to review and consider City of Wharton Improvement
Projects:

- A. City of Wharton Waterline and Sanitary Sewer Replacement Project – Uticon, Inc. – Pay Request No. 2.

City Manager Andres Garza, Jr. presented a copy of the Pay Request No. 2 from Uticon, Inc. for the Waterline and Sanitary Sewer Replacement Project. Mr. Carlos Cotton, P.E. addressed the City Council and stated that the project was 31% complete on March 8, 2005; however as of today the project was 85% complete with most of lines laid. After some discussion, Councilmember Ray Linseisen made a motion to approve the City of Wharton Waterline and Sanitary Sewer Replacement Project – Uticon, Inc. – Pay Request No. 2 in the amount of \$63,553.86. Councilmember David Samuelson seconded the motion. All voted in favor.

B. City of Wharton Richmond Road Sanitary Sewer Rehabilitation Project – rePipe Texas, Inc. – Pay Request No. 1.

City Manager Andres Garza, Jr. presented a copy of the Pay Request No. 1 from rePipe Texas, Inc. for the Richmond Road Sewer Replacement Project. Mr. Carlos Cotton, P.E. addressed the City Council and stated that the project was 87% as of March 10, 2005; however the project was 95% as of today with all lines laid. After some discussion, Councilmember Ray Linseisen made a motion to approve the City of Wharton Richmond Road Sanitary Sewer Rehabilitation Project – rePipe Texas, Inc. – Pay Request No. 1 in the amount of \$127,179.00. Councilmember David Samuelson seconded the motion. All voted in favor.

C. Additional Water & Sewer Improvements – Murphy Street sewer line, replacement of fire hydrants, etc.

City Manager Andres Garza, Jr. stated that during the February 28, 2005 Regular City Council meeting, the City Staff and Engineer Carlos Cotton, P.E. mentioned the additional utility work being contemplated. He stated that the work included the replacement of the four fire hydrants around the Courthouse and the leaking valve in front of the Post Office. He stated that since then, the sewer line along Murphy Street had to be repaired by Public Works personnel. He stated that the line was an old concrete line that a portion had collapsed. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the Additional Water & Sewer Improvements – Murphy Street sewer line, replacement of fire hydrants, etc. and authorized the City Staff to solicit bids for the project. Councilmember Ray Linseisen seconded the motion. All voted in favor.

D. Civic Center Sign.

City Manager Andres Garza, Jr. stated that the City Staff solicited bids for the replacement of the Civic Center sign, which were due March 1, 2005. He stated that approximately eight sign contractor's picked-up bids packages; however, no bids were submitted. He stated that the City Staff could pursue the sign replacement by being the general contractor and using sub-contractors. He stated that the bid was readvertised to the open on March 21, 2005. He stated that Facilities Maintenance Director Bob Baker contacted three companies and was advised by one company that they did not want to travel to Wharton and another company previously had other small jobs. He stated that the City could be the General Contractor and contract out the masonry work. After some discussion, no action was taken.

E. Wharton Municipal Pool Re-Plastering Project.

City Manager Andres Garza, Jr. stated that the Wharton Municipal Swimming Pool needed to be replastered. He stated that the City Staff had issued a notice for bids for this project. The bids would be opened on March 28th and a recommendation would be presented during the regular March 28, 2005 City Council meeting. After some discussion, no action was taken.

F. Sante Fe Trail Water Fountain Project.

City Manager Andres Garza, Jr. stated that the bid opening was held March 10, 2005 for the Santa Fe Trail Water Fountain Project; however, no bids were received. He stated that the City Staff had reissued the bid packages and the bid opening would be held March 28th. After some discussion, no action was taken.

The tenth item on the agenda was to review and consider Preliminary Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) for Wharton County, Texas, and Incorporated Areas. City Manager Andres Garza, Jr. presented a copy of the letter dated March 7, 2005 from

Mr. Doug Bellomo, P.E., Chief of the Federal Emergency Management Agency, Hazard Mitigation Section, Mitigation Division Emergency Preparedness and Response Directorate providing the City of Wharton with the Preliminary Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) for Wharton County, Texas, and Incorporated Areas. He stated that a copy of the preliminary summary of map actions were also included and that the preliminary maps were issued to the City for review during the community review period. He stated that requests to revise the maps in or near designated flood hazard areas may be provided during the community review period, at the final Consultation and Coordination Officer meeting or during the statutory 90-day appeal period. He stated that Building Official Ronnie Bollom was reviewing the maps to determine the areas that were changed. After some discussion, no action was taken.

The eleventh item on the agenda was to review and consider appointment to the Building Standards Commission. City Manager Andres Garza, Jr. stated that there was one vacancy on the Building Standards Commission. He stated that Councilmember V. L. Wiley, Jr. was recommending that Mr. Lewis Edwards be appointed to fill the position. He stated that Building Official Ronnie Bollom was recommending that Mr. Paul Fertsch be appointed to the position. He stated that both individuals had expressed interest in serving on the Commission. City Attorney Paul Webb asked if either of the gentlemen had experience in building standards. Mayor Bryce D. Kocian requested the gentlemen to submit a resume for City Council review. After some discussion, no action was taken.

The twelfth item on the agenda was to review and consider an update – 2005 AMCC Institute Annual Conference and Texas Municipal League Legislative Briefing held February 12 – 14, 2005. City Manager Andres Garza, Jr. stated that the 2005 AMCC Institute Annual Conference and Texas Municipal League Legislative Briefing was held February 12 - 14, 2005. He stated that Councilmembers Domingo Montalvo, Jr. and V. L. Wiley, Jr., and himself attended the conference and legislative briefing. He stated that the conference addressed the legislative process and that the Texas Municipal League was lobbying on behalf of the cities. He said that the current legislation would be reviewing approximately 5,000 bills, which a majority of the bills would have an impact on city government such as appraisal caps, and for local law enforcement to assist with Child Protective Services. He stated if the House Bill was passed, then the City would have to train police officers assisting Texas Department of Human Services - Child Protective Services for child abuse cases, which would be a financial burden to dedicate resources to enforce regulation. He further stated that another big issue was school reform finances. Councilmember V. L. Wiley, Jr. stated that the City would need to look at the costs since no extra revenue would be received. Councilmember Domingo Montalvo, Jr. stated the State was shifting burdens to local governments. He stated that the City needed to capture funds from state and federal levels in order to bring back to the community. Mr. Garza stated that another issue was the collection of fees from water users that would be sent to the State. He stated that was what the State was doing in Municipal Court fees. After some discussion, no action was taken.

The thirteenth item on the agenda was to review and consider the City Council Committees, Boards and Commission's Reports:

A. Wharton Regional Airport Board meeting held March 1, 2005.

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- B. Public Safety Committee meeting held March 7, 2005.
 - C. Youth Advisory Commission meeting held March 8, 2005.
 - D. Electrical Board meeting held March 8, 2005.
 - E. Beautification Commission meeting held March 9, 2005.
- City Manager Andres Garza, Jr. presented the reports to the City Council. No action was taken.

The twenty-first 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 adjourned at 7:59 p.m.

CITY OF WHARTON, TEXAS

By: _____
DONALD MUELLER
Mayor Pro-Tem

ATTEST:

LISA STAVENA
City Secretary