

MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
JANUARY 23, 2006

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Councilmember Ken Freese 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, and Domingo Montalvo, Jr.

Councilmember absent was: Ray Linseisen.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Stavena, Assistant to City Manager Jackie Jansky, Building Official Ronnie Bollom, Planning Director Prudencio Arriaga, Sr., and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, David Schroeder, Raymond Harrison, Carl Carmichael, Jim Cockroll, Chris Phillips, Rex Baxter, and Richard Hardy.

The second item on the agenda was Roll Call and Excused Absences. Councilmember V. L. Wiley, Jr. made a motion to excuse the absence of Councilmember Ray Linseisen from the Regular City Council meeting held January 23, 2006. Councilmember Ken Freese seconded the motion. All voted in favor.

The third item on the agenda was Public Comments. Mr. Carl Carmichael addressed the City Council and stated that the cleanliness and appearance of properties with hay lot permits were cleaner and were not lots that were just cut. He said the permitted lots were cut and raked. No action was taken.

The fourth item on the agenda was the Wharton Moment. Councilmember Ken Freese publicly commended the Wharton Volunteer Fire Department for the Annual Banquet held on Saturday, January 21, 2006. He stated that Alfred Bryant retired after 21 years of service and Lionell Garcia retired after 18 years of services. He stated that Juan Cano received Fire Fighter of the Year.

Councilmember Domingo Montalvo, Jr. publicly thanked the City Council for working together. He also publicly thanked the City Staff and City Manager Andres Garza, Jr. for continued cooperation. 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 December 2005. Finance Director Joyce Vasut presented the financial report for the

month of December 2005 and stated that the fiscal year was at 25%. Mrs. Vasut stated that the general fund revenues were at 23.81% and the expenditures were at 24.20%. The total ad valorem taxes collected were \$494,232. The sales tax for the month of November 2005 was \$136,112 with \$90,741 to the City and \$45,371 to WEDCo. The TexPool balance for December 2005 was \$889,591.46 with an average monthly yield of 4.1676%. The bank balance was \$627,128.59. After some discussion, Councilmember David Samuelson made a motion to approve the City of Wharton Financial Report for the month of December 2005. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider the Beautification Commission recommendation for City Council to consider amending the City of Wharton Code of Ordinances Chapter 14 Animals and Fowl and Chapter 54 Parks and Recreation to restrict the walking or running of dogs along the Santa Fe Trail. City Manager Andres Garza, Jr. stated that during the January 11, 2006 Beautification Commission meeting, the Beautification Commission recommended that the City Council consider amending the City of Wharton Code of Ordinances Chapter 14, Animals and Fowl and Chapter 54, Parks and Recreations to restrict the walking or running of dogs along the Santa Fe Trail. He stated that the Commission stated that the restriction should exclude service dogs. He then presented a copy of the memorandum dated January 12, 2006 from Chairman Lewis Fortenberry, Jr. providing the Commission's recommendation. Mr. Garza stated that he requested Police Chief Tim Guin to investigate if the City could regulate the walking of dogs on the trail and was awaiting his response. Councilmember Ken Freese stated that the Jr. High School track had a sign that no dogs were allowed. After some discussion, no action was taken.

The seventh item on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances Chapter 30 Fire Prevention and Protection, Article I. In General; Section 30-6 Fire and Rescue Service Fees; Providing for severability and providing for an effective date. City Manager Andres Garza, Jr. stated that during the regular August 22, 2005 City Council meeting, the City Council adopted Ordinance No. 2005-08 establishing fees and fines for the Wharton Fire Department. He stated that the City had awarded the contract for the billing services to Revenue Rescue. He said that Revenue Rescue had reviewed the ordinance and was recommending that the City amend the ordinance to state that the fees were on an hourly basis. He then presented a copy of the draft ordinance amending the City of Wharton Code of Ordinances Chapter 30 Fire Prevention and Protection, Article I. In General; Section 30-6 Fire and Rescue Service Fees. Councilmember David Samuelson asked if the charge would be assessed to City residents. Councilmember Domingo Montalvo, Jr. stated that the charges would be submitted to the insurance company. He stated that charges were for services beyond the basic services provided. He stated that additional training and equipment was needed on certain types of calls; therefore, billing would allow funding for the replenishment of supplies. He stated that it was not fair for the citizens to cover the cost of the extra services provided. City Attorney Paul Webb stated that the ordinance did not specify that only the insurance company would be billed for the services rendered. He stated that the contract with Revenue Rescue should state what steps would be taken. He stated that in the ordinance, there were no restrictions. He stated that he would contact the City of San Angelo, the City from where this ordinance was patterned after, to verify how their process was handled. He stated that he would report back to the City

Council with findings at the next City Council meeting. After some discussion, no action was taken.

The eighth item on the agenda was to review and consider City of Wharton Meter Reading Equipment:

**A. Resolution:** A resolution of the Wharton City Council authorizing the purchase of new meters with Radio Read Automated Meter Reading technology from Hughes Supply, Inc. under the cooperative purchasing power of the City of Pearland, Baytown, and Nederland, Texas, and authorizing the Mayor to execute all documents necessary for said purchase. City Manager Andres Garza, Jr. stated that during the November 14, 2005 regular Wharton City Council meeting the City Council rejected the October 19, 2005 bids for the meter replacement project at the request of the City Staff. He said that Finance Director Joyce Vasut, Public Works Director Phil Bush and Water Superintendent Harold Matula met with the companies to research other options in purchasing radio read equipment and to replace all of the meters at one time. He then presented a copy of the memorandum dated January 10, 2006 from Ms. Vasut regarding the meter replacement project. He said that the City Council Finance Committee met on January 12, 2006 and heard a presentation by Hughes Supply, Inc. and Neptune regarding the meter replacement program. The Finance Committee voted to recommend the City Council consider moving forward in purchasing the radio read automated meter reading technology. He then presented a copy of the information that was provided by Hughes Supply regarding the equipment. He stated that there was a copy of an option to finance the package; however, there were other options available to the City, which the City Staff was reviewing. He stated that the City Staff would present the financing package at the February 13, 2006 regular City Council meeting. Finance Director Joyce Vasut stated that the radio read would allow accuracy and timeliness. She stated that many meters in the City of Wharton were up to 20-30 years old and the meters were not accurately reading the current usage. She stated that with the installation of the new meters, the City of Wharton would generate enough revenue to fully fund the debt payment in ten years, which would mean that the City would receive approximately \$600,000 in revenues in the last 5 years of the meter's life. She stated that under the current meter replacement plan, the City would replace approximately 100 meters per year, which would take 40 years to replace all the meters in the City. Councilmember Ken Freese stated that the write-off accounts would also be reduced since the meter would be read in 4 hours as compared to the current meter read system taking two weeks. Mrs. Vasut stated that the billing cycle would be modified with radio read in order to get the customer's bills more current. Mr. Chris Phillips addressed the City Council and stated that there was a maintenance agreement, which could be renewed annually. He stated that the maintenance agreement was competitive pricing. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2006-04, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2006 – 04**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING THE PURCHASE OF NEW METERS WITH RADIO READ AUTOMATED METER READING TECHNOLOGY FROM HUGHES SUPPLY, INC. UNDER THE COOPERATIVE PURCHASING POWER OF THE CITY'S OF PEARLAND,**

**BAYTOWN, AND NEDERLAND, TEXAS, AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY FOR SAID PURCHASE.**

**WHEREAS,** the Wharton City Council wishes to improve the water meter system within the City of Wharton, Texas; and

**WHEREAS,** the Wharton City Council wishes to purchase new meters with radio read automated meter reading technology from Hughes Supply, Inc. under the cooperative purchasing power of the City's of Pearland, Baytown and Nederland, Texas; and

**WHEREAS,** the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents necessary for said purchase.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS hereby:**

**Section I.** Authorizes the City Staff to purchase new meters with radio read automated meter reading technology from Hughes Supply, Inc. under the cooperative purchasing power of the City's of Pearland, Baytown and Nederland, Texas.

**Section II.** Authorizes the Mayor of the City of Wharton to execute all documents necessary for the purchase of the radio read automated meter reading equipment.

**Section III.** That this resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of January 2006.

**CITY OF WHARTON, TEXAS**

**By:**

\_\_\_\_\_  
**BRYCE D. KOCIAN**

Mayor

**ATTEST:**

\_\_\_\_\_  
**LISA STAVENA**

City Secretary

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

**B. Resolution:** A resolution of the Wharton City Council approving an Interlocal Purchasing Agreement with the City of Pearland to allow the City of Wharton to benefit from the cooperative purchasing power of the City of Pearland, Baytown and Nederland, Texas, and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of a draft resolution authorizing the purchase of new meters with radio read automated meter reading technology from Hughes Supply, Inc. under the cooperative purchasing power of the City of Pearland, Baytown, and Nederland, Texas, and authorizing the Mayor to execute all documents necessary for said purchase. He then presented a copy of the draft resolution approving an Interlocal Purchasing Agreement with the City of Pearland to allow

the City of Wharton to benefit from the cooperative purchasing power of the City of Pearland, Baytown and Nederland, Texas, and authorizing the Mayor of the City of Wharton to execute the agreement. After some discussion, Councilmember David Samuelson made a motion to approve Resolution No. 2006-05, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2006 - 05**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN INTERLOCAL PURCHASING AGREEMENT TO ALLOW THE CITY OF WHARTON TO BENEFIT FROM THE COOPERATIVE PURCHASING POWER OF THE CITY'S OF PEARLAND, BAYTOWN, AND NEDERLAND, TEXAS, AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY FOR SAID PURCHASE.**

**WHEREAS,** the Wharton City Council authorized the purchase of new radio read automated meter reading technology to improve the water meter system within the City of Wharton, Texas; and

**WHEREAS,** the Wharton City Council wishes benefit from the cooperative purchasing power of the City's of Pearland, Baytown and Nederland, Texas; and

**WHEREAS,** the Wharton City Council wishes to enter into an interlocal agreement with the City of Pearland, which would allow the City of Wharton to benefit from the cooperative purchaseing power; and

**WHEREAS,** the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents related to the interlocal agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS hereby:**

**Section I.** Authorizes the Mayor of the City of Wharton to execute an interlocal agreement with the City of Pearland to allow the City of Wharton to benefit from the cooperative purchasing power related to the purchase of the new radio read automated meter reading technology.

**Section II.** That this resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of January 2006.

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

\_\_\_\_\_

**LISA STAVENA**

City Secretary

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

The ninth item on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances Chapter 34 Health and Sanitation, Article II. Cleanliness and Sanitation of Premises; Littering, Division I. Generally, Section 34-51 Accumulation of growth of weeds or brush through Section 34-55 Same – Performance by City; Providing for Separability; Providing a penalty clause; and setting an effective date. City Manager Andres Garza, Jr. stated that this item was previously addressed at the October 25, 1999 and November 8, 1999 regular Wharton City Council meetings. He stated that during those meetings, no action was taken. He said that the City Council Finance Committee met January 12, 2006 and reviewed the City of Wharton Code of Ordinances, Chapter 34 Health and Sanitation, Article II. Cleanliness and Sanitation of Premises; Littering, Division I. Generally, Section 34-51 Accumulation of growth of weeds or brush through Section 34-55 Same – Performance by City, with regards to hay lots within the City limits. He said that the Wharton Central Appraisal District currently did not have a policy for agriculture use. He said that the Finance Committee voted to recommend the City Council to consider amending the ordinance. He then presented a copy of the memorandum dated January 20, 2006 from the Finance Committee outlining the recommended changes to the ordinance. He also presented a copy of the ordinance with the amendments. Councilmember Ken Freese stated that the City should not be the regulating entity on agriculture property. Councilmember Domingo Montalvo, Jr. stated that the storage of hay bales was a fire hazard. Building Official Ronnie Bollom stated that the outer perimeter should be kept at a height 10” or shorter. He stated that hay bales should not be stored more than seven days after the harvest, and should be removed from the City limits. City Manager Andres Garza, Jr. stated that the ordinance did not extend to the ETJ. After some discussion, Councilmember David Samuelson made a motion to approve Ordinance No. 2006-01, which read as follows:

**CITY OF WHARTON  
ORDINANCE NO. 2006-01**

**AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES CHAPTER 34 HEALTH AND SANITATION, ARTICLE II. CLEANLINESS AND SANITATION OF PREMISES; LITTERING, DIVISION I. GENERALLY; SECTION 34-51 ACCUMULATION OF GROWTH OF WEEDS OR BRUSH THROUGH SECTION 34-55 SAME – PERFORMANCE BY CITY; PROVIDING FOR SEPARABILITY; PROVIDING A PENALTY CLAUSE; AND SETTING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY OF WHARTON, TEXAS,** that Chapter 34, Health and Sanitation, Article II. Cleanliness and Sanitation of Premises; Littering, Division I. Generally, Section 34-51 Accumulation of growth of weeds or brush through Section 34-55 Same – Performance by City be amended as follows:

**Sec. 34-51. Accumulation or growth of weeds or brush.**

- (a) Nuisance declared. It shall be unlawful for any owner, or owner’s representative of any premises within the city to allow weeds, grass or uncultivated plants to grow upon such premises or to allow trash or rubbish to accumulate upon such premises to such an extent

as is reasonably calculated to create a fire hazard or to become injurious to the health of the citizens. Any such act is declared to constitute a public nuisance.

(b) Duty to cut growth.

(1) It shall be unlawful for any owner, or owner's representative of any premises to permit weeds, grass or uncultivated plants to grow upon such premises to a height greater than ten (10) inches on an average or to grow in rank profusion thereon. Any premises upon which any weeds, grass or uncultivated plants grow above such height or in rank profusion shall be deemed a public nuisance. Provided, however, the provisions of this subsection shall not apply to any owner, occupant or person in charge of any premises who has received and maintains a valid permit to grow and harvest hay within the city limits.

(2) It shall be the duty of any owner or owner's representative of any premises to remove or cause to be cut all weeds, grass or uncultivated plants as often as may be necessary to comply with subsection (a) of this section.

(3) The requirements for receiving and maintaining a valid permit to grow and harvest hay within the city limits are:

- a. Applications for permits shall be made upon forms provided by the city building inspector and shall contain or have attached thereto information including, but not necessarily limited to, the following:
  1. Name, address and telephone number of the applicant, the owner of the premises, and any person or entity holding any lien against the premises.
  2. The legal property description (lot and block number) of the premises and the amount of acreage per contiguous lot.
- b. Permits shall be issued upon the payment of a fee of \$20.00 per contiguous one (1) acre or greater lot, and each permit shall be valid for one year. Permits may be renewed annually upon the payment of an annual fee of \$20.00 per contiguous one (1) acre or greater lot.
- c. The storing of hay within the city limits is prohibited, and the harvested hay shall be removed from the city limits within seven days after the hay is harvested.
- d. Notwithstanding any provision contained herein to the contrary, the use of lots for harvesting hay shall not excuse the requirement that a width of at least ten feet between property lines shall be kept mowed below the required ten (10)-inch height at all times.

- e. Any violation of any applicable section of this article shall result in the revocation of the permit.
  
- (c) With respect to lots or parcels of land of one (1) acre or more under single ownership, the provision of this section shall not be applicable to the area in excess of ten (10) feet from any open public street or alley or to the area in excess of ten (10) feet from any adjacent property under different ownership on which habitable structures are located. Lots and parcels of the land less than one (1) acre must be maintained in accordance with this section in its entirety.
  
- (d) Penalty. Any person, firm or corporation intentionally, knowingly, or recklessly violating any provision of this section shall be guilty of a misdemeanor and shall be guilty of a separate offense for each day or portion thereof during which any violation is committed, continues or is permitted. Upon conviction of any such violation, any person, firm or corporation shall be punished by a fine of not more than \$2,000.00.

Sec. 34-52. Stagnant water.

It shall be unlawful for any person to permit or allow the accumulation of stagnant water on any lot owned or occupied by him within the city or to permit stagnant water to remain thereon. It shall likewise be unlawful for any person to permit or allow holes on such lot where water may accumulate and become stagnant.

Sec. 34-53. Fire code violations.

It shall be unlawful for any person to permit or allow any conditions to exist that violate any provisions of chapter 30, relating to fire prevention and protection, of this Code or the fire prevention code adopted in section 18-66.

Sec. 34-54. Abatement--Notice to remedy.

- (a) Whenever any condition described in this article is found to exist upon any premises in the city, any officer or authorized employee of the city shall notify the owner of such premises or the owner's authorized agent or representative, if known, and any person holding a recorded lien on the property to remove or remedy the condition within ten days after the date of such notice.
  
- (b) Such notice shall be in writing and shall be served on the owner; the owner's authorized agent or representative, if known, and any person holding a recorded lien on the property, at the last known address of any such person.
  
- (c) If the address of any lienholder is unknown, the city may give notice to the lienholder by sending written notice in care of the owner or the owner's authorized agent or representative.

Sec. 34-55. Same--Performance by city.

- (a) If the owner of any lot or premises fails to remove or remedy any condition described in this division within the required period after notice has been given as provided in section 34-54, the city may do whatever is necessary to remove or remedy the condition or cause the same to be done and charge the expenses incurred thereby to the owner of such lot or premises, and such expenses shall be assessed against the real estate upon which the work was done. The doing of such work and the charging and assessing of the expenses thereof against the owner shall not relieve the owner or occupant of any such prosecution for such violation.
- (b) One notice sent by certified mail shall be given prior to removal of weeds during the current calendar year. Once the city has given notice to remove or remedy any condition and the owner or the owner's authorized agent or representative has failed to remove or remedy the condition within the required time period, the city shall have the right to continue to do such work as is necessary to keep any such weeds, grass or uncultivated plants at or below the required height and to continue charging and assessing the expenses thereof against the owner without the necessity of giving further notices until and unless the owner or the owner's authorized agent or representative removes or remedies the condition.
- (c) In the event an owner or the owner's authorized agent or representative of any lot or premises is in violation more than one (1) time per the current calendar year the owner or the owner's authorized agent or representative is subject to penalties as described in Section 34-51, which may result with a complaint filed in Municipal Court.

### **Separability**

Unless expressly provided otherwise, if any provision of this Code or its application to any person or circumstances is held invalid, the invalidity does not affect other provision or applications of this Code that can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

### **Penalty.**

Any person, firm or corporation intentionally, knowingly, or recklessly violating any provision of this section shall be guilty of a misdemeanor and shall be guilty of a separate offense for each day or portion thereof during which any violation is committed, continues or is permitted. Upon conviction of any such violation, any person, firm or corporation shall be punished by a fine of not more than \$2,000.00.

### **Effective Date.**

This ordinance shall become effective the 3<sup>rd</sup> day of February 2006 at 12:01 a.m.

**PASSED AND APPROVED** by the Wharton City Council, on the 23<sup>rd</sup> day of January 2006.

**CITY OF WHARTON**

By: \_\_\_\_\_  
Bryce D. Kocian, Mayor

**Attest:**

\_\_\_\_\_  
Lisa Stavena, City Secretary

**Approved as to Form:**

\_\_\_\_\_  
Paul Webb, City Attorney

Published in the Wharton Journal Spectator Wednesday, January 25, 2006 and Wednesday, February 1, 2006.

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

The tenth item on the agenda was to review and consider the Texas Colorado River Floodplain Coalition:

**A. Resolution:** A resolution authorizing the Mayor of the City of Wharton to execute an Interlocal Agreement between the City of Wharton and the Texas Colorado River Floodplain Coalition. City Manager Andres Garza, Jr. presented a copy of the letter dated December 1, 2005 from Mr. James Oakley, Chairman of the Texas Colorado River Floodplain Coalition (TCRFC) regarding the renewal of the interlocal agreement between the TCRFC and the City of Wharton. He said that the TCRFC updated the interlocal agreement during its November 17, 2005 Executive Committee Bi-Annual meeting. He said that the updates were made in order to reduce duplication between it and other organizational documents and to make future changes in operating procedures easier to administrate. He then presented a copy of the revised interlocal agreement and also a draft resolution approving the agreement. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2006-06, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2006 – 06**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF WHARTON AND THE TEXAS COLORADO RIVER FLOODPLAIN COALITION.**

**WHEREAS,** an Interlocal Agreement between the City of Wharton, Texas Colorado River Floodplain Coalition and other cities, counties, special districts and other legally constituted political subdivision of the State of Texas relating to the creation and implementation of the Texas Colorado River Floodplain Coalition for the pursuit of common goals for the lower Colorado River basin including flood protection and damage reduction and other appropriate floodplain management goals; and

**WHEREAS,** the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute an interlocal agreement effective January 15, 2006 between the City of Wharton and the Texas Colorado River Floodplain Coalition.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS hereby:**

**Section I.** The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute an interlocal agreement between the City of Wharton and the Texas Colorado River Floodplain Coalition.

**Section II.** That this resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of January 2006.

**CITY OF WHARTON, TEXAS**

**By:**

\_\_\_\_\_  
**BRYCE D. KOCIAN**

Mayor

**ATTEST:**

\_\_\_\_\_  
**LISA STAVENA**

City Secretary

Councilmember Don Mueller seconded the motion. All voted in favor.

**B. Resolution:** A resolution of the Wharton City Council appointing members to the Executive and Technical Committees of the Texas Colorado River Floodplain Coalition.

City Manager Andres Garza, Jr. presented a copy of the City of Wharton Resolution No. 2002-26 appointing City of Wharton representatives to the Executive and Technical Committees for the TCRFC. He said that the TCRFC was requesting in the letter dated December 14, 2005 from Ms. Susan Joseph, Floodplain Management, that the City of Wharton make any necessary changes in the current representatives. He said that the City's new floodplain administrator was Planning Director Prudencio V. Arriaga, Sr., who was replacing Building Official Ronnie Bollom as the City's floodplain administrator. He said that Mr. Arriaga had received his certification as a nationally accredited floodplain manager from the Association of State Floodplain Managers, Inc. and the Texas Floodplain Management Association in December 2005. He then presented a copy of a draft resolution appointing the City of Wharton TCRFC representatives. He also presented a copy of the letter dated January 13, 2006 from Mayor Bryce D. Kocian to LCRA General Manager Joe Beal requesting assistance from LCRA, TCRFC, and the Corps in petitioning Congress for funding the next phase of the feasibility study, which was the pre-construction engineering design (PED). He stated that on January 18, 2006, he had met with LCRA, TCRFC, and Corp representatives, who indicated that the entities were willing to assist the City with its request. After some discussion, Councilmember David Samuelson made a motion to approve Resolution No. 2006-07, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2006 - 07**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPOINTING MEMBERS OF THE EXECUTIVE AND TECHNICAL COMMITTEES OF THE TEXAS COLORADO FLOODPLAIN COALITION.**

**WHEREAS,** the City of Wharton has agreed to participate in the Texas Colorado River Floodplain Coalition; and

**WHEREAS,** the Interlocal Agreement creating the Texas Colorado River Floodplain Coalition provided for each participating community to appoint representatives to the Executive and Technical Committees of the Coalition.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS hereby:**

**Section I.** Appoints the following City of Wharton representatives to serve on two committees, one executive and one technical, to carry out the duties and responsibilities of these committee members as provided when the Interlocal Agreement creates the Texas Colorado River Floodplain Coalition; and

*Executive Committee*  
Elected Officials

*Technical Committee*  
EMC/FPA

Domingo Montalvo, Jr.  
(Primary Member)

Prudencio V. Arriaga, Jr., CFM  
(Primary Member)

V. L. Wiley, Jr.  
(Alternate Member)

Ronnie Bollom, Building Official  
(Alternate Member)

**Section II.** Assures the other committee members that the above representatives will strive to diligently represent the City and will faithfully attend and contribute to the scheduled working committee meetings of the Coalition.

**NOW THEREFORE,** on this the 23 rd day of January 2006, in a meeting of the City Council of Wharton, Texas, duly convened and acting in its capacity as governing body of the City of Wharton, on motion of Councilmember David Samuelson seconded by Councilmember Don Mueller, duly put and carried, this Resolution is hereby adopted.

**CITY OF WHARTON, TEXAS**

By:

BRYCE D. KOCIAN  
Mayor

**ATTEST:**

LISA STAVENA  
City Secretary

Councilmember Don Mueller seconded the motion. All voted in favor.

The eleventh item on the agenda was Executive Session: City Council may adjourn into an Executive Session in accordance with Section 551.072 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:** Acquisition of real estate from Union Pacific Railroad for the road extension project between FM 1301 and County Road 235.
- B. **Discussion:** Acquisition of real estate from Mr. Wilbert Hundl, Sr. & Albina Hundl for the Santa Fe Drainage Outfall Channel Project.
- C. **Discussion:** Acquisition of real estate from Mr. Benedict Hundl for the Santa Fe Drainage Outfall Channel Project.
- D. **Discussion:** Acquisition of real estate from Mr. Frank J. Felcman for the Santa Fe Drainage Outfall Channel Project.
- E. **Discussion:** Acquisition of real estate from Mr. Wilbert and Katheryn Kainer for the Santa Fe Drainage Outfall Channel Project.

Mayor Bryce D. Kocian adjourned the meeting into Executive Session at 8:20 p.m.

Mayor Bryce D. Kocian returned to open session at 9:02 p.m.

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

- A. **Review & Consider:** Acquisition of real estate from Union Pacific Railroad for the road extension project between FM 1301 and County Road 235. Mayor Bryce D. Kocian stated that action on this item would be taken under item thirteen of the agenda.
- B. **Review & Consider:** Acquisition of real estate from Mr. Wilbert Hundl, Sr. & Albina Hundl for the Santa Fe Drainage Outfall Channel Project. Councilmember Ken Freese made a motion to authorize the City Staff to continue negotiations with the property owners. Councilmember Don Mueller seconded the motion. All voted in favor.
- C. **Review & Consider:** Acquisition of real estate from Mr. Benedict Hundl for the Santa Fe Drainage Outfall Channel Project. Councilmember Ken Freese made a motion to authorize the City Staff to continue negotiations with the property owners. Councilmember Don Mueller seconded the motion. All voted in favor.
- D. **Review & Consider:** Acquisition of real estate from Mr. Frank J. Felcman for the Santa Fe Drainage Outfall Channel Project. Councilmember Ken Freese made a motion to authorize the City Staff to continue negotiations with the property owners. Councilmember Don Mueller seconded the motion. All voted in favor.
- E. **Review & Consider:** Acquisition of real estate from Mr. Wilbert and Katheryn Kainer for the Santa Fe Drainage Outfall Channel Project. Councilmember Ken Freese made a motion to authorize the City Staff to continue negotiations with the property owners. Councilmember Don Mueller seconded the motion. All voted in favor.

The thirteenth item on the agenda was to review and consider an ordinance declaring a public necessity for the acquisition of fee simple title to 4.870 acres of land, being more or less out of Abstract 38 in the City of Wharton, Wharton County, Texas, as conveyed to the Union Pacific Railroad, for a public purpose, namely the acquisition, improvement and maintenance of the road

extension project between FM 1301 and County Road 235; and authorizing the City Attorney and the Law Offices of Davidson & Troilo, a professional corporation, to file eminent domain proceedings; ratifying and affirming all prior acts and proceedings done or initiated by attorneys and employees of the City to acquire such property; authorizing all other lawful action necessary or incidental to such acquisition or eminent domain proceedings. City Manager Andres Garza, Jr. presented a draft copy of the ordinance declaring a public necessity for the acquisition of fee simple title to 4.870 acres of land, being more or less out of Abstract 38 in the City of Wharton, Wharton County, Texas, as conveyed to the Union Pacific Railroad, for a public purpose, namely the acquisition, improvement and maintenance of the road extension project between FM 1301 and County Road 235; and authorizing the City Attorney and the Law Offices of Davidson & Troilo, a professional corporation, to file eminent domain proceedings; ratifying and affirming all prior acts and proceedings done or initiated by attorneys and employees of the City to acquire such property; authorizing all other lawful action necessary or incidental to such acquisition or eminent domain proceedings. After some discussion, Councilmember Ken Freese made a motion to approve Ordinance No. 2006-02, which read as follows:

**CITY OF WHARTON  
ORDINANCE NO. 2006-02**

**AN ORDINANCE DECLARING A PUBLIC NECESSITY FOR THE ACQUISITION OF FEE SIMPLE TITLE TO 4.870 ACRES OF LAND, BEING MORE OR LESS OUT OF ABSTRACT 38 IN THE CITY OF WHARTON, WHARTON COUNTY, TEXAS, AS CONVEYED TO THE UNION PACIFIC RAILROAD, FOR A PUBLIC PURPOSE, NAMELY THE ACQUISITION, IMPROVEMENT AND MAINTENANCE OF THE ROAD EXTENSION PROJECT BETWEEN FM 1301 AND COUNTY ROAD 235; AND AUTHORIZING THE CITY ATTORNEY AND THE LAW OFFICES OF DAVIDSON & TROILO, A PROFESSIONAL CORPORATION, TO FILE EMINENT DOMAIN PROCEEDINGS; RATIFYING AND AFFIRMING ALL PRIOR ACTS AND PROCEEDINGS DONE OR INITIATED BY ATTORNEYS AND EMPLOYEES OF THE CITY TO ACQUIRE SUCH PROPERTY; AUTHORIZING ALL OTHER LAWFUL ACTION NECESSARY OR INCIDENTAL TO SUCH ACQUISITION OR EMINENT DOMAIN PROCEEDINGS.**

**BE IT ORDAINED BY THE WHARTON CITY COUNCIL:**

**SECTION 1.** A public necessity is hereby declared for the City of Wharton to acquire fee simple title to certain privately owned real property of the Union Pacific Railroad, for the purpose of a road extension project between FM 1301 and County Road 235. Said parcel is generally described as follows:

4.87 acres of land, more or less, being out of Abstract 38, in the City of Wharton, Wharton County, Texas, and described by the Wharton County Appraisal District as Property ID # R31928 and is located at the southwest corner of Richmond Road (Hwy. 60) and FM 1301 (Boling Hwy.) in the City of Wharton as shown in the attached "Exhibit A."

**SECTION 2.** In the event that the City staff is unable to acquire the property by negotiation by reason of its inability to agree with the owners thereof as to the value of the parcel, or is unable to acquire the parcel for any other reason, the City Manager, through the City Attorney and/or designated special counsel under the direction of the City Attorney, are hereby authorized and directed to institute and prosecute to conclusion all necessary proceedings to condemn the property. The City Attorney is hereby authorized to retain the services of the law firm of Davidson & Troilo, P.C. as special counsel as may be needed from time to time and to pay for the services rendered from any appropriations as may be made for the purpose.

**SECTION 3.** The prior actions and efforts of City Officials to negotiate the purchase of the necessary right-of-way and the steps taken to initiate and prosecute acquisition of the property are hereby ratified and affirmed.

**SECTION 4.** It is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this Ordinance, was given to all as required by the Texas Code Annotated, as amended, Title 5, Chapter 551, Government Code.

**SECTION 5.** If any part, section, paragraph, sentence, phrase, or word of this Ordinance is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this Ordinance shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid, or ineffective.

**SECTION 6.** This Ordinance shall be effective on the 3<sup>rd</sup> of February 2006 at 12:01 a.m.

**PASSED AND APPROVED** this the 23<sup>rd</sup> day of January 2006.

**CITY OF WHARTON**

By: \_\_\_\_\_

**BRYCE D. KOCIAN**

Mayor

**ATTEST:**

\_\_\_\_\_  
**LISA STAVENA**  
City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**PAUL WEBB**

City Attorney

Councilmember Don Mueller seconded the motion. All voted in favor.

The fourteenth item on the agenda was to review and consider the request for City Council authorization to pay exempt employees for compensatory time accrued during Hurricane Rita. City Manager Andres Garza, Jr. stated that several city employees that were exempt from the Fair Labor Standards Act (FLSA) accrued compensatory time during Hurricane Rita. He stated that it was the City's policy that exempt employees receive compensatory time at straight time. He said that the time was allocated to their comp-time and was not paid; however, the City had received documentation approving the reimbursement and FEMA was processing the reimbursement payment. He stated that the City Staff was seeking City Council authorization to pay the time accrued to the respective employees in order to reduce the compensatory time. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to pay exempt employees for compensatory time accrued during Hurricane Rita. Councilmember David Samuelson 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 Projects. City Manager Andres Garza, Jr. presented a copy of his memorandum dated January 23, 2006 providing an update on the City of Wharton projects, which read as follows:

**FLOOD PLAIN MANAGEMENT**

- A. Wharton Interim Feasibility Study. This project was on going. The Corps of Engineers feasibility report should be completed for the first phase of this project by December 2006. However, preparations had begun on the second phase, which was the pre-construction engineering and design. On January 13, 2006, Mayor Bryce D. Kocian submitted a letter to Mr. Joe Beal, General Manager of the Lower Colorado River Authority (LCRA) requesting assistance from LCRA, the Texas Colorado River Floodplain Coalition and the U.S. Army Corps of Engineers in petitioning Congress for funding for the pre-construction engineering design (PED) phase of the project.
  
- B. FEMA-Flood Maps. The City Staff had been in contact with representatives of FEMA, LCRA, and the Texas Colorado River Floodplain Coalition (TCRFC) and had confirmed a date to hold the public information meeting regarding the new flood maps and flood insurance rates. The meeting would be held January 24, 2006 at 7:00 p.m. at the Wharton Civic Center. Beginning January 5, 2006, the City Staff had issued over 300 certified letters to property owners regarding the meeting. Representatives from LCRA, FEMA, TCRFC, Texas Commission on Environmental Quality (TCEQ) and the US Army Corps of Engineers (Corps) would be available to answer any questions.

**DRAINAGE:**

- 1. Ahldag Ditch Design.

The excavation of the Ahldag Drainage Outfall Channel had been completed with the assistance of Wharton County Commissioner Chris King. City personnel would complete the installation of the drop pipes and grade the berm ditches. This project was ongoing.

- 2. Santa Fe Outfall Ditch.

On December 21, 2005, Mr. Garza submitted the appraisals that were prepared by Hudgins-Groover Appraisal to the seven property owners. Currently, the City had received a response from four of the property owners that would be reviewed by the City Council during the January 23, 2006 regular Wharton City Council meeting. Also, the construction drawings being prepared by Jones & Carter, Inc. was 75% complete. Mr. Garza had scheduled a meeting with Wharton County Commissioner Mickey Reynolds for Tuesday, January 31, 2006 to discuss the project. This project was ongoing.

### **WATER/SEWER IMPROVEMENTS:**

#### 1. Water Plant Tank Inspections.

Jones & Carter, Inc. had completed the tank inspections at the Valhalla Plant and the report should be completed in approximately two weeks. Several of the tanks needed to be recoated this year.

#### 2. Sewer Improvements/Industrial Park

The professional engineering contract prepared by Jones & Carter, Inc. had been submitted to the USDA. Jones & Carter, Inc. was preparing a materials list and specifications for the force main so the City could bid the materials. Jones & Carter would also finalize the pump station location with the City and the Industrial Foundation in order to proceed with the pump station design.

#### 3. Water System Analysis.

During the regular January 9, 2006 Wharton City Council meeting, the City Council authorized Jones & Carter, Inc. to conduct a water system analysis for the City water distribution system. The City was awaiting the contracts for execution.

### **STREET IMPROVEMENTS**

#### 1. U.S. 59/FM 102 Intersection Upgrade - Road Extension Project between FM 1301 and County Road 235 – US Highway 59 and SH 60 Interchange Projects.

During the December 12, 2005 Wharton City Council meeting, the City Council approved Resolution No. 2005-83 that approved the projects as outlined in the Texas Department of Transportation letter dated October 31, 2005. Mr. Garza had submitted a letter to Yoakum District Engineer Lonnie Gregorcyk, P.E. providing him with a copy of the resolution and requested that the State begin preparing the necessary contracts in order to move the projects forward.

#### 2. 2005 Street Improvement Program.

Cornerstone Paving, Inc. had completed the sealcoating and reconstruction of the streets in accordance with the contract. The company would begin the necessary touch up/clean up to complete the project. The project should be completed during the week of January 23<sup>rd</sup>.

#### 3. WISD – Harris Park.

Mr. Don Hillis, Superintendent of WISD, informed Mr. Garza that the school district was interested in addressing the easement for the paving of the road located inside Harris Park. The City Staff was negotiating the easement with WISD. However, WISD was not in favor of granting all of Harris Park to the City as requested. On January 17, 2006, Mr. Garza met with Mr. Hillis and provided him with an alternative option regarding the necessary land that would be needed by the City in order to conduct the levee project and pave the road. Mr. Garza was awaiting a response from the school district.

#### 4. Heartland Homes Housing Project.

During the regular January 9, 2006 regular City Council meeting, the City Council authorized Jones & Carter, Inc. to prepare the design of the paving of Price Street and the replacement of the two-inch water line. The City Staff had issued the street construction agreement to Heartland Homes for signature. Jones & Carter, Inc. had submitted the required contracts for professional engineering services.

### **WHARTON REGIONAL AIRPORT – 2006 RAMP PROGRAM**

The maintenance fees for the AWOS/Nadin system at the Wharton Regional Airport had been included in the 2006 RAMP program, which costs approximately \$1500.00 per year. The Airport Board was currently determining which projects could be conducted with the remaining funds under this grant.

### **NON-PRIMARY ENTITLEMENT (NPE) FUNDS**

The City Staff submitted the lease agreements and minimum standards for the Wharton Regional Airport to the Texas Department of Transportation Aviation Division for the States review as they requested. The City Staff was awaiting their response. The amendments to the agreements and adoption of minimum standards were a requirement of the State in order for the City to receive the NPE funds. Once the State approved the agreements, the City Staff would present the amended agreements and FBO minimum standards to the City Council for final approval.

### **AIRPORT TERMINAL PROJECT**

The Texas Department of Transportation Aviation Division was currently negotiating with Stern & Bucek Engineers on the contract terms and conditions. The City looks forward to a signed contract by the end of January 2006.

### **AIRPORT DEVELOPMENT PLAN**

The final draft of the Airport Development Plan had been submitted to the Texas Department of Transportation Aviation Division for their final review and comment. Once the City received their approval of the plan, the plan would be submitted to the City Council for formal adoption.

### **HOME PROJECTS**

**1. 2004 HOME Program.**

The City Staff had received notification that the City was approved for this grant which would enable the City to build 7 homes for special needs individuals. Applications were taken until December 31, 2005. This is a special needs grant and was on going.

**2. 2005 Home Program (Disaster Relief)**

Nine new homes for the citizens that were affected by the November 2004 flood had been approved. The City had signed the contract and was awaiting the fully executed agreement in order to proceed.

**OTHER PROJECTS:**

1. Santa Fe Trail Park Project.

This project was moving forward. The City had submitted a request for bids for the construction of the amenities of the Santa Fe Trail, i.e. pavilions, arbors, lighting, irrigation, etc., which would be due January 31, 2006. The water fountain foundation had been constructed. The plumbing phase of the project would begin the week of January 23<sup>rd</sup>.

2. Southern Pacific Railroad Depot Restoration Project.

Restoration of the depot by A & A Constructors, Inc. was moving forward. This project was on going.

3. Police Station Electrical Protection.

Jones & Carter, Inc. was working with the Police Department and their electrical consultant examining the existing equipment. The firm was preparing the bid documents and specifications to provide adequate surge and lightening protection, which should be complete in approximately three weeks.

4. Sidewalk Project.

The City Staff was reviewing the City's sidewalk program for accessibility in the downtown area. The City Staff was also reviewing the City's overall City sidewalk program.

After some discussion, no action was taken.

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

- A. Beautification Commission meeting held December 14, 2005.
- B. Finance Committee Meeting held January 12, 2006.
- C. Parks Planning Committee meeting held January 18, 2006.

- D. Mayor's Committee on People with Disabilities Committee held October 25, 2005, November 17, 2005 and January 19, 2006.
  - E. Building Standards Commission meeting January 19, 2006.
  - F. Wharton County Appraisal District update dated January 11, 2006.
- City Manager Andres Garza, Jr. presented the reports to the City Council. No action was taken.

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

- |   |  |
|---|--|
| 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.           | N. Legal.  |
| G. Water & Sewer Department.              | O. Weedy Lots/Sign Ordinance.                      |
| H. Public Works Department.               |  |

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

The eighteenth 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 9:06 p.m.

CITY OF WHARTON, TEXAS

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

ATTEST:

\_\_\_\_\_  
LISA STAVENA  
City Secretary