

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
JUNE 13, 2011**

Mayor Domingo Montalvo, Jr. declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Councilmember Al Bryant led the opening devotion and led the pledge of allegiance.

Councilmember's present were: Mayor Domingo Montalvo, Jr., Councilmembers Alfred Bryant, Terry David Lynch, Russell Machann, Don Muller, and Karen Schulz.

Councilmember absent was: Councilmember Jeff Gubbels.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joan Anadel, City Secretary Paula Favors, Assistant to City Manager Jackie Jansky, Public Works Director Carter Miska, and City Attorney Paul Webb.

Visitors present were: John Mercurief II with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Sherrell Speer, I.O. Colman, Jr., Rachel Rust, Alanne Huggins, Gabrielle Luera, Rachel Bahnsen, Cody Woodfin, Leslie Woodfin, Dalton Woodfin, Casey Woodfin, Millie Hlavinka, Marissa Hlavinka, Paul Sherland, Alicia Luera, Ramiro Paniagua, Steven D. May, and Ricky Sherfield, Jr.

The second item on the agenda was Roll Call and Excuses Absences. Councilmember Don Mueller moved to excuse Councilmember Jeff Gubbels from being absent. Councilmember Terry David Lynch seconded the motion. All voted in favor.

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

The fourth item on the agenda was the Wharton Moment. Mayor Domingo Montalvo, Jr. presented proclamations to the Wharton High School 2010-2011 UIL Participants in Sports, Academic and Band. He stated that the participants attended the state competition and represented the City of Wharton well. City Manager Andres Garza, Jr. introduced and welcomed Ricky Sherfield from the Texas Department of Agriculture Internship Program.

The fifth item on the agenda item was to review and consider the reading of the minutes from the regular meeting held May 9, 2011 and May 23, 2011 as presented. After some discussion, Councilmember Terry David Lynch moved to approve the minutes from the regular meetings

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held May 9, 2011 and May 23, 2011. Councilmember Al Bryant seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider a request by Ms. Frances Crump c/o Ms. Jo Hale for an over 50% variance request for the placement of a 6'-8" x 6'-8" sign to be located at 102 West Alabama Street; Wharton, Block 54, Lots 1, 2. City Manager Andres Garza, Jr. presented a copy of the memorandum dated June 2, 2011 from Building Official Ronnie Bollom providing the application for an Over 50% Variance request submitted by Ms. Frances Crump c/o Ms. Jo Hale for a side yard setback variance for the placement of a 6'-8" x 6'-8" sign to be located at 102 West Alabama Street; Wharton, Block 54, Lots 1, 2. Mr. Garza also presented a copy of the application and supporting documentation. After some discussion, Councilmember Al Bryant moved to approve the request by Ms. Frances Crump c/o Ms. Jo Hale for an over 50% variance request for the placement of a 6'-8" x 6'-8" sign to be located at 102 West Alabama Street; Wharton, Block 54, Lots 1, 2 contingent upon the sign being constructed to allow for visibility at the bottom of the sign. Councilmember Don Mueller seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider a resolution of the Wharton City Council rescinding Resolution No. 2011-34 and approving the Multi-Jurisdictional Hazard Mitigation Action Plan prepared by the Texas Colorado River Floodplain Coalition. City Manager Andres Garza, Jr. stated that on May 9, 2011, the Wharton City Council approved Resolution No. 2011-34 approving the Multi Jurisdictional Hazard Mitigation Action Plan. Mr. Garza added that since that time, the Texas Colorado River Floodplain Coalition had made recommended changes to the plans introductory section. City Manager Garza further stated that the Federal Emergency Management Agency (FEMA) had asked that all entities that approved the plan prior to the changes being made (May 23, 2011) readopt the resolution approving the plan. City Manager Garza presented a copy of the email from Ms. Melissa Lerma, TCRFC and H2OPartners requesting that the resolution and plan be readopted. City Manager Garza stated that the City Staff was requesting City Council consideration to approve the plans re-adoption. After some discussion, Councilmember Terry David Lynch moved to approve the resolution rescinding Resolution No. 2011-34 and approving the Multi-Jurisdictional Hazard Mitigation Action Plan prepared by the Texas Colorado River Floodplain Coalition. City of Wharton Resolution No. 2011- 41 read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-41**

A RESOLUTION OF THE WHARTON CITY COUNCIL RESCINDING RESOLUTION NO. 2011-34 AND APPROVING THE MULTI-JURISDICTIONAL HAZARD MITIGATION ACTION PLAN PREPARED BY THE TEXAS COLORADO RIVER FLOODPLAIN COALITION.

WHEREAS, on May 9, 2011, the Wharton City Council approved Resolution No. 2011-34 approving the Multi-Jurisdictional Hazard Mitigation Action Plan; and

WHEREAS, the Federal Emergency Management Agency has asked each participating entity to reapprove the plan since modifications were made to the introductory sections of the plan; and

WHEREAS, the City of Wharton wishes to rescind Resolution No. 2011-34 approving the original Multi-Jurisdictional Hazard Mitigation Action Plan; and

WHEREAS, the City of Wharton wishes to approve said plan that was revised after May 23, 2011; and

WHEREAS, natural hazards in the Lower Colorado Basin historically have caused significant disasters with losses of life and property and natural resources damage; and

WHEREAS, the City of Wharton is a participating member of the Texas Colorado River Floodplain Coalition (TCRFC); and

WHEREAS, the Federal Disaster Mitigation Act of 2000 and Federal Emergency Management Agency (FEMA) require communities to adopt a hazard mitigation action plan to be eligible for the full range of pre-disaster and post-disaster federal funding for mitigation purposes; and

WHEREAS, FEMA requires that communities update hazard mitigation action plans every five years in order to be eligible for the full range of pre-disaster and post-disaster federal funding for mitigation purposes; and

WHEREAS, the City of Wharton has assessed the community's potential risks and hazards and is committed to planning for a sustainable community and reducing the long-term consequences of natural and man-caused hazards; and

WHEREAS, the TCRFC's Hazard Mitigation Plan Update outlines a mitigation vision, goals and objectives; assesses risk from a range of hazards; and identifies risk reduction strategies and actions for hazards that threaten the community.

NOW THEREFORE BE IT RESOLVED THAT:

- Section I. The Wharton City Council hereby rescinds Resolution No. 2011-34.
- Section II. The TCRFC's Hazard Mitigation Plan Update amended after May 23, 2011 as approved in its entirety;
- Section III. The City of Wharton will pursue available funding opportunities for implementation of the proposals designated therein, and will, upon receipt of such funding or other necessary resources, seek to implement the actions contained in the mitigation strategies;
- Section IV. The City of Wharton vests with the Mayor/County Judge the responsibility, authority, and means to inform all parties of this action; assure that the Hazard Mitigation Plan Update will be reviewed at least annually; and that any needed adjustments will be presented to the City Council/Commissioner's Court for consideration; and
- Section V. The City of Wharton agrees to take such other action as may be reasonably necessary to carry out the objectives of the Plan Update and report on progress as required by FEMA and the Texas Division of Emergency Management (TDEM).
- Section VI. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this the 13th day of June 2011.

CITY OF WHARTON

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Russell Machann seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider **the *First Reading: Ordinance:*** An ordinance authorizing the Mayor of the City of Wharton to execute on behalf of the City of Wharton, Texas, an Electric Power Distribution Franchise with Wharton County Electrical Cooperative, Inc., and its successors and assigns, to use the Public Rights-of-Way of the City for the Distribution of Electric Power; Providing for Period of Grant; for Consideration; for Construction and Relocation of System Facilities; for assignment; and for Publication in accordance with the Authority Granted in this Ordinance. City Manager Andres Garza, Jr. stated that during the May 23, 2011 Wharton City Council meeting, the City Council was presented a draft copy of a proposed franchise agreement between the City of Wharton and the Wharton County Electrical Cooperative (WCEC) for electric power distribution. Mr. Garza further stated the City Charter required that franchise agreements (ordinances) must be read at three separate meetings of the City Council. Mr. Garza presented a copy of the proposed ordinance and franchise agreement and a copy of the City Charter Section 117 regarding franchises. After some discussion, Councilmember Don Mueller moved to approve the first reading of the ordinance authorizing the Mayor of the City of Wharton to execute on behalf of the City of Wharton, Texas, an Electric Power Distribution Franchise with Wharton County Electrical Cooperative, Inc., and its successors and assigns to use the Public Rights-of-Way of the City for the Distribution of Electric Power; Providing for Period of Grant for Consideration; for Construction and Relocation of System Facilities; for assignment; and for Publication in accordance with the Authority Granted in the Ordinance. The City of Wharton Ordinance No. 2011-10, read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2011-10**

AN ORDINANCE AUTHORIZING THE MAYOR OF THE TO EXECUTE ON BEHALF OF THE CITY OF WHARTON, TEXAS AN ELECTRIC POWER DISTRIBUTION FRANCHISE WITH WHARTON COUNTY ELECTRIC COOPERATIVE, INC., AND ITS SUCCESSORS AND ASSIGNS, TO USE THE PUBLIC RIGHTS-OF-WAY OF THE CITY FOR THE DISTRIBUTION OF ELECTRIC POWER; PROVIDING FOR PERIOD OF GRANT; FOR CONSIDERATION; FOR CONSTRUCTION AND RELOCATION OF SYSTEM FACILITIES;

FOR ASSIGNMENT; AND FOR PUBLICATION IN ACCORDANCE WITH THE AUTHORITY GRANTED IN THIS ORDINANCE.

* * *

The following statements are true and correct and constitute the basis upon which the City Council of the City of Wharton, Texas (the "**City**") may pass, approve and adopt this Ordinance:

WHEREAS, Texas Utilities Code § 41.005 provides that "An electric cooperative shall be an electric utility for purposes of Section 182.025, Tax Code, and Section 33.008."

WHEREAS, Texas Utilities Code § 33.008(a) provides that, "a municipality may impose on an electric utility, transmission and distribution utility ... or electric cooperative that provides distribution service within the municipality a reasonable charge as specified in Subsection (b) for the use of a municipal street, alley, or public way to deliver electricity to a retail customer."; and

WHEREAS, Wharton County Electric Cooperative, Inc. is an "electric cooperative" as that term is defined in the Texas Utilities Code and wishes to use the City of Wharton's streets, alleys, and public ways to deliver electricity to retail customers; and

WHEREAS, the City of Wharton wishes to grant Wharton County Electric Cooperative, Inc. ("**Company**") the right to use its streets, alleys, and public ways to distribute electricity to retail customers for a reasonable charge; and

WHEREAS, the City of Wharton finds that the charge provided in this Franchise Agreement is reasonable and comparable to fees charged to other providers;

WHEREAS, the City Council has reviewed the terms and conditions of the agreement covering the City's grant of the Franchise to Company ("**Franchise**"), as described with greater specificity below; and

WHEREAS, the City Council adopts this Franchise Authorizing Ordinance which authorizes the Mayor of the City to execute a Franchise with Company on behalf of the City strictly upon the terms as set forth herein; and

WHEREAS, City of Wharton finds that the publication of this Ordinance, as required by the City Charter Section 117(b), fully complies with that Charter requirement, with the Franchise being available to the public to review in the City Secretary's Office; and

WHEREAS, upon passage, approval and adoption of this Ordinance, and after publication and written acceptance by the Company, the Mayor may execute the Franchise on behalf of the City, which Franchise shall include the terms and conditions as described herein; and

WHEREAS, as set forth herein, the terms and conditions of the Franchise are provided for summary purposes only and are limited in their entirety by the actual terms and conditions of the Franchise to be entered into by and between the City and the Company; capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Franchise.

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

The City Council adopts this Franchise Authorizing Ordinance authorizing the Mayor to execute on behalf of the City a Franchise with Company, which Franchise shall include the following terms and conditions:

The term of the Franchise shall be no longer than ten (10) years;

Company shall provide the City with written acceptance of the Franchise in accordance with its term;

Company shall pay to the City on a quarterly basis a franchise fee in the amount of four percent (4%) of Company's Gross Revenue for the privileges conferred to Company under the Franchise, or the maximum allowed by Section 33.008 of the Texas Utilities Code;

City shall be allowed to review books and records of the Company to verify franchise fee payments;

Company shall agree to abide by with all applicable City ordinances concerning the construction, use, excavation, maintenance, operation, and removal of the Company's electrical system facilities that are in, on or over the public rights-of-way in the City;

Company shall relocate its electrical distribution facilities at its cost for City construction projects;

Company shall indemnify the City;

The Franchise may not be assigned or transferred by Company without the prior written consent of the City, as provided for in the Franchise

The Franchise shall provide for forfeiture and termination for material breaches;

Venue for disputes shall be in Wharton County; and

Company shall distribute electrical power service in full conformity with its tariffs, but only in the areas of the City where the Company is authorized to provide electrical power service.

Upon publication of this Ordinance as required by the City Charter Section 117(b), and written acceptance of the Franchise by Company, the City Council hereby authorized the Mayor to execute on behalf of the City and with Company a Franchise having the terms and conditions as described above.

This Ordinance shall be in full force and effect following its publication in accordance with the City Charter Section 117(b).

Read in full and passed and adopted on first reading at a regular meeting of the City Council of Wharton, Texas, on the 13th day of June 2011, and approved by the Mayor.

APPROVED:

DOMINGO MONTALVO, JR.
MAYOR OF THE CITY OF
WHARTON, TEXAS

ATTEST:

PAULA FAVORS
CITY SECRETARY OF WHARTON, TEXAS

THE STATE OF TEXAS §
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and _____ were present at said meeting and acted as the Council throughout; that after the first reading and before the date of the final reading, the full text of the above and foregoing ordinance was published one each week for four consecutive weeks in the official newspaper of the city; that the same has been signed and approved by the Mayor and is duly attested by the City Secretary; and that the same has been duly filed with the City Secretary and recorded by the City Secretary in full in the books kept for the purpose of recording the ordinances of the City of Wharton.

EXECUTED under my hand and the official seal of the seal of the City of Wharton, Texas at said City, this the _____ day of _____, 2011.

Paula Favors
City Secretary
City of Wharton, Texas

Councilmember Al Bryant seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider City of Wharton Emergency Generators Quick Connects for Certain City Facilities Project - Electrical Automation Controls (EAC):

A. Change Order No. 2.

City Manager Andres Garza, Jr. presented a copy of the memorandum dated May 19, 2011 from Building Official Ronnie Bollom regarding the Change Order No. 2 that would reduce the scope of work on the project, for the Wharton Fire Department outlined in the contract. City Manager Garza stated that since the bid to install the Automatic Transfer Switch at the Wharton Fire Department was awarded to Barbee Electric, the installation of the 400 amp manual transfer switch and cam lock assembly needed to be removed from the EAC contract but the company had received the equipment, which could not be restocked. City Manager Garza further stated the City had received the equipment and the \$5,216.97 represents its cost and the removal of this portion of the work from the contract scope of work was a result of changing the electrical service entrance to a 600 Amp service in order to provide electrical power to the existing building and new building and being able to utilize only one emergency generator and components.

B. Pay Request No. 4.

City Manager Garza presented a copy of the memorandum dated June 6, 2011 from Building Official Ronnie Bollom providing the Pay Request No. 4, in the amount of, \$13,392.12 for the City of Wharton Emergency Generators Quick Connects for Certain City Facilities Project being conducted by Electrical Automation Controls. City Manager Garza stated Building Official Ronnie Bollom was recommending the City Council consider approving the request for payment. After some discussion, Councilmember Terry David Lynch moved to approve both items A. Change Order No. 2 and B. Pay Request No. 4 as presented above. Councilmember Russell Machann seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider a Wharton Fire Station Expansion Project – Garage Doors:

- A. Tabulation of Quotes.
- B. **Resolution:** A resolution of the Wharton City Council awarding a contract for the purchase of garage doors

City Manager Andres Garza, Jr. presented a copy of the memorandum dated June 13th from Facilities Maintenance Director Bob Baker providing quotes for the garage doors for the Fire Station Expansion Project. City Manager Garza stated Mr. Baker was recommending the City of Wharton award the purchase of the garage doors from La Grange Overhead Doors in the amount of \$15,468.00. After some discussion, Councilmember Terry David Lynch moved to approve City of Wharton Resolution No. 2011-42, which reads as follows,

**CITY OF WHARTON
RESOLUTION NO. 2011-42**

A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDING A CONTRACT FOR THE PURCHASE OF GARAGE DOORS FOR THE NEW BUILDING FOR THE CITY OF WHARTON FIRE STATION EXPANSION PROJECT AND AUTHROIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE PURCHASE AGREEMENT.

WHEREAS, the City of Wharton received quotes in accordance with the City of Wharton purchasing policy for the purchase of garage doors for the new building for the City of Wharton Fire Station Expansion Project; and

WHEREAS, La Grange Overhead Doors submitted the lowest and best qualified quote in the amount of \$15,468.00 in accordance with the specifications for the new building for the Wharton Fire Station Expansion Project; and

WHEREAS, the Wharton City Council wishes to award the purchase agreement to La Grange Overhead Doors for submitting the lowest and best qualified quote in the amount of \$15,468.00 for the new building; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor to execute all necessary documents related to the purchase of said garage doors for the Wharton Fire Station Expansion Project; and

WHEREAS, this resolution is passed in accordance with the quotes provided.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. That the Wharton City Council hereby approves to award a contract to La Grange Overhead Doors in the amount of \$15,468.00 for the purchase of garage doors for the new building for the City of Wharton Fire Station Expansion Project.

Section II. That the Wharton City Council hereby authorizes the Mayor to execute all necessary documents related to the purchase of said new building for the Wharton Fire Station Expansion Project.

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

Passed, Approved, and Adopted this 13th of June 2011.

CITY OF WHARTON, TEXAS

By:

DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Al Bryant seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider setting a Public Hearing for the 2010 Annual Drinking Water Quality Report – Consumer Confidence Report. City Manager Andres Garza, Jr. stated that each year, the City of Wharton was required by the Texas Commission on Environmental Quality (TCEQ) to make available the Annual Drinking Water Quality Report – Consumer Confidence Report. City Manager Garza presented a copy of the 2010 Annual Drinking Water Quality Report – Consumer Confidence Report, which the City Staff was preparing for distribution. City Manager Garza stated that a public hearing was required and the City Staff was requesting the City Council to consider setting the public hearing for Thursday, June 23, 2011 at 7:00 p.m. at City Hall to provide citizens an opportunity to obtain additional information regarding the report. After some discussion, Councilmember Don Mueller moved to approve setting a Public Hearing for the 2010 Annual Drinking Water Quality Report – Consumer Confidence Report for Thursday, June 23, 2011 at 7:00 p.m. at City Hall to provide citizens an opportunity to obtain additional information regarding the report. Councilmember Karen Schulz seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider appointments to the City of Wharton City Council, Boards, Commissions, and Committees:

- A. Wharton Regional Airport Board.
- B. Beautification Commission.
- C. Building Standards Commission.
- D. Electrical Board.
- E. Holiday Light Decorating Chairman.
- F. Mayor's Committee on People with Disabilities.
- G. Planning Commission.
- H. Plumbing and Mechanical Board.
- I. Wharton Economic Development Corporation Board of Directors.
- J. Youth Advisory Commission.
- K. City Council Committees:
 - 1. Annexation Committee.
 - 2. Finance Committee
 - 3. Housing Committee
 - 4. Intergovernmental Relations Committee.
 - 5. Legislative Committee.
 - 6. Public Health Committee
 - 7. Public Safety Committee.
 - 8. Public Works Committee.
 - 9. Telecommunications Committee.

City Manager Andres Garza, Jr. presented a copy of the list of Boards, Commissions, and Committees. City Manager Garza stated that the members whose terms were expiring on June 30th and whether or not they were willing to renew their terms was indicated on the list. After some discussion, Councilmember Terry David Lynch moved to appoint Councilmember Russell Machann to the Finance and Housing Committees. Councilmember Don Mueller seconded the motion. All voted in favor. Councilmember Terry David Lynch moved to appoint all Board, Committee and Commission members who indicated that they were willing to continue to serve another term as follows:

A. Wharton Airport Board	<u>Term Expiring</u>
1. Gary Williams	June 30, 2013
2. Randy Rodriguez	June 30, 2013
3. Bill Kingrey	June 30, 2013
B. Building Standards Commission	
1. Ellis Hurd	June 30, 2013
2. I.O. Coleman, Jr.	June 20, 2013
C. Electrical Board	
1. Leroy Alvarado	June 30, 2013
D. Mayor's Committee On People With Disabilities	
1. Phyllis Sliva	June 30, 2013

E. Planning Commission

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| 1. I.O. Coleman, Jr. | June 30, 2013 |
| 2. Rob Kolacny | June 30, 2013 |
| 3. Jeanene D. Merka | June 30, 2013 |

F. Plumbing and Mechanical Board

- | | |
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| 1. A.J. Rath | June 30, 2013 |
| 2. Tom Faust | June 30, 2013 |
| 3. Bryan Lynn | June 30, 2013 |

Councilmember Russell Machann seconded the motion. All voted in favor.

The thirteenth item on the agenda was to review and consider a presentation by Mayor Domingo Montalvo, Jr. regarding the Interstate 69 Segment 3 Committee. Mayor Domingo Montalvo, Jr. presented information regarding the Interstate 69 Segment 3 Committee. After some discussion, no action was taken.

The fourteenth item on the agenda was to review and consider Elected Official Workshop/Conferences:

- A. Houston-Galveston Area Council Elected City Official Workshop to be held June 23, 2011 in Houston, Texas.
- B. Texas Municipal League and the Association of Mayors, Councilmembers and Commissioners 2011 Newly Elected city Officials' Orientation to be held July 15-16, 2011 and August 5-6, 2011 in Austin, Texas.

City Manager Andres Garza, Jr. stated the City Council might consider approving the allowing newly elected Councilmembers to attend these conferences. After some discussion, Council Terry David Lynch moved to approve new Councilmembers attending the Elected Official Workshop/Conferences. Councilmember Al Bryant seconded the motion. All voted in favor.

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

- A. Wharton Economic Development Corporation meeting held on May 26, 2011
- B. Wharton Regional Airport board meeting held June 7, 2011.

After some discussion, Councilmember Terry David Lynch moved to appoint Karen Schulz and Al Bryant to the Wharton Economic Development Corporation Board Selection Committee. Councilmember Don Mueller seconded the motion. All voted in favor.

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The sixteenth item on the agenda was adjournment. After some discussion, Councilmember Don Mueller made a motion to adjourn. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The meeting adjourned at 7:46 p.m.

CITY OF WHARTON, TEXAS

By: _____
Domingo Montalvo, Jr
Mayor

ATTEST:

Paula Favors
City Secretary