

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
AUGUST 25, 2014**

Mayor Domingo Montalvo, Jr. declared a Regular Meeting duly open for the transaction of business at 7:00 P.M at City Hall 120 E. Caney Street Wharton, TX. Mayor Domingo Montalvo, Jr. led the opening devotion and the pledge of allegiance.

Councilmember's present were: Mayor Domingo Montalvo, Jr. and Councilmembers Tim Barker, Al Bryant, Jeff Gubbels, Russell Machann, Don Mueller and Steven Schneider.

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joan Anandel, City Attorney Paul Webb, City Secretary Paula Favors, Assistant to the City Manager – Special Projects Cheryl Urbanovsky, Assistant to the City Manager Brandi Jimenez, Airport Manager David Allen, EMS Director John Kowalik, Police Chief Terry David Lynch and Public Works Director Kyle Marchant, P.E.

Visitors present were: David Schroeder with Wharton Economic Development Corporation (WEDCO), Carlos Cotton, P.E. with Jones and Carter, Inc., Wharton Chamber Director Ron Sanders and Natalie Frels with the Wharton Journal Spectator.

The second item on the agenda was Roll Call and Excused Absences. All members were present.

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

The fourth item on the agenda was the Wharton Moment. Mayor Domingo Montalvo, Jr. stated that he and Councilmember Al Bryant attended the regional Texas Municipal League (TML) meeting. Mayor Montalvo said they were presented with information on appraisal caps and other important information that could effect cities.

The fifth item on the agenda was the City Manager's submission of the City of Wharton, Texas, proposed budget for the fiscal year October 1, 2014 to September 30, 2015. City Manager Andres Garza, Jr. stated that on Wednesday, August 20, 2014, he filed with City Secretary Paula Favors the City of Wharton Fiscal Year October 1, 2014 to September 30, 2015 Proposed Budget as required by State Law. City Manager Garza presented under

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separate cover, on Monday, August 25, 2014 a copy of the Proposed City Budget as required by the City's Charter.

The sixth item on the agenda was setting a public hearing date for the City of Wharton, Texas, proposed budget for the fiscal year October 1, 2014 to September 30, 2015. City Manager Andres Garza, Jr. stated that under Article VI, Section 53 of the City of Wharton Charter the City Council shall set a time and place for a public hearing. City Manager Garza said if the date was approved by the City Council, the City Staff would publish the Notice of Public Hearing on Wednesday, August 27, 2014 in the Wharton Journal Spectator. City Manager Garza recommend the public hearing be set for the September 8, 2014 regular City Council meeting stating the date would comply with Section 53 of the Charter and State law. After some discussion, Councilmember Don Mueller moved to set a public hearing date for the City of Wharton, Texas, proposed budget for the fiscal year October 1, 2014 to September 30, 2015 for September 8, 2014 regular City Council meeting. Councilmember Tim Barker seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider the City of Wharton Finance Report for July 2014. Finance Director Joan Andel presented the financial report for the month of July 2014. Mrs. Andel stated that the TexPool balance for July as \$151,341.32 with an average monthly yield of .03%. She said the Prosperity Bank balance for July 2014 was \$9,385,538.30 with an average monthly yield of .15%. After some discussion, Councilmember Don Mueller moved to approve the City of Wharton Financial Report for the month of July 2014. Councilmember Tim Barker seconded the motion. All voted in favor.

The eighth item discussed on the agenda was to review and consider a resolution of the Wharton City Council awarding a contract for the Wharton Regional Airport Re-Sheeting Project and authorizing the Mayor of then city of Wharton to execute this agreement. City Manager Andres Garza, Jr. stated that the Wharton Regional Airport Re-Sheeting Project would allow the City to upgrade its hangar by re-sheeting. Airport Manager David Allen stated that quotes were received in order to utilize the funds available for the Routine Airport Maintenance Program (RAMP) which were available until August 31, 2014. City Manager Garza presented the quotes received and stated that the expenditures were at a 50% match from the RAMP grant. After some discussion, Councilmember Russell Machann moved to approve City of Wharton Resolution No 2014-68, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2014-68**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDING A CONTRACT FOR THE REPLACEMENT OF THE WHARTON REGIONAL AIRPORT RE-SHEETING PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.**

**WHEREAS,** proposals were received for the Wharton Regional Airport Re-Sheeting Project; and,

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**WHEREAS,** BLS Construction, Inc. was deemed the best lowest qualified bidder in the amount of \$49,296.00; and,

**WHEREAS,** the Wharton City Council wishes to award a contract to BLS Construction, Inc. for the Wharton Regional Airport Re-Sheeting Project in the amount of \$49,296.00; and

**WHEREAS,** the City of Wharton and BLS Construction, Inc. wish to be bound by the conditions as set forth in the agreement; and,

**WHEREAS,** the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute the agreement.

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

**Section I.** The Wharton City Council hereby authorizes the Mayor of the City of Wharton, Texas, to execute a contract for the Wharton Regional Airport Re-Sheeting Project to BLS Construction, Inc. in the amount of \$49,296.00.

**Section II.** The City of Wharton and BLS Construction, Inc. are hereby bound by the conditions as set forth in the agreement.

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

**Passed, Approved, and Adopted** this 25th day of August 2014.

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

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

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

The ninth item discussed on the agenda was to review and consider the purchase of new mower for Public Works Department. City Manager Andres Garza, Jr. presented an email from Public Works Director Kyle Marchant regarding the purchase of a new mower. Mr. Marchant presented three options which were as follows: Hlavinka Equipment Company- New Kubota ZG 227-60- \$8,350.00, Schmidt Implement Inc.- New Gravely Pro-Turn 460-

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\$9,711.20 and Schmidt Implement Inc.- Scag Freedom Z-\$7,500.00. Mr. Marchant requested the City Council consider approving the purchase of New Kubota ZG 227-60 in the amount of \$8,350. After some discussion, Councilmember Don Mueller moved to approve the purchase from Hlavinka Equipment Company – New Kubota ZG 227-60 in the amount of \$8,350. Councilmember Al Bryant seconded the motion. All voted in favor.

The tenth item discussed on the agenda was to review and consider a resolution of the Wharton City Council awarding a contract for the replacement of the EMS Bunk Room Roof Air Conditioning Unit and authorizing the Mayor of the City of Wharton to execute all documents relating to said contract. City Manager Andres Garza, Jr. presented is a draft resolution and memo from EMS Director John Kowalik regarding the purchase of a replacement air conditioning unit for the EMS Station Bunk Room. EMS Director John Kowalik presented three bids from the following companies: Leon's Heating & Air Conditioning, Inc., Roberson Air Conditioning & Refrigeration Inc. and Eldridge Air Conditioning and Heating Inc. Mr. Kowalik stated Leon's Heating & Air Conditioning, Inc. presented the lowest and best bid to replace the air conditioning unit damaged by hail. After some discussion Councilmember Don Mueller moved to approve City of Wharton Resolution No. 2014-66, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2014-66**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDING A CONTRACT FOR THE REPLACEMENT OF THE EMS BUNK ROOM ROOF AIR CONDITIONING UNIT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.**

**WHEREAS,** proposals were received for the City of Wharton EMS Bunk Room Roof Air Conditioning Unit Project; and,

**WHEREAS,** Leon's Heating & Air Conditioning, Inc. was deemed the best lowest qualified bidder in the amount of \$10,790.00; and,

**WHEREAS,** the Wharton City Council wishes to award a contract to Leon's Heating & Air Conditioning, Inc. for the City of Wharton EMS Bunk Room Roof Air Conditioning Unit Project in the amount of \$10,790.00; and

**WHEREAS,** the City of Wharton and Leon's Heating & Air Conditioning, Inc. wish to be bound by the conditions as set forth in the agreement; and,

**WHEREAS,** the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute the agreement.

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

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- Section I.** The Wharton City Council hereby authorizes the Mayor of the City of Wharton, Texas, to execute a contract for the City of Wharton EMS Bunk Room Roof Air Conditioning Unit Project to Leon's Heating & Air Conditioning, Inc. in the amount of \$10,790.00.
- Section II.** The City of Wharton and Leon's Heating & Air Conditioning, Inc. are hereby bound by the conditions as set forth in the agreement.
- Section III.** That this resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this 25th day of August 2014.

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

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

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

The eleventh item discussed on the agenda was to review and consider a resolution of the Wharton City Council amending the Customer-Developer Water Utility Service Agreement with Colorado Bend Energy Partners, LP and the City of Wharton and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. stated that on September 12, 2013, the City entered into an agreement with Colorado Bend Energy Partner, LP. for the extension of a waterline to service to their plant located on Highway 60 South. City Manager Garza said the amendment would change the completion date and allow for the company to designate how any initial overpayment associated with the project be returned to the company. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Resolution No. 2014-67, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2014 - 67**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AMENDING THE CUSTOMER-DEVELOPER WATER UTILITY SERVICE AGREEMENT WITH COLORADO BEND ENERGY PARTNERS, LP AND THE CITY OF WHARTON FOR REIMBURSEMENT OF ANY INITIAL OVERPAYMENT ASSOCIATED**

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**WITH THE PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.**

**WHEREAS,** On August 25, 2014 the Wharton City Council considered an amendment to the customer-developer water utility service agreement with Colorado Bend Energy Partners, LP and the City of Wharton for reimbursement of any initial overpayment for engineering, construction, legal, bid advertising, and related administrative costs associated with the project; and,

**WHEREAS,** the City of Wharton and Colorado Bend Energy Partners, LP wishes to be bound by the conditions as set forth in the agreement; and

**WHEREAS,** the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute said contract amendment.

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

**Section I.** The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute the amended agreement with Colorado Bend Energy Partners, LP and the City of Wharton for any initial overpayment for engineering, construction, legal, bid advertising, and related administrative costs associated with the Project.

**Section II.** The City of Wharton and Colorado Bend Energy Partners, LP are hereby bound by the conditions as set forth in the contract amendment.

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

**PASSED, APPROVED, and ADOPTED** this 25<sup>th</sup> day of August 2014.

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

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

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

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The twelfth item discussed on the agenda was to review and consider the proposed 2014-2015 Wharton Economic Development Corporation Budget. City Manager Andres Garza, Jr. presented a copy of the Wharton Economic Development Corporation Proposed Budget submitted to the City on June 24, 2014 and his letter to Mr. David Schroeder dated August 13, 2014 advising him of the City Council action taken on the August 12, 2014 Council meeting. City Manager Garza stated that Mr. Schroeder's letter dated August 20, 2014 was Wharton Economic Development Corporations response to the City Council request. After some discussion, Councilmember Russell Machann moved to accept the proposed 2014-2015 Wharton Economic Development Corporation Budget with the following amendments for the proposed budget: exclude the District Creation line item in the amount of \$200,000, the proposed budget be adjusted so that the amount for Section 125 Flexible Spending Account for employees be what the standard full time City of Wharton employee receives which was \$750.00 instead of \$1750.00 per year and for the proposed budget to include the Wharton City Council's request for funding submitted to WEDCo in the August 13, 2014 letter. Councilmember Al Bryant seconded the motion. All voted in favor.

The thirteenth item discussed on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 86, Sections 86-15, 86-16, 86-17 and 86-21, Utilities and Services, Article I in General; 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 a savings clause and revoking all ordinances or parts of ordinances in conflict herewith only to the extent same are in conflict herewith otherwise provided herein. City Manager Andres Garza, Jr. presented a copy of the memorandum dated August 20, 2014 from Finance Director Joan Andel to him regarding the proposed increase in utility rates for customers to be effective October 1, 2014. City Manager Garza stated the 3% proposed utility rate increase was discussed in the City Council Budget Workshop on August 12, 2014. Also, he said the amendment would amend section 86-15 to incorporate the City's standard practice of requiring main line extensions to be extended the entire width of the property to the next adjacent property line unless a variance was issued. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Ordinance No. 2014-06, which read as follows:

**CITY OF WHARTON  
ORDINANCE NO. 2014-06**

**AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 86, SECTIONS 86-15, 86-16, 86-17 AND 86-21, UTILITIES AND SERVICES, ARTICLE I IN GENERAL; 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 A SAVINGS CLAUSE AND REVOKING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH ONLY TO THE EXTENT SAME ARE IN CONFLICT HEREWITH OTHERWISE PROVIDED HEREIN.**

**BE IT ORDAINED** by the City Council of the City of Wharton, Texas that Chapter 86, Utilities and Services, Article I in General; Sections 86-15, 86-16, 86-17 and 86-21 be amended by the following:

**Section I. Amendment**

The Code of Ordinances of the City of Wharton, Texas, Chapter 86 Utilities and Services is hereby amended to be enforced by the City of Wharton as follows:

**Sec. 86-15. Water and sewer tap charges, deposits, administrative penalties and other charges.**

1. Customers are responsible for the actual cost for main line extensions, boring under a street or pre-existing utility line, or any other additional costs necessary to install a water tap. All main line extensions will require the extension to be extended the width of the property to the next adjacent property line unless a variance is issued. All main line extensions will require a written agreement between the city and the customer.
2. Residential customers inside the city limits that qualify for a homestead exemption prior to applying for a building permit will receive up to 200 feet of line extension at no charge for the cost of materials and installation. Residential homestead customers in the city limits will be charged for any borings associated with the installation of the first 200 feet of line extension and will be charged for any main line extensions in excess of 200 feet. Residential customers outside the city limits will be charged for the first 200 feet as well as for any boring associated with the first 200 feet and for any main line extensions in excess of 200 feet.
3. Customers will be required to pay the city in advance for any additional costs associated with connecting to the city's main line based on the city's engineer's estimate for projected engineer and construction costs. Once the project is complete, the customer will either be billed or refunded the difference between the estimate and the actual cost.

In addition to the standard sewer tap fee, customers must also pay the city for any and all additional costs associated with installing a sewer tap:



1. Customers are responsible for the actual cost for main line extensions, boring under a street or pre-existing utility line, or any other additional costs necessary to install a sewer tap. All main line extensions will require the extension to be extended to the width of the property to the next adjacent property line unless a variance is issued. All main line extensions will require a written agreement between the city and the customer.
2. Residential customers inside the city limits that qualify for a homestead exemption prior to applying for a building permit will receive up to 200 feet of line extension at no charge for the cost of materials and installation. Residential homestead customers in the city limits will be charged for any borings associated with the installation of the first 200 feet of line extension and will be charged for any main line extensions in excess of 200 feet. Residential customers outside the city limits will be charged for the first 200 feet as well as for any boring associated with the first 200 feet and for any main line extensions in excess of 200 feet.
3. Customers will be required to pay the city in advance for any additional cost associated with connecting to the city's main line based on the city's engineer's estimate for projected engineer and construction costs. Once the project is complete, the customer will either be billed or refunded the difference between the estimate and the actual cost.

**Sec. 86-16. Water Service Charges.**

- (a) The monthly charges for water service rendered by the City shall be as follows:

<b>Volume</b>	<b>Charges</b>
First 2,000 gallons (minimum)	\$ 15.16
Next 2,000 gallons	\$ 2.87 per 1,000
Next 3,000 gallons	\$ 2.97 per 1,000
Next 4,000 gallons	\$ 3.09 per 1,000
Next 4,000 gallons	\$ 3.29 per 1,000
Next 35,000 gallons	\$ 3.49 per 1,000
Next 50,000 gallons	\$ 3.61 per 1,000
Next 50,000 gallons	\$ 3.88 per 1,000
Next 50,000 gallons	\$ 4.12 per 1,000

- (b) Customers requesting temporary water services (7 day increments) can apply for a temporary water rate based on the following:

***Volume Charges***

First 8,000 gallons	
\$ 35.04 for 7 days	
Over 8,000 gallons	
\$ 3.20 per 1,000	

**Sec. 86-17. Sewer Service Charges.**

- (a) The monthly charges for sanitary sewer services rendered by the City shall be as follows:

**Volume Charges**

First 2,000 gallons (minimum)	\$ 16.29
Next 2,000 gallons	\$ 2.52 per 1,000
Next 3,000 gallons	\$ 3.09 per 1,000
Next 4,000 gallons	\$ 3.42 per 1,000
Next 4,000 gallons	\$ 3.68 per 1,000
Next 35,000 gallons	\$ 3.99 per 1,000
Next 50,000 gallons	\$ 4.33 per 1,000
Next 50,000 gallons	\$ 4.59 per 1,000
Next 50,000 gallons	\$ 4.91 per 1,000

**Sec 86-21. Bulk Water Rates**

- (a) Bulk Sales through fire hydrant water meters temporarily installed at locations remote from the Wharton Volunteer Fire Department on Fulton Street will require the following:
2. Payment of Bulk Sales Rate of \$58.41 per month for the first 1,000 gallons of water dispensed, or any fraction thereof. \$23.36 per month per 1,000 gallons dispensed, or any fraction thereof, beyond the initial 1,000 gallons dispensed; and
- (b) Bulk Sales through permanently installed water meter dispensation point at the Wharton Volunteer Fire Department on Fulton Street will require the following:

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2. Payment of Bulk Sales Rate of \$58.41 for the first 1,000 gallons of water dispensed, or nay fraction thereof. \$23.36 per 1,000 gallons dispensed, or any fraction thereof, beyond the initial 1,000 gallons dispensed; and

### **Severability**

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

### **Penalties and Fines**

Any person knowingly or recklessly found violating and are convicted of a violation of this ordinance shall be fined in an amount not to exceed \$2,000.00. Each day or fraction of a day during which this ordinance or any part thereof is violated shall be deemed a separate offense and punishable as such.

### **Effective Date**

This ordinance shall be effective on the 1<sup>st</sup> day of October 2014 at 12:01 a.m.

### **Passage and Approval**

**PASSED AND APPROVED** by the City Council of the City of Wharton, Texas, this 25<sup>th</sup> day of August 2014.

**CITY OF WHARTON, TEXAS**

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

**DON MUELLER**

Mayor

**ATTEST:**

\_\_\_\_\_  
**Paula Favors**  
City Secretary

**APPROVED AS:**

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**PAUL WEBB**  
City Attorney

Councilmember Tim Barker seconded the motion. All voted in favor.

The fourteenth item discussed on the agenda was to review and consider the Official Ballot of the Texas Municipal League Intergovernmental Risk Pool Board of Trustees Election. City Manager Andres Garza, Jr. presented the Official Ballot of the Texas Municipal League Intergovernmental Risk Pool Board of Trustees Election. City Manager Garza stated that the officials listed on the ballot had been nominated to serve a six-year term and he recommend the City Council cast its vote for the following:

Place 1-Robert T. Herrera  
Place 2-John W. Fullen  
Place 3-George Shackelford  
Place 4-Peter Vargas

After some discussion, Councilmember Russell Machann moved to approve City Manager Andres Garza Jr.'s recommendation for the Official Ballot of the Texas Municipal League Intergovernmental Risk Pool Board of Trustees Election. Councilmember Al Bryant seconded the motion. All voted in favor.

The fifteenth item on the agenda was to review and consider a resolution of the Wharton City Council awarding a contract for the City of Wharton Force Main Replacement at WWTP No. 1 Project and authorizing the Mayor of the City of Wharton to execute all documents relating to said contract. City Manager Andres Garza, Jr. presented the bid tabulation for the Force Main Replacement Project at WWTP #1. Mr. Carlos Cotton, PE with Jones and Carter, Inc. stated to the City Council that his recommendation was to re-bid the project since there was only one bid received and it was twice the engineer's estimate. After some discussion, Councilmember Don Mueller moved to reject all bids and re-bid the City of Wharton Force Main Replacement at WWTP No. 1 Project. Councilmember Al Bryant seconded the motion. All voted in favor.

The sixteenth item on the agenda was to review and consider a request by Mr. Ron Sanders, Executive Director of the Wharton Chamber of Commerce & Agriculture for City of Wharton assistance by approving the following for the Wine and Arts Fair to be held Saturday, October 11, 2014:

- A. Street closure of Houston Street from Milam to Burleson Streets from 9:00 a.m. until 12:00 Midnight.
- B. Allow "open containers" during the event on City of Wharton property on the exterior sides of the Monterey Square and approximately one adjoining block to include all participating businesses.

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- C. Waive all local permit fees.
- D. Provide three generators and light trees for the generators, and turn on lights that outline the downtown buildings.

City Manager Andres Garza, Jr. presented a copy of the letter dated August 18, 2014 from Mr. Ron Sanders, Executive Director of the Wharton Chamber of Commerce & Agriculture providing his request for the afore-mentioned items. City Manager Garza stated that the City Staff's only concern was that the cost to turn on the lights that outline the buildings would be approximately \$2000 for the event. After some discussion, Councilmember Jeff Gubbels moved to approve the request from Mr. Ron Sanders, Executive Director of the Wharton Chamber of Commerce & Agriculture for the afore-mentioned items with the exception of turning on lights that outline the downtown buildings. Councilmember Russell Machann seconded the motion. All voted in favor.

The seventeenth item on the agenda was to review and consider a resolution of the City Council of the City of Wharton, Texas authorizing the City's participation in a coalition of similarly situated cities in proceedings before the Railroad Commission of Texas and the Texas Legislature related to the City's authority to effectively review and regulate utility rates; finding and determining that the meeting at which this resolution was passed was in accordance with the requirements of the Texas Open Meetings Act; making other findings and provisions related to the subject; and declaring an effective date. City Manager Andres Garza, Jr. stated that the City of Wharton had participated with other cities in the Texas Coast Utilities Coalition (TCUC) to review rates increases and other changes private utility companies wish to impose on the cities. City Manager Garza presented an information sheet that described a rule making proceeding being undertaken by the Texas Railroad Commission. City Manager Garza said the Commission sets rates for Centerpoint Energy-Entex that provide natural gas service to the citizens in Wharton and the City staff recommended the City Council consider approving the resolution. After some discussion, Councilmember Jeff Gubbels moved to approve City of Wharton Resolution No. 2014-70, which read as follows:

#### **RESOLUTION NO. 2014-70**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS AUTHORIZING THE CITY'S PARTICIPATON IN A COALITION OF SIMILARLY SITUATED CITIES IN PROCEEDINGS BEFORE THE RAILROAD COMMISSION OF TEXAS AND THE TEXAS LEGISLATURE RELATED TO THE CITY'S AUTHORITY TO EFFECTIVELY REVIEW AND REGULATE UTILITY RATES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS PASSED WAS IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS,** the City of Wharton, Texas, hereinafter referred to as “City,” is a member of the Texas Coast Utilities Coalition of cities (“TCUC”); and,

**WHEREAS,** TCUC has participated in utility ratemaking proceedings before the Railroad Commission of Texas; and,

**WHEREAS,** TCUC has participated in legislative proceedings before the Texas Legislature; and,

**WHEREAS,** as recently as in the 83<sup>rd</sup> Regular Session of the Texas Legislature the Legislature considered and rejected legislation that if enacted, would have negatively affected municipalities’ original jurisdiction to regulate a utility’s rates, services, and operations in the City; and,

**WHEREAS,** as recently as the 83<sup>rd</sup> Regular Session of the Texas Legislature in 2013, the Legislature considered and rejected legislation that if enacted, would have negatively affected municipalities’ ability to undertake a meaningful evaluation of a utility’s request to increase gas rates and effectively challenge unreasonable rate increases; and,

**WHEREAS,** the Railroad Commission of Texas has initiated proceedings to adopt new rules whose effect would be similar to the restrictions that the Legislature rejected in its 83<sup>rd</sup> Regular Session; and,

**WHEREAS,** the rules the Railroad Commission of Texas proposed would diminish, if not altogether eliminate, Texas cities’ original ratemaking jurisdiction over gas utilities and cities’ ability to meaningfully review a gas utility’s request to increase its rates; and,

**WHEREAS,** the City supports TCUC’s and other similarly situated coalitions of cities’ opposition to proposed rules or laws that would diminish and/or eliminate municipalities’ ability to effectively regulate gas utility rates or to meaningfully participate in contested proceedings before the Railroad Commission of Texas; and,

**WHEREAS,** as the Legislature noted in Section 101.002 of the Gas Utility Regulatory Act, utilities are by definition monopolies in the areas they serve and as a result, the normal forces of competition that regulate prices in a free enterprise society do not operate and therefore, public agencies, including the City, regulate utility rates, operations, and services as a substitute for competition; and,

**WHEREAS,** gas utilities continue to be monopolies whose rates are not governed by the normal forces of competition; and,

**WHEREAS**, to provide fair, just, and reasonable rates and adequate and efficient services, Section 103.001 of the Gas Utility Regulatory Act grants the City exclusive original jurisdiction over the rates, operations, and services of a gas utility within the municipality; and,

**WHEREAS**, under Section 103.001 of the Gas Utility Regulatory Act passed by the Texas Legislature into law, a municipality regulating a gas utility has the right to require gas utilities to submit information as necessary for the municipality to make a reasonable determination of the utility's actual rate base, expenses, investment, and rate of return for providing its services and to retain personnel necessary to make the determination of reasonable rates; and,

**WHEREAS**, under Section 103.022 of the Gas Utility Regulatory Act, a municipality participating in or conducting a ratemaking proceeding may engage rate consultants, accountants, auditors, attorneys, and engineers to fully evaluate a utility's request to change rates and the gas utility in the ratemaking proceeding shall reimburse the municipality its reasonable rate case expenses; and,

**WHEREAS**, in order to ensure the reasonableness of gas utility rates and ensure the adequacy of gas utility service by preserving cities' right to effectively investigate and challenge utility-proposed rate increases both before the City and before any state agency that is authorized to regulate gas utilities' rates;

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

**Section 1.** That the findings set out in the preamble to this resolution are hereby in all things approved and adopted.

**Section 2.** The City directs TCUC to oppose rules or legislation that would:

- Eliminate or reduce the ability of incorporated municipalities to exercise their statutorily guaranteed original jurisdiction over gas utility rates.
- Allow the approval of increases in rates without a complete and thorough review of a utility's capital expenditures or operating expenses by cities representing their ratepayers' interests.
- Eliminate, delay, or diminish the reimbursement of municipalities' reasonable costs incurred while investigating and challenging utility rate proposals or that would otherwise reduce municipalities' ability to participate in the rate-setting process.

**Section 3.** The City directs TCUC to support processes that:

- Uphold and enforce municipalities' original jurisdiction over gas utility ratemaking.

- Preserve municipalities' ability to fully investigate and challenge gas utilities' proposed changes to their rates and tariffs.
- Preserve municipalities' historical right to prompt reimbursement of reasonable costs that the municipalities' incur while investigating and challenging gas utilities' proposals to change their rates in all related proceedings, without any onerous predicate requirements .

**Section 4.** The City authorizes the TCUC Steering Committee to hire and direct its advocates in these efforts before the Railroad Commission of Texas and the Texas Legislature.

**Section 5.** That a copy of this resolution shall be sent to Mr. Alfred R. Herrera, Herrera & Boyle, PLLC, 816 Congress Avenue, Suite 1250, Austin, Texas 78701, in his role as Special Counsel to TCUC.

**Section 6.** That the meeting at which this resolution was adopted was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

**Section 7.** That this resolution shall become effective from and after its passage.

**PASSED AND APPROVED this 25<sup>th</sup> day of August, 2014.**

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

**ATTEST:**

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

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

The eighteenth item on the agenda was to review and consider a resolution approving a Memorandum of Understanding between Wharton Police Department and Bay Area Council on Drugs & Alcohol regarding a safe location for the disposal of unwanted pharmaceuticals. City Manager Andres Garza, Jr. presented an email from Chief Lynch regarding a memorandum of understanding between the City and BACODA and the



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proposed Memorandum of Understanding between the Wharton Police Department and BACODA Tri-County Community Coalition in which the Wharton Police Department would facilitate the installation, security, maintenance and evaluation protocols for a permanent prescription drug drop box for our community. Police Chief Terry David Lynch stated the program would implement a community outreach program with zero overhead for residents who wanted to dispose of unneeded medications in a secure location. After some discussion, Councilmember Don Mueller moved to approve City of Wharton Resolution No. 2014-69, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2014-69**

**A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN WHARTON POLICE DEPARTMENT AND BAY AREA COUNCIL ON DRUGS & ALCOHOL REGARDING A SAFE LOCATION FOR THE DISPOSAL OF UNWANTED PHARMACEUTICALS.**

**WHEREAS,** the disposal drop box is designed specifically for the purpose of community disposal of unwanted, unused, and expired medications; and,

**WHEREAS,** the drop box is in response to the successful number of Take Back Events throughout the county in which thousands of dosage units of medicine have been collected from patients and to the growing number of unwanted pharmaceuticals in the home; and,

**WHEREAS,** there is a great need for a permanent solution in which these medicines can be properly disposed of quickly and anonymously.

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

**Section I.** The Wharton City Council hereby authorizes the Chief of Police of the City of Wharton, Texas, to execute a Memorandum of Understanding between Wharton Police Department and Bay Area Council on Drugs & Alcohol regarding a safe location for the disposal of unwanted pharmaceuticals.

**Section II.** The Wharton Police Department and Bay Area Council on Drugs & Alcohol are hereby bound by the conditions as set forth in the memorandum of understanding.

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

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**PASSED, APPROVED, and ADOPTED** this 25<sup>th</sup> day of August 2014.

**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 nineteenth item on the agenda was to review and consider update of City of Wharton on-going Projects. City Manager Andres Garza, Jr. presented a copy of the memorandum dated August 25, 2014 providing an update on the City of Wharton current 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.cityofwharton.com/information-a-notices/lcrb-feasibility-study>.

Halff Associates submitted the 100% set of construction plans for the portion of the levee under design and the City Staff has reviewed the document. The City Staff has indicated to Halff Associates that it is too early to acquire the services of a professional land surveyor to prepare metes and bounds since we do not know for sure if the alignment will stay as shown on the current set of construction plans. The City Staff and Halff Associates went through the plan set page by page to identify utility relocations that will be necessary during or prior to construction of the levee. The City will be responsible for all relocations of water, sewer and drainage infrastructure. The City will work together with Halff Associates to coordinate other utility relocations. These include utilities owned by others including CenterPoint Electric, CenterPoint Gas, MidCoast Cable, and Panther Pipeline. The City Staff worked with Jones & Carter and has completed the preliminary layout for the Hughes St. utility relocation. Halff along with the City Staff are working together to solve the issue of spoil disposal.

This design is for the first phase of levee construction along the Colorado River from FM 102 to Business 59. The U.S. Corps of Engineers requested the City submit a letter of support for the 2016 Federal Budget. Mayor Montalvo has submitted to the Corp a letter requesting assistance for this project. The City is awaiting a response.

**DRAINAGE:**

1. Santa Fe Outfall Channel.

The Public Works Department has finished excavation of the channel. During the month of June, routine maintenance was done on the Channel. The channel is slowly increasing in grass cover which is allowing several eroded areas to heal themselves over time. Public Works will continue installing grade stabilization structures to eliminate erosion thereby reducing or eliminating the need to reshape the channel areas with active erosion. The Public Works Department has installed six grade stabilization structures or pipe drops along the channel so far. These structures are part of the original engineering design and not only control erosion but are helping to improve drainage in the city by serving as the outfall for water that has been redirected to the Santa Fe Channel. Work on property owners land is now complete.

2. Stavena Addition Drainage Project.

Update – The City Staff met with Schiebe Consulting on August 7, 2014 to introduce our new Public Works Director and discuss the project details. No further action has been taken.

The City Council on January 27, 2014 authorized the project. The Staff met with Schiebe Engineering on the project. The design and construction plans are complete. The challenge on this project is to find locations to place approximately 35,000 cubic yards of soil.

3. Ahldag Ditch Improvement.

Update – Project details were also discussed on August 7, 2014 with Mr. Schiebe and our Public Works Director.

The City Staff has met with Schiebe Engineering to develop the plans and specifications for the Ahldag Ditch Improvements from Wayside Street downstream to the point where the ditch is concrete lined. The project was approved in the 2013 Bond Program.

**WATER/SEWER IMPROVEMENTS:**

1. Alabama Road Water Plant Storage Tank Renovation Project.

Pay Request #1 was submitted to City Council for approval on 8/11 for J & A Coating, LLC. The City Council approved a contract with J & A Coating, LLC. The company has begun the work.

2. On-going Water and Sewer Maintenance Program.

Water leaks and sewer failures were on average the month of April.

Grease build up has continued to be a problem in the sanitary sewer lines and manholes along Richmond Rd. This results in sewer back-ups and has kept crews busy. The Public Works Department is coordinating with Code Enforcement to begin a grease trap inspection program at restaurants throughout town. The City Staff hopes this will eliminate some of the unnecessary grease build up and sewer back-ups along Richmond Rd and other areas of the City.

Public Works received a telephone complaint concerning grease and sewer back up was made against Denny's on 8/11 by Whataburger Manager. Public Works addressed the situation, took photos, contacted Code Enforcement and closed the establishment down until further action is taken for clean up on the part of Denny's.

3. Alabama Street Sewer Line Project/Kelving Way and Croom/Price Waterline Project.

BEFCO Engineering has begun the preliminary engineering work on this project.

4. South Highway 60 Waterline Extension Project.

The Project is moving forward. The construction contracts have been executed. A pre-construction meeting was held on June 11, 2014. Construction notice to proceed were issued. The contractor was to submit to Jones & Carter Inc. the work schedule.

Received email from Jones & Carter that AR Turnkee would be at job site on 8/11. The construction has begun with an estimated completion date of September 13, 2014.

5. Wastewater Treatment Plant No. 1 Improvement Project.

Jones & Carter, Inc. has begun the engineering design for the project. The City Staff and Jones & Carter Inc. representatives have met and discussed the progress of the plans and specifications.

## **STREET IMPROVEMENTS**

1. FM 1301 Extension and Overpass Project Progress Report.

IDC Inc. continues to work with City Staff in an effort to develop preliminary engineering for the project. The City Staff continues to coordinate with TxDOT to ensure the project continues to move forward.

The City Staff and IDC Inc. have worked on placing the four (4) phases on the TxDOT State Transportation Improvement Plan (STIP). The City has submitted the City Council approved letter to TxDOT and is awaiting a response. The Federal Highway Administration (FHWA) has issued "a satisfactory for further processing and public involvement." A Public Hearing was held on June 11, 2014 at the Wharton Civic Center. IDC has submitted to TxDOT the railroad overpass package of plans for TxDOT to acquire the necessary permit. Once the final report on the public hearing has been finalized it will be submitted to TxDOT and the FHWA to complete the environmental document.

2. 2014 Street Improvement Program.

The City Staff is in the process of implementing the 2014 Street Improvement Program as approved by the City Council. The work has begun in the Briar Grove Addition, Circle Drive Street, and Ford Street.

Third Street is primed from Pecan Street to Rusk. Rusk to Richmond will be leveled up. Public works is checking with Finance Director to find out about funds prior to moving forward once Third Street is completed. Public Works has submitted a listing of street left to be worked along with linear footage involved.

3. Wharton Sidewalk Accessibility and Historic Streetscape Project.

A. Phase I:

The project is complete. The close out phase of the project has begun. Reimbursement request was submitted to TxDOT on 8/11 for around \$77K.

B. Phase II:

The City Staff has received the executed Advance Funding Agreement (AFA) from TxDOT. The implementation phase has begun. The Consultant Selection Committee is in the process of evaluation engineering proposals submitted.

Consultant Selection Committee has ranked engineering firms and will hold interviews on 8/20 with members of CivilCorp and BEFCO Engineering.

4. On-going Street and Drainage Maintenance Program.

The Public Works Department has continued working on cleaning residential drainage ditches that have experienced poor drainage.

5. Kansas City Southern Railroad Quiet Zone.

The City Council has approved the submission of a “notice of intent” (NOI) to the different public agencies and Kanas City Southern Railroad (KCS). BEFCO is in the process of submitting the required notifications.

## **WHARTON REGIONAL AIRPORT**

### **1. Hangar Construction Project.**

The City has submitted the ranking of the engineering firms approved by the City Council to TxDOT. Once TxDOT negotiates the engineering agreement the City Staff and TxDOT will meet with the firm selected to develop the project scope.

After some discussion, no action was taken.

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

- A. Electrical Board.
- B. Holiday Lighting Decorating Chairman.
- C. Wharton Economic Development Corporation Board of Directors.

After some discussion, no action was taken.

The twenty-first item on the agenda was to review and consider City Council Boards, Commissions, and Committee Reports:

- A. Beautification Committee meeting held on August 13, 2014.
- B. Mayor’s Committee on People with Disabilities meeting held on August 19, 2014.
- C. Consultant Selection Committee for the City of Wharton Sidewalk Accessibility and Historic Streetscape Enhancement Project Meeting was held August 20, 2014.

After some discussion, no action was taken.

The twenty-second item on the agenda was City Manager’s Reports:

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

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After some discussion, no action was taken.

The twenty-third item on the agenda was adjournment. There being no further discussion, Councilmember Don Mueller moved to adjourn. Councilmember Tim Barker seconded the motion. All voted in favor.

The meeting adjourned at 7:42 p.m.

**CITY OF WHARTON, TEXAS**

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

**Domingo Montalvo, Jr.**  
**Mayor**

**ATTEST:**

\_\_\_\_\_  
**Paula Favors**  
**City Secretary**