

MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
FEBRUARY 13, 2006

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Councilmember David Samuelson 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, Planning Director Prudencio Arriaga, Sr., Police Chief Tim Guin, and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, Lewis Fortenberry, Carlos Cotton, Louis Edwards, David Schroeder, Belinda Hernandez-James, Gary Kubeezka, Diane Matula, Misty Taylor, Brandi Currie, Jennifer Walker, Glenn Erdelt, and Ed Addicks.

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 February 13, 2006. Councilmember David Samuelson seconded the motion. All voted in favor.

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

The fourth item on the agenda was Wharton Moment. No comments were given. 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 January 9, 2006 and January 23, 2006. After some discussion, Councilmember Ken Freese made a motion to approve the Wharton City Council minutes of the regular meetings held January 9, 2006 and January 23, 2006 as presented. Councilmember David Samuelson seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider an ordinance calling for a City Officers Election, providing for the date, time, and place of the election, the appointment of election

officers and clerks, early voting, Notice of the Election, drawing for ballot positions, filing applications, and making election returns. City Manager Andres Garza, Jr. presented a draft ordinance calling for the Regular City Officers Election of May 13, 2006, Providing for the Date, Time, and Place of the Election, the Appointment of Election Officers and Clerks, Early Voting, Notice of Election, Drawing for Ballot Positions, Filing Applications, and Making Election Returns. City Secretary Lisa Stavena stated that the City would be leasing the AutoMark machines as required by Help America Vote Act (HAVA) from Wharton County for the General Election. She stated that the two extended 12 hour days for early voting would be held on May 2, 2006 and May 9, 2006. She stated that a manual count would be conducted with optical scan ballots. After some discussion, Councilmember Ken Freese made a motion to approve Ordinance No. 2006-03, which read as follows:

**CITY OF WHARTON, TEXAS  
ORDINANCE NO. 2006-03**

**AN ORDINANCE CALLING FOR A CITY OFFICERS ELECTION, PROVIDING FOR THE DATE, TIME, AND PLACE OF THE ELECTION, THE APPOINTMENT OF ELECTION OFFICERS AND CLERKS, EARLY VOTING, NOTICE OF THE ELECTION, DRAWING FOR BALLOT POSITIONS, FILING APPLICATIONS, USE OF ACCESSIBLE VOTING SYSTEM, ESTABLISHING EARLY VOTING HOURS, AND MAKING ELECTION RETURNS.**

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

"Section 32 of the City Charter provides that regular city elections will be held annually on the first Saturday in May; however, pursuant to changes in the Texas Election Code, Section 41.001(a), the General Election date has been changed to the second Saturday in May."

**Date and Position**

An election shall be held in the City of Wharton, Texas on **May 13, 2006**, for the purpose of electing the following officials for the City:

Mayor  
Councilmember - District No. 2  
Councilmember - District No. 4  
Councilmember at Large - Place No. 6

**Location**

The election shall be held at the City of Wharton Civic Center at 1924 North Fulton Street, Wharton, Texas.

**Time**

The polls shall open for voting at **7 a.m.** and shall close at **7 p.m.**

### **Election Officers**

The following-named persons are appointed officers for the election:

Presiding Judge: Magdalena Rodriguez  
Alternate Presiding Judge: Gerald Adams

The presiding judge shall have the authority to appoint no more than twelve (12) clerks in the holding of such election, but in no event shall the Presiding Judge appoint less than two (2) clerks.

### **Ballots**

Optical scan ballots shall be used for voting on election day and for early voting by personal appearance and by mail in each of the elections.

### **Early Voting**

The City Secretary is appointed early voting clerk and the City Secretary is authorized to appoint by written order one or more temporary deputies to serve as early voting clerks.

The early voting by personal appearance for the above-designated election shall take place at the Wharton Community/Civic Center at 1924 North Fulton Street, Wharton, Texas. The place for early voting shall remain open on each day that is not a Saturday, Sunday, or an official state holiday, between the hours of **8 a.m.** and **5 p.m.**, beginning on **May 1, 2006** and continuing through **May 9, 2006** as required by state law, with the exception of Tuesdays, which shall be from **7 a.m.** to **7 p.m.** on **May 2, 2006** and **May 9, 2006**.

An Early Voting Ballot Board is hereby established for the purpose of early voting results. Gerald Adams is appointed the Presiding Judge of the Early Voting Ballot Board. The Presiding Judge shall appoint not less than two (2) nor more than four (4) resident qualified voters of the City to serve as members of the Early Voting Ballot Board. The City Secretary shall act as Early Voting Ballot Board Clerk.

Voters may send ballot applications and mailed ballots to the City Secretary's office at 120 East Caney, Wharton, Texas 77488.

### **Compensation for Election Officials and Clerks**

The election officials and clerks shall be compensated in the following manner:

The Election Judge for the May 13, 2006 General Election shall be paid \$7.00 per hour. The Election Judge shall also be paid \$25.00 for delivering the precinct records, keys to ballot box or other election equipment and unused election supplies after the election.

The Election Clerk(s) for the May 13, 2006 General Election shall be paid \$7.00 per hour.

### **Candidate Names**

The City Secretary shall, in accordance with the terms and provisions of the Texas Election Code, order the candidate names to be printed on the ballots for said General Election.

### **Eligibility to Vote**

The election shall be held in accordance with the Election Code of the State of Texas. Only qualified resident voters of the City of Wharton, Texas shall be eligible to vote in the election.

### **Accessible Voting System**

Section 61.012 of the Texas Election Code requires that the City of Wharton must provide at least one accessible voting system in each polling place used in a Texas election on or after January 1, 2006. This system must comply with state and federal laws setting the requirements for voting systems that permit voters with physical disabilities to cast a secret ballot.

The Office of the Texas Secretary of State has certified that the AutoMark Voter Assist Terminal provided by ES&S - Election Systems & Software is an accessible voting system that may legally be used in Texas elections.

Sections 123.032 and 123.035 of the Texas Election Code authorize the acquisition of voting systems by local political subdivisions and further mandate certain minimum requirements for contracts relating to the acquisition of such voting systems. The City of Wharton shall lease or rent from the County of Wharton as authorized by Section 123.032.

The City of Wharton hereby adopts for use in Early Voting and Election Day Voting the ES & S - AutoMark Voter Assist Terminal as approved by the Secretary of State to comply with HAVA requirements.

### **Notice of City Officers' Election**

The Mayor shall cause a notice by publication of this election to be published at least once in a newspaper that is published in the City of Wharton, Texas and that is in the jurisdiction of the City of Wharton, Texas, which publication shall be not earlier than the **30th day** nor later than the **10th day** before election day.

The Mayor shall also give notice of the election by causing a copy of the notice of election to be posted not later than the **21st day** before election day on the bulletin board located at the City Hall, 120 East Caney, Wharton, Texas and used for posting notices of meetings of the Wharton City Council. The notice shall include the location of the polling place.

### **Returns**

"Section 41 of the City Charter provides that city elections shall be canvassed within one (1) week after the election; however, pursuant to changes in the Texas Election Code, Section 67.003, the local canvass shall convene not earlier than the third day or later than the 11<sup>th</sup> day after the election day." The period for official canvass shall be from May 16 - 24, 2006. The officers holding the election shall make returns of the results thereof to the Mayor of this City, as required by the Election Code of the State of Texas.

### **Writ of Election**

A copy of this ordinance shall also serve as a writ of election, which shall be delivered to the above-appointed presiding judge for the election not later than the **15th day** before election day.

### **Filing**

Candidates must file applications for a place on the ballot with the City Secretary of the City of Wharton, Texas beginning on **February 11, 2006** and continuing through **5 p.m. on March 13, 2006**. A declaration of write-in candidacy must be filed not later than 5:00 P.M. on **March 20, 2006**, the 5th day after an application for a place on the ballot is required to be filed that is on Saturday, March 18, 2006; therefore, the date is moved to Monday, March 20, 2006.

Candidates for City Councilmember must designate the position filed for, either Mayor, Councilmember District No. 2, Councilmember District No. 4, or Councilmember at Large - Place No.6.

### **Ballot Positions**

On **March 17, 2006 at 4:00 p.m.**, a drawing will take place in the office of the City Secretary for the purpose of determining the order of the candidates' names as they are to appear on the ballot.

The City Secretary shall post a notice of the date, hour, and place of the drawing and this notice shall remain posted continuously for at least 72 hours immediately preceding the scheduled time of the drawing.

### **Order**

The City Council of the City of Wharton, Texas shall order the election, in accordance with the foregoing provisions.

### **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.

### Passage and Approval

**PASSED AND APPROVED** by the City Council of the City of Wharton, Texas, on this 13th day of February, 2006.

**ATTEST:**

**CITY OF WHARTON, TEXAS**

\_\_\_\_\_  
**Lisa Stavena**  
City Secretary

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

**APPROVED AS:**

\_\_\_\_\_  
**Paul Webb**  
City Attorney

Councilmember David Samuelson seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider the recommendation from the Planning Commission to consider approving the following:

A. Final Replat of the Muegge Family Testamentary Trust for approval of Ahldag, Block 13B, Barclay, Lot 8A, 9, 10, 11,12, 13, 14 and Burr, Block A, Lot 1, 2, 3, 4.

City Manager Andres Garza, Jr. presented a copy of the memorandum dated February 7, 2006 from Planning Commission Chairman A. J. Rath recommending the City Council consider approving the request. Planning Director Prudencio Arriaga, Sr. informed the City Council that the final replat had been modified from the preliminary replat previously sent. He stated that the revision allowed seven lots, meeting all the subdivision requirements. After some discussion, Councilmember David Samuelson made a motion to approve the final replat of the Muegge Family Testamentary Trust for approval of Ahldag, Block 13B, Barclay, Lot 8A, 9, 10, 11,12, 13, 14 and Burr, Block A, Lot 1, 2, 3, 4. Councilmember Ken Freese seconded the motion. All voted in favor.

B. Preliminary replat request by Navasota Energy, LLC for a portion of the former Cane Belt Railroad and Lots 5 thru 24, and a portion of Dyann Drive and Rebecca Street of Plantation Acres, Section No. 2.

City Manager Andres Garza, Jr. presented a copy of the memorandum dated February 7, 2006 from Planning Commission Chairman A. J. Rath recommending the City Council consider approving the request. Planning Director Prudencio Arriaga, Sr. informed the City Council that the property was located outside the City limits but inside the ETJ. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the preliminary replat request by Navasota Energy, LLC for a portion of the former Cane Belt Railroad and Lots 5 thru 24, and a portion of Dyann Drive and Rebecca Street of Plantation Acres, Section No. 2. Councilmember Don Mueller seconded the motion. All voted in favor.

