

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
OCTOBER 22, 2012**

Mayor Pro-Tem Don Mueller declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Mayor Pro-Tem Don Mueller led the opening devotion and the pledge of allegiance.

Councilmember's present were: Mayor Pro-Tem Don Mueller, Councilmembers Al Bryant, Jeff Gubbels, Terry David Lynch, Russell Machann, and Karen Schulz.

Councilmembers absent were: Mayor Domingo Montalvo, Jr.

Staff members present were: City Manager Andres Garza, Jr., City Attorney Paul Webb, Finance Director Joan Anandel, Public Works Director Carter Miska, P.E., Emergency Management Coordinator Jim Cooper, Waste Water Plant Operator Daniel Frankum, and Assistant to City Manager Jackie Jansky.

Visitors present were: Ben Sharp, Wharton Journal Spectator, Doris Teague, Mimi McCart, Carlos Cotton, P.E. with Jones and Carter, Inc., and David Schroeder, Executive Director of the Wharton Economic Development Corporation (WEDCO).

The second item on the agenda was Roll Call and Excused Absences. All members were present. Councilmember Jeff Gubbels moved to excuse Mayor Domingo Montalvo, Jr. Councilmember Al Bryant seconded the motion. All voted in favor.

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

The fourth item on the agenda was the Wharton Moment. Mayor Pro-Tem Don Mueller stated Mayor Domingo Montalvo, Jr. made a wager with City of El Campo Mayor Richard Young to wear the opposing City's High School T-shirt if their City lost their varsity football game. The El Campo Ricebirds won by a single touchdown, 17-10 when they opposed the Wharton High School Tigers Friday, October 19, 2012. Mayor Pro-Tem Don Mueller stated the Mayor made a wager and he had to honor it.

The fifth item on the agenda was to review and consider the City of Wharton Financial Report for the month of September 2012. Finance Director Joan Anandel presented the financial report for the month of September 2012. Mrs. Anandel stated that the TexPool balance for September was \$154,137.41 with an average monthly yield of 0.16%. She said the Prosperity Bank balance for September 2012 was \$6,058,207.14 with an average monthly yield of 0.15%. Mrs. Anandel further stated that other investments included \$2,685.57 at TexasGulf Federal Credit Union in the debt fund. After some discussion, Councilmember Jeff Gubbels moved to approve the City of Wharton Financial Report for

the month of September 2012. Councilmember Al Bryant seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider a request by Mr. Marshall Francis, Property Owner, for an over 50% variance to attach a 12'0" x 24'0" portable building to the existing building one foot from the front property line located at 816 Olive; Barbee, Block 13, Lot 1, 2, 3, 7A, 8A, 9A, 10, 11, 12. Assistant to the City Manager Jackie Jansky presented a copy of the application for an over 50% variance submitted by Mr. Marshall Francis, Property Owner of General Sales and Storage. Mrs. Jansky stated that Mr. Francis was requesting City Council approval to attach a 12'0" x 24'0" portable building to the existing building one foot from the front property line located at 816 Olive; Barbee, Block 13, Lot 1, 2, 3, 7A, 8A, 9A, 10, 11, 12. Mrs. Jansky also presented copies of maps and diagrams that indicated the location of the proposed building. Mrs. Jansky said the building set back requirement is 25' from the front property line; therefore, the variance request was for 24' to place the building 1' from the front property line. After some discussion, Councilmember Russell Machann moved to approve the request by Mr. Marshall Francis, Property Owner, for an over 50% variance to attach a 12'0" x 24'0" portable building to the existing building one foot from the front property line located at 816 Olive; Barbee, Block 13, Lot 1, 2, 3, 7A, 8A, 9A, 10, 11, 12. Councilmember Al Bryant 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 approving a Mutual Aid Agreement for Emergency Medical Services between Colorado County and the City of Wharton and authorizing the Mayor to execute the agreement. City Manager Andres Garza, Jr. presented a copy of the letter dated October 16, 2012 from Ms. Patty Nelson, Director of Colorado County EMS to the City of Wharton requesting City Council consideration to approve the attached draft agreement for EMS Mutual Aid Services between Colorado County and the City of Wharton. City Manager Garza also presented a copy of the existing agreement. City Attorney Paul Webb stated he would like the agreement amended to read the same throughout the document. After some discussion, Councilmember Karen Schulz moved to approve City Paul Webb to amend the contract and City of Wharton Resolution No. 2012-58, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2012-58**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A MUTUAL AID AGREEMENT FOR EMERGENCY MEDICAL SERVICES BETWEEN COLORADO COUNTY AND THE CITY OF WHARTON; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.**

**WHEREAS**, the City of Wharton City Council wishes to approve a mutual aide agreement between Colorado County and the City of Wharton to provide Emergency Medical Services (EMS) Mutual Aid; and

**WHEREAS**, Colorado County and the City of Wharton wishes to be bound by the conditions as set forth in the agreement

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

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

**Section I.** That the City Council of the City of Wharton hereby approves a mutual aide agreement between Colorado County and the City of Wharton to provide Emergency Medical Services (EMS) Mutual Aid.

**Section II.** That the City Council of the City of Wharton hereby authorizes the Mayor of the City of Wharton to execute all documents relating to said agreement.

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

**Passed, Approved, and Adopted** this 22<sup>nd</sup> day of October 2012.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**DON MUELLER**  
Mayor Pro-Tem

**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 Ambulance Provider Permit Renewal Application submitted by St. Christina's EMS. City Manager Andres Garza, Jr. stated the item could be pulled from the agenda and did not need City Council approval. No action was taken.

The ninth item on the agenda was to review and consider a presentation on National Incident Management System (NIMS) and Emergency Preparedness Presentation by Emergency Management Coordinator Jim Cooper. Emergency Management Coordinator Jim Cooper presented the City of Wharton and Emergency Preparedness and the National Incident Management System (NIMS) to the City Council. Mr. Cooper stated NIMS was a template nationwide in regards to disasters. Mr. Cooper said no matter what size disaster utilizing NIMS allowed entities to follow the same system. After some discussion, no action was taken.

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The tenth item on the agenda was to review and consider City of Wharton Fuel:

A. Bid Tabulation.

B. **Resolution:** A resolution of the Wharton City Council awarding the bid for the City of Wharton Fuel and authorizing the Mayor of the City of Wharton to execute the agreement.

City Manager Andres Garza, Jr. presented a copy of the bid tabulation for the fuel bids that were received by the City of Wharton on October 18, 2012, and a copy of the memorandum dated October 18, 2012 from Public Works Director Carter Miska, P.E. providing his recommendation to award the fuel bid to Oil Patch Brazos Valley for being the lowest and best qualified bidder. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Resolution No. 2012-59, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2012-59**

**A RESOLUTION AWARDED THE CITY OF WHARTON FUEL CONTRACT TO OIL PATCH BRAZOS VALLEY AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.**

**WHEREAS,** competitive, sealed bids were received on October 18, 2012 for the City of Wharton Fuel; and

**WHEREAS,** Oil Patch Brazos Valley was deemed to be the lowest and best qualified bidder as per bid specifications; and

**WHEREAS,** the Wharton City Council wishes to award the City of Wharton's Fuel Contract to Oil Patch Brazos Valley; and

**WHEREAS,** the City of Wharton and Oil Patch Brazos Valley wishes to be bound by the conditions set forth in the agreement; and

**WHEREAS,** this resolution is passed in accordance with this bid.

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

**Section I.** That Oil Patch Brazos Valley is hereby awarded the City of Wharton Fuel Contract for being lowest and best qualified bidder in accordance with the bid documents.

**Section II.** That the Mayor of the City of Wharton is hereby authorized to sign any and all documents relating to the contract.

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

**Passed, Approved, and Adopted** this 22<sup>nd</sup> day of October 2012.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**DON MUELLER**  
Mayor Pro-Tem

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
City Secretary

Councilmember Karen Schulz seconded the motion. All voted in favor.

The eleventh 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; Providing that a violation of the ordinance or any part of the Code as adopted hereby shall constitute a penalty upon a conviction of a fine; Providing for severability; and establishing an effective date. City Manager Andres Garza, Jr. stated that on September 10, 2012, the City Staff presented information to the City Council Public Safety Committee regarding proposed amendments to the City of Wharton Code of Ordinances, Chapter 30, Fire Prevention and Protection that would establish the Fire Marshal position. After some discussion, Councilmember Jeff Gubbels moved to approve City of Wharton Ordinance No. 2012-15 with the addition of acquiring certifications through the Texas Commission on Fire Protection: Fire Inspector and Fire Investigator. City of Wharton Ordinance No. 2012-15 read as follows:

**CITY OF WHARTON  
ORDINANCE NO. 2012-15**

**AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 30 FIRE PREVENTION AND PROTECTION; PROVIDING THAT A VIOLATION OF THE ORDINANCE OR ANY PART OF THE CODE AS ADOPTED HEREBY SHALL CONSTITUTE A PENALTY UPON CONVICTION OF A FINE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**BE IT ORDAINED** by the City Council of the City of Wharton, Texas, that the City of Wharton Code of Ordinances, Chapter 30 Fire Prevention and Protection be amended as follows:

**ARTICLE I – IN GENERAL**

[Sec. 30-1. Arson reward.](#)

A reward of \$250.00 shall be paid by the city to any person causing the arrest and conviction of any person who shall be found guilty of arson committed within the city.

[Sec. 30-2. Interference with firefighters and other officials proceeding to fire.](#)

It shall be unlawful for any person to interfere with or in any manner obstruct any firefighter or other city official proceeding to the scene or reported scene of any fire or to make it difficult or dangerous for any firefighter or other city official to proceed to the scene of a fire.

[Sec. 30-3. Unauthorized use of fire equipment.](#)

It shall be unlawful for any person to use the fire trucks or any of the fire equipment or apparatus belonging to the city unless the equipment is used in fighting fires or in the performance and fulfillment of orders received by the persons using the equipment and given by the duly authorized officers of the city.

[Sec. 30-4. Mobile service units.](#)

It shall be unlawful for any person to dispense flammable liquids by mobile service units within the city. As used in this section, mobile service units are vehicles, tank trucks or other mobile devices from which flammable liquids used as motor fuels may, as an act of retail sale, be dispensed into the fuel tanks of motor vehicles parked on off-street parking facilities or parked upon the streets of the city.

[Sec. 30-5. Fire and rescue service fees.](#)

- (a) The City of Wharton shall assess and collect fees for certain services rendered by the Wharton Volunteer Fire Department. The fees for use of equipment and supplies shall be established by the Wharton City Council in the form of a separate resolution. Said fees shall be assessed and collected when such equipment and/or supplies are used in connection with the following events or incidents:
  - (1) Vehicle fires;
  - (2) Vehicle accidents;
  - (3) Hazardous material spills or releases; and
  - (4) Rescues or rescue attempts at low water crossings.
- (b) The city may contract the assessment and collection to a third party company or firm.
- (c) Fees collected for reimbursement of use of equipment and supplies shall be allocated for expenditures by the Wharton Volunteer Fire Department.

[Secs. 30-6—30-35. - Reserved.](#)

**ARTICLE II – FIRE MARSHAL.**

[Sec. 30-36. - Appointment; term of office; removal.](#)

The city manager shall appoint a fire marshal, who shall hold office for the duration of his appointment, unless sooner removed by the city manager.

[Sec. 30-37. – Qualifications.](#)

[The fire marshal shall be properly qualified to perform the duties of the position. The fire marshal shall hold the following certifications through the Texas Commission on Fire Protection: Fire Inspector and Fire Investigator.](#)

Sec. 30-38. – Responsibilities.

The fire marshal shall be responsible for enforcing all city, state and federal laws as they pertain to fire prevention, assist firefighters in public awareness programs, inspecting new and existing buildings and structures for potentially dangerous conditions relating to fire and reviewing construction and engineering plans for potentially dangerous conditions relating to fire prior to commencement of construction. The fire marshal shall carry out duties in accordance with the Fire Prevention Code set forth in the City of Wharton Code of Ordinances, Chapter 18 Building and Construction, Article III Construction Codes, Sec. 18-66 Codes adopted, Fire Prevention Code.

Sec. 30-39. Issuing of permits and fire code inspections.

Permits shall be issued by the Code Enforcement Department. The fire marshal, under the general direction of the Building Inspector, shall inspect public, commercial and residential structures for compliance with all applicable fire codes.

Sec. 30-40. Examination of commercial and public structures.

At least once every calendar quarter, the fire marshal may enter upon and make or cause to be entered upon and made a thorough examination of all commercial and public structures together with the premises belonging thereto.

Sec. 30-41. Ordering removal or remedy—General conditions warranting.

Whenever the fire marshal shall find that any building, structure or other premises, because of disrepair, age, dilapidation or any other reason, is unduly susceptible to fire and that such building, structure or other premises is so situated as to endanger another building, structure or property or is so occupied that fire would endanger persons or property therein, he shall order the building or structure removed or the conditions causing undue susceptibility to fire remedied.

Sec. 30-42. Specific dangerous or hazardous conditions.

Whenever the fire marshal finds any condition which may be dangerous in character or likely to cause or promote fire or create conditions dangerous to firemen or other persons or finds any violation of the Standard Building Code, National Electrical Code, Life Safety Code, Standard Fire Prevention Code or National Fire Codes or any code or ordinance adopted by the city and amendments thereto, he shall order the condition removed or remedied.

Sec. 30-43. Right of entry.

The fire marshal shall have the authority, at all times of the day or night, when necessary in the performance of the duties imposed upon him by the provisions of this article, to enter upon and examine any building or premises where any fire has occurred, and other buildings and premises adjoining or near the same.

Secs. 30-44 – 30-70 – Reserved.

### **ARTICLE III – FIRE PREVENTION CODE**

#### [Sec. 30-71. Definitions.](#)

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) Fire prevention code means the fire prevention code adopted in [section 18-66](#).  
Cross reference— Definitions and rules of construction generally, § 1-2.
- (b) Wherever the term "municipality" is used in the fire prevention code, it shall be held to mean the City of Wharton Code of Ordinances.
- (c) Wherever the term "corporation counsel" is used in the fire prevention code, it shall be held to mean the city attorney.

#### [Sec. 30-72. Fire Prevention Code.](#)

- (a) Reference the City of Wharton Code of Ordinances, Chapter 18 Building and Construction, Article III Construction Codes, Sec. 18-66 Codes Adopted, Fire Prevention Code.
- (b) Section 108, Board of Appeals of the [International Fire Prevention Code](#) adopted and referenced above is heretofore deleted and shall be amended as outlined in Item (c) below.
- (c) *Appeal Process* - Reference the City of Wharton Code of Ordinances, [Chapter 18](#) Building and Construction, Article III - Construction Codes, Sec. 18-76. – Appeals Procedures.

[Sec. 30-73. Fire Marshal.](#)

- (a) The fire code shall be enforced by the Fire Marshal, which is hereby established shall be operated under the supervision of the City Manager.
- (b) The Fire Marshal shall provide monthly inspection and other reports to the city manager. The reports shall contain all proceedings under the fire prevention code, with such statistics as the fire marshal may wish to include therein. The fire marshal shall also recommend any amendments to the fire prevention code.

[Sec. 30-74. Modifications.](#)

The fire marshal shall have the authority to modify any of the provisions of the fire prevention code upon application in writing by the owner or lessee or his duly authorized agent when there are practical difficulties in the way of carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secured and substantial justice done. The particulars of such modification when granted or allowed and the decision of the fire marshal thereon shall be entered upon the records of the department and a signed copy shall be furnished the applicant.

[Sec. 30-75. Appeals.](#)

Whenever the fire marshal shall disapprove an application or refuse to grant a permit applied for or when it is claimed that the provisions of the fire prevention code do not apply or that the true intent and meaning of the fire prevention code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire marshal in accordance with the Appeal Process set forth above in Sec. 30-72, Item (c) – *Appeal Process*.

[Sec. 30-76. New materials, processes or occupancies that may require permits.](#)

The fire marshal shall determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies that shall require permits, in addition to those enumerated in the fire prevention code. The fire marshal shall post such list in a conspicuous place in his office and distribute copies thereof to interested persons.

[Sec. 30-77. Penalties.](#)

- (a) Any person who shall violate any of the provisions of the fire prevention code or fail to comply therewith or who shall violate or fail to comply with any order made there under or who shall build in violation of any detailed statement of specifications or plans submitted and approved there under or any certificate or permit issued there under and from which no appeal has been taken or who shall fail to comply with such an order as affirmed or modified by the council or by a court of competent jurisdiction, within the time fixed in this article, shall severally for each such violation and noncompliance respectively, be guilty of a misdemeanor, punishable as provided in [section 1-5](#). The

imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense.

- (b) Notwithstanding any provision contained in this article to the contrary, the application of the penalties in subsection (a) of this section shall not be held to prevent enforced removal of prohibited conditions or to prohibit or restrict the city fire marshal or city manager from taking actions to summarily abate and remove all prohibited conditions if, in the judgment of the city fire marshal or the city manager, such abatement is necessary for the health, safety or security of the city or its inhabitants.

[Sec. 30-78. Abatement—Notice to remedy.](#)

- (a) Whenever any prohibited condition described in this chapter is found to exist upon any lot or premises in the city, any officer or authorized employee of the city shall notify the owner of such lot or premises to remove or remedy the condition within ten days after the date of such notice. Such notice shall be in writing and served on the owner in person or mailed to him at his latest known address. If personal service cannot be had and the owner's address is not known, such notice shall be given by publication at least twice within ten consecutive days in a newspaper published in the city. The city shall also send any such notice to any person holding a recorded lien against the property.
- (b) Notwithstanding any provision contained in this article to the contrary, such notification is not necessary if, in the judgment of the city fire marshal or the city manager, such notification would create a delay that may materially increase the danger to life or property. If notification can be accomplished without increasing the danger to life or property, notice shall be given by personal service or mail on the owner of the premises or the owner's representative and on any person holding a recorded lien against the property.

[Sec. 30-79. Same—Performance by city.](#)

- (a) If the owner of any lot or premises fails to remove or remedy any prohibited condition described in this chapter within the required period after notice has been given as provided in this article, the city may do whatever is necessary to remove or remedy the condition or cause the work 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) Notwithstanding any provision contained in this article to the contrary, the city may do whatever is necessary to remove or remedy the condition without giving the notice described in [section 30-78](#) if, in the judgment of the city fire marshal or the city manager, such notification would create a delay that may materially increase the danger to life or

property. If notification can be accomplished without increasing the danger to life or property, notice shall be given by personal service or mail on the owner of the premises or the owner's representative and on any person holding a recorded lien against the property.

Sec. 30-80. Same—Collection of expenses.

The city manager, fire marshal or health officer shall file a statement of expenses incurred by the city pursuant to section 30-79, giving the amount of such expenses and the date on which the work was done or improvements made and describing the property, with the county clerk, and the city shall have a privileged lien on such lot or real estate upon which the work was done or improvements to secure the expenditures so made in accordance with V.T.C.A., Health and Safety Code art. 342.001 et seq, which lien shall be second only to tax liens and liens for street improvements. The amount of such expenses shall bear ten percent interest from the date of payment by the city. For any such expenditures and interest, suit may be instituted and recovery and foreclosure of such lien may be had in the name of the city, and the statement of expenses so made or a certified copy thereof shall be prima facie proof of the amount expended for such work or improvements.

Secs. 30-81—30-129. Reserved.

ARTICLE IV – FIREWORKS

Sec. 30-130. Definitions.

In this article:

*Fireworks* means any composition or device designed to produce a visible or audible effect by combustion, explosion, deflagration, or detonation, except:

- (1) Toy pistols, toy guns, or other devices that use paper or plastic caps manufactured in accordance with regulation of the U.S. Department of Transportation, and that are packed and shipped in accordance with regulations of that department;
- (2) Model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models;
- (3) Novelties and trick noise makers;
- (4) Pyrotechnic signaling devices or distress signals designed for marine, aviation, or highway use;
- (5) Blank cartridges used or intended for signal or ceremonial purposes in athletic, military, or veterans' organization events; or

- (6) Explosive charges designed, manufactured, and intended for industrial, construction, or building demolition use.

*Illegal fireworks* means fireworks offered for sale or possessed under circumstances or in a place where the sale or possession of fireworks is prohibited by this article.

Person means an individual or entity, including an owner, manager, officer, employee, or occupant.

[Sec. 30-131. Public nuisance.](#)

Illegal fireworks are a public nuisance.

[Sec. 30-132. Prohibited acts.](#)

A person may not:

- (1) Sell or offer for sale fireworks to the public or any person, at wholesale or retail, within the city limits or outside the city limits for a distance of 5,000 feet.
- (2) Possess fireworks in the city or outside the city limits for a distance of 5,000 feet with the intention of selling or offering to sell the fireworks within the city limits or outside 5,000 feet.
- (3) Possess, use, manufacture or explode fireworks within the city limits or outside the city limits for a distance of 5,000 feet.

[Sec. 30-133. Penalties.](#)

- (a) A person commits an offense if the person knowingly or intentionally violates [section 30-132](#) of this article.
- (b) An offense under this section is punishable by a fine not to exceed \$500.00.
- (c) Each day that a violation occurs or continues, constitutes a separate offense.
- (d) A peace officer or a fire official may seize illegal fireworks. Fireworks seized under this section shall be kept in the custody of the chief of police or fire official. The owner of the seized fireworks may file an action contesting the seizure in the district court of this county within 30 days after the seizure. If an action contesting the seizure is not filed within that time, or if an action is timely filed unless upon final hearing the court orders the return of the seized fireworks, the chief of police or fire official shall destroy the fireworks.

**Separability**

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*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.*

**Effective Date**

This Ordinance shall become effective on the 2<sup>nd</sup> day of November 2012 at 12:01 a.m.

**Passage and Approval**

**PASSED AND APPROVED** by the City Council of the City of Wharton, Texas, on the 22<sup>nd</sup> day of October 2012.

CITY OF WHARTON, TEXAS

By: \_\_\_\_\_  
**DOMINGO MONTALVO, JR.**  
Mayor

**ATTEST:**

\_\_\_\_\_  
PAULA FAVORS  
City Secretary

**APPROVED AS TO FORM**

\_\_\_\_\_  
PAUL WEBB  
City Attorney

Councilmember Karen Schulz seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider a resolution of the Wharton City Council establishing Fire and Rescue Service Fees for the Wharton Volunteer Fire Department in accordance with the City of Wharton Code of Ordinances, Chapter 30 Fire Prevention and Protection, Article I – In General, Sec. 30-5. City Manager Andres Garza, Jr. stated that with City Council approval of Agenda Item No. 11 adopting the amendments to the City of Wharton Code of Ordinances, Chapter 30 Fire Protection and Prevention, the City Council was authorized to establish, by separate resolution, Fire and Rescue Service Fees for the Wharton Volunteer Fire

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Department for the use of certain equipment and supplies. Councilmember Jeff Gubbels moved to approve City of Wharton Resolution No. 2012-60, which read as follows:

**CITY OF WHARTON  
 RESOLUTION NO. 2012 - 60**

**A RESOLUTION OF THE WHARTON CITY COUNCIL ESTABLISHING FIRE AND RESCUE SERVICE FEES FOR THE WHARTON VOLUTEER FIRE DEPARTMENT IN ACCORDANCE WITH THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 30 FIRE PREVENTION AND PROTECTION, ARTICLE I – IN GENERAL, SEC. 30-5.**

**WHEREAS**, During the October 22, 2012 regular City Council meeting, the Wharton City Council amended the City of Wharton Code of Ordinances, Chapter 30 Fire Prevention and Protection; and

**WHEREAS**, Chapter 30 Fire Prevention and Protection, Article I – In General, Sec. 30-5 establishes that the City of Wharton shall assess and collect fees for certain services rendered by the Wharton Volunteer Fire Department for use of equipment and supplies, which shall be established by the Wharton City Council; and

**WHEREAS**, the Wharton City Council wishes to establish the Fire and Rescue Service Fees for the use of certain equipment and supplies as set forth below:

<b>VEHICLES</b>		
Vehicle Type	Apparatus	Price
1	Class A Engine	\$600.00
1	Aerial	700.00
1	Engine 1130	600.00
1	Engine 1132	600.00
1	Engine 1134	600.00
2	Ladder 1131	700.00
3	Tanker	500.00
4	Brush Truck	500.00
5	Rescue (Heavy)	700.00
6	Command Car/Truck	300.00
7	Rescue Boat	475.00
8	Support Vehicle	300.00

**FIRE AND RESCUE SERVICE FEES**

<b>HAND TOOLS</b>	
<b>Tool</b>	<b>Price</b>
Flathead Axe	\$25.00
Pickhead Axe	25.00
Long Pike Pole	25.00
Sheetrock Pike Pole	25.00
Short Pike Pole	25.00
Pry Axe	25.00
Hooligan Tool	25.00
Bolt Cutters	25.00
Pry Bar	25.00
Fire Rake	25.00
Fire Flappers	25.00
Shovels	25.00
Scoops	25.00
Brooms	25.00
All Hand Tools	25.00

<b>FIRE EQUIPMENT</b>	
Tool	Price
Foam Nozzle	\$75.00
Foam Eductor	68.00
AFFF Foam - Per Gallon	52.00
Class A Foam - Per Gallon	30.00
Piercing Nozzle	54.00
M/S Foq Nozzle	75.00
M/S Straight Bore Nozzle	40.00
Salvage Cover	38.00
SCBA Pack	105.00
Hall Runner	24.00
Portable Tank	100.00
PPV Fan - Per Hour	75.00
Generator, Portable - Per Hour	75.00
Generator - Per Hour	75.00
Chain Saw - Per Hour	60.00
Water Extinguisher	31.00
Dry Chemical Extinguisher	60.00
CO2 Extinguisher	60.00
Scene Lights	30.00
Portable Pump - Per Hour	120.00
Float Pump - Per Hour	90.00
Water Vests	45.00
Thermal Imaging Camera	100.00
Heat Detection Gun	100.00
SAWZALL	75.00

<b>HAZARDOUS MATERIAL EQUIPMENT</b>	
Supplies/Service	Price
Absorbent - Per Bag	\$20.50
Absorbent Pads	2.50
Absorbent Booms	45.00
Top Sol	45.00
Disposable Coveralls	35.00
Neoprene Gloves	25.00
Latex Gloves	8.50
Over Boots	30.00
Disposable Goggles	25.00
Gas Plug Kit	75.00
Plug and Dike	95.00
Drum Liners	12.50
Barricade Tape	25.00
Poly Sheeting	65.00
Removal of Hazardous Material	175.00
Disposal of Hazardous Material	175.00
Gas Multi Meter	68.00
CO2 Meter	85.00
Terrazyme	90.00
Microblaze - Per Quart	10.50
Microblaze - Per 5 Gallons	150.00

<b>RESCUE EQUIPMENT</b>	
Tool	Price
Spreaders	\$350.00
Cutters	350.00
Rams	350.00
Air Bags	350.00
K-12 Saw	75.00
Target Saw	75.00
Ajax Tool	28.00
K-Tool	28.00
Windshield Tool	17.50
Rescue Blanket	38.00
Rope	31.00

<b>MISCELLANEOUS</b>	
Service	Price
Dispatch Fee	\$85.00
False Alarm Fee	300.00

<b>HAZARDOUS MATERIAL EQUIPMENT</b>	
Supplies/Service	Actual Cost

**WHEREAS**, the Wharton City Council wishes this resolution to become effective immediately upon its passage.

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

**Section I.** The Wharton City Council hereby establishes fees for certain services rendered by the Wharton Volunteer Fire Department for use of equipment and supplies in accordance with the City of Wharton Code of Ordinances, Chapter 30 Fire Prevention and Protection, Article I – In General, Sec. 30-5 and as set forth above.

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

**Passed, Approved, and Adopted** this 22<sup>nd</sup> day of October 2012.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**DON MUELLER**  
Mayor Pro-Tem

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
City Secretary

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

The thirteenth item on the agenda was to review and consider Wharton Economic Development Corporation Appointments:

- A. Three (3) Members of the Board of Directors.
- B. Two (2) Alternate Members of the Board of Directors.

City Manager Andres Garza, Jr. stated that there were three vacancies on the Wharton Economic Development Corporation (WEDC) Board of Directors. City Manager Garza presented copies of the applications that had been submitted by persons interested in being considered by the City Council Selection Committee for the WEDC Board of Directors.

The applications were submitted by the following:

- 1. Bill Ansley, 1313 Crestmont Drive, Wharton, Texas.
- 2. Paul Barrett, 1424 Kelving Way, Wharton, Texas.
- 3. David Copeland, 324 Croom Drive, Wharton, Texas.
- 4. Kent Hill, 1410 Lindwood, Wharton, Texas.
- 5. Mickey Reynolds, 4707 FM 3012, Wharton, Texas.
- 6. Bo Phillips, 911 Breezy Lane, Wharton, Texas.
- 7. Michael Wootton, 719 Price Drive, Wharton, Texas.

City Manager Garza stated that under the newly adopted WEDC By-Laws, all of the applicants would be eligible for consideration. City Manager Garza said the City Council Selection Committee for the WEDC Board of Directors met on Thursday, October 18, 2012 to consider the

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applications and the Committee Members voted to recommend the City Council consider approving the appointment of the following applicants:

1. Bill Ansley.
2. David Copeland.
3. Mike Wootton.

City Manager Garza stated the Committee Members also voted to recommend the City Council consider appointing two alternate members that would only serve should a vacancy become available on the current Board of Directors and that the alternate members term would be to fill the unexpired term of that position. City Manager Garza said Alternate Members for the WEDC Board of Directors were to be appointed during each yearly cycle of re-appointments or new appointments that would occur October 1<sup>st</sup> each year. City Manager Garza stated the recommended alternate members for City Council consideration were as follows:

1. Kent Hill.
2. Mickey Reynolds.

After some discussion, Councilmember Karen Schulz moved to appoint the following:

- |   |                      |
|---|----------------------|
| A. Three (3) Members of the Board of Directors.         | <u>Term Expiring</u> |
| 1. Bill Ansley.   | September 30, 2014   |
| 2. David Copeland.                                      | September 30, 2014   |
| 3. Mike Wootton.  | September 30, 2014   |
|   |                      |
| B. Two (2) Alternate Members of the Board of Directors. |                      |
| 1. Kent Hill.   |                      |
| 2. Mickey Reynolds.                                     |                      |

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

The fourteenth item on the agenda was to review and consider Status Report on City of Wharton Projects.

### **FLOOD REDUCTION (LEVEE) PROJECT**

The U.S. Army Corp of Engineers (USACE) Lower Colorado River Phase I Report - City of Wharton Flood Prevention Project and Recommended report is located at the Wharton County Library and the office of the City of Wharton City Secretary for viewing or the report may be viewed on line at <http://www.swf.usace.army.mil/pubdata/notices/LowerColorado/>.

The City Staff continues to work with the USACE and Half Associates in obtaining the required ROE agreements and engineering data. The agreement for the Third and Restated Agreement between the City of Wharton and the Lower Colorado River Authority (LCRA) has been executed. The amendment incorporates Segment 1(a) into the project, which is the extension of the levee along FM 102.

Halff Associates, Inc. submitted the official 65% plan set to the USACE on September 26, 2012. The City Staff received the 65% plan set on October 1, 2012 and is in the process of reviewing and submitting comments to Halff Associates. This design is for the first phase of levee construction along the Colorado River.

**DRAINAGE:**

1. Santa Fe Outfall Channel.

The Public Works Department has finished excavation up to Alabama Road. The Public Works Department will now focus on installing grade stabilization structures and installing other best management practices needed to control erosion. The City Staff has met with property owners to discuss work that needs to be performed by the City in accordance with the agreements. During the month of October the Public Works Department has continued to work toward completing the work required in those agreements. The City Staff will continue to work on completing the agreements with property owners over the next several months weather permitting.

2. Highway 60 & Old Lane City Road Drainage Improvements

Centerpoint Energy completed relocation of the power poles along Highway 60 at the end of June. AT&T Tx Mid/Gulf Cablevision completed relocation of their utilities along Highway 60 in June as well.

The construction plans call for the installation of two 30 inch culverts underneath Highway 60. The culvert installation will be completed by an outside contractor. During October, the City Staff asked for updated quotes for this portion of the project. Two quotes are pending and should be submitted the week of October 22. Other culvert installations will be completed by the City and TxDOT. Work will need to be coordinated with the local TxDOT office. TxDOT will provide a Gradall and operator for excavation and the Public Works Department will provide dump trucks and operators to haul the spoil. The City Staff hopes to start construction next month weather permitting.

**WATER/SEWER IMPROVEMENTS:**

1. 2012 -2013 Water Storage Tank Maintenance Program

City Council approved the demolition of the Cloud Street EST. The City Staff, with the assistance of Jones & Carter, is working to finalize plans for demolition and plans for installing components necessary for continued production at the Cloud Street Plant once the EST is taken down. Jones & Carter, Inc. collected survey data and soil samples the week of October 15<sup>th</sup>. This data is needed to complete plans for the new hydro-pneumatic tank that will be installed after demolition is completed.

In addition to the Cloud Street EST there are two ground storage tanks at the Alabama Water Plant in need of rehabilitation.

2. Pressure Switches at City Water Plants

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Jones & Carter replaced the faulty pressure control switches with new control switches earlier this month. Jones & Carter paid for the switches and the installation. City Staff is closely monitoring the performance of the new switches. The new switches are functioning as designed. Staff will continue to monitor and tweak the switches for optimum performance. These switches are designed to minimize and equalize pumping times, thereby extending the life of the water plants.

### 3. Wastewater Treatment Plant No. 1 Rehabilitation Proposal

City Staff is currently exploring various avenues to fund the rehabilitation of WWTP No. 1. The top priority is the WWTP's clarifier. The City Staff met with AUC Group, Inc. this month to discuss options for repairing or replacing the clarifier.

### 4. On-going Water and Sewer Maintenance Program

Soil moisture has remained fairly constant in October reducing the shrink-swell of the soil. This has decreased the number of water leaks and sanitary sewer backups experienced compared to last year's drought. Over the past several weeks the influent line to WWTP#1 failed twice. The line was installed in 1976 and is due for maintenance. The Public Works Department is developing plans to fix the line in an effort to avoid any catastrophic failures. The City Staff met with several contractors in October to discuss options for fixing the 36 year old sanitary sewer line.

Due to the age of the City's lift stations, maintenance is becoming a daily issue, specifically with pump failures. Public Works is working to fix or replace all failing lift station components and has recently initiated a more stringent preventive maintenance program.

## **STREET IMPROVEMENTS**

### 1. FM 102 Relocation and/or FM 1301

#### A. Progress Report on Project.

IDC Inc. continues to work with City Staff in an effort to develop preliminary engineering for the project. The City Staff has obtained the necessary rights of entry agreements for the project. The City Staff, with the assistance of SMC Consulting, Inc., finished gathering data for the environmental, archaeological, and historical portions of the project in September. The Public Works Committee met with IDC Inc. and SMC Consulting Inc. at the end of September to discuss the status of the project. The group reviewed TxDOT's comments on the City's US 59 Improvement Plan and Schematics and prepared responses to their comments. In addition, the status of the environmental document was discussed. IDC Inc. attended the Special City Council meeting on October 15, 2012 and provided the City Council and public with a project update.

#### B. Update on status of Advance Funding Agreement (AFA) between the City of Wharton and the Texas Department of Transportation (TxDOT).

TxDOT has agreed to amend the AFA with an increase of \$200,000 making the States total support toward the project \$3,700,000 for construction. City Council passed a resolution accepting this amendment to the AFA. City Council passed a resolution approving Modification No. 3 to the

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professional engineering services contract between the City of Wharton and IDC Inc. to provide additional environmental services for the Identification and Evaluation of Archaeological Resources and Historic Age Buildings for the extension of FM 1301 from SH 60 to US Hwy 59 and Overpass Project. These adopted resolutions will allow City Staff to have better control over the environmental portion of the project and result in a more timely completion of the final engineering plans.

## 2. 2012 Street Improvement Program

The Public Works Staff began making street improvements the week of May 21, 2012. Staff is repairing the streets approved by City Council for the 2012 Program.

The Interlocal Cooperation Agreement between the City of Wharton and the City of El Campo for use of equipment was renewed on July 9, 2012. This agreement allows both cities to complete street improvements at a reduced cost through the sharing of construction equipment.

The Public Works Staff completed overlays on Crestmont St and Lily Lane this month. Currently the Public Works Staff is working on Fulton Street to patch areas in need of repair. The project is over 90% complete. Wet weather and a shortage of road materials slowed construction down some in October. Staff hopes to complete this project within the next 30 days, weather permitting.

## 3. Wharton Sidewalk Accessibility and Historic Streetscape Project

Bids were publicly opened at City Hall on August 14, 2012 at 2:00 pm. Two bids were submitted for the project. The bids received were higher than expected. City Council voted to reject the two bids. The City Staff is currently working with BEFCO Engineering, Inc. to prepare plans and documents needed to re-bid the project. The City Staff intends to re-let the project in November.

## 4. On-going Street and Drainage Maintenance Program

During October the City received limited rainfall, some areas received more than others. The Public Works Department has been working to clean residential drainage ditches that have been experiencing poor drainage. The Public Works Department has several residential ditch cleaning projects planned. Public Works Staff has completed elevation surveys and developed drainage profiles for over twenty-five ditch re-grading projects throughout the City. These projects will be completed over the next several months, weather permitting.

## **WHARTON REGIONAL AIRPORT**

### 1. Capital Improvement Drainage Project.

Blue Bay Construction and the Public Works Department began construction in mid June. Over ninety-five percent of the ditch and crossing work is complete. The slurry seal for the runway, taxi-way and ramp still need to be completed. Once the slurry seal is complete new striping will be applied. The project is approximately 90% complete.

## **OTHER PROJECTS**

### 1. Fire Hydrant Testing Program

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The Fire Department with the assistance of the Public Works Department has begun an annual hydrant testing program. The Fire Department has completed testing on all the City's hydrants. The majority of the hydrants were in good working condition. Those that need attention are being repaired by Public Works Staff. This program will help to improve the City's ISO insurance rating.

2. Wharton County Web Map Project

The City Staff continues to work with Halff Associates to complete the initial design for the Web based GIS mapping tool. This tool will help City Staff and City Officials make daily decisions by allowing them to view GIS data files via the Internet. After some discussion, no action was taken.

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

- A. Mayor's Committee on People with Disabilities meeting held October 9, 2012.
- B. City Council Selection Committee for the Wharton Economic Development Corporation Board of Directors meeting held October 18, 2012.

After some discussion, no action was taken.

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

- |   |                                |
|---|--------------------------------|
| A. City Secretary/Personnel.                    | I. Legal Department.           |
| B. Code Enforcement.                            | J. Municipal Court.            |
| C. Community Services Department /Civic Center. | K. Police Department           |
| D. Emergency Management.                        | L. Public Works Department.    |
| E. E.M.S. Department.                           | M. Water/ Sewer Department.    |
| F. Engineer/Planning Department.                | N. Weedy Lots/ Sign Ordinance. |
| G. Facilities Maintenance Department.           | O. Wharton Municipal Pool.     |
| H. Fire Department.                             | P. Wharton Regional Airport.   |

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

The seventeenth item on the agenda was adjournment. After some discussion, Councilmember Karen Schulz moved to adjourn. Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The meeting adjourned at 7:48 p.m.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**Don Mueller**  
**Mayor Pro-Tem**

**ATTEST:**

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**Paula Favors**  
**City Secretary**