

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
OCTOBER 27, 2008**

Mayor David W. Samuelson declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Mayor David W. Samuelson led the opening devotion and then led the pledge of allegiance.

Councilmember's present were: Mayor David W. Samuelson, Councilmembers Lewis Fortenberry, Jr., Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Jeff Gubbels.

Councilmember absent was: V. L. Wiley, Jr.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Olmeda, Assistant to City Manager Jackie Jansky, Police Chief Tim Guin, EMS Director John Kowalik, Public Works Director Carter Miska, Community Services Director Jo Knezek, and City Attorney Paul Webb.

Visitors present were: Barry Halvorson with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Carlos Cotton with Jones & Carter, Walter Garrett, Ron Sanders, Tara Krushall, Larry Krushall, Carmen Escobedo, Adrian Escobedo, Emma Escobedo, Roland Duncan, Kelly Duncan, Jessie Pena, Alice Krushall, Brandon Krushall, Brandon Escobedo, Donovan Krushall, Jordan Martinez, Kelli Martinez, LaDonna Jones, Khorzon Perry, Beau Escobedo, Tony Ortiz, Dustin Fults, Corey Fults, Stephanie Fults, Janis Gusman, Emma Sherman, Rebecca Aguilar, and Adrien Hall.

The second item on the agenda was Roll Call and Excuses Absences. Councilmember Lewis Fortenberry, Jr. made a motion to excuse the absence of Councilmember V. L. Wiley, Jr. from the Regular City Council meeting held October 27, 2008. Councilmember Don Mueller seconded the motion. All voted in favor.

The third item on the agenda was Public Comments. Ms. Rebecca Aguilar addressed the City Council and stated that she was a parent of a Wharton Texan that was a football player for the Wharton County Youth Football League. She stated that three counties were represented: Wharton, Brazoria and Matagorda with 78 students. She stated that the students were taught self-discipline, self-pride, and self-confidence. She stated that the organization's requirement was no pass – no play. She stated that parents were present during the practices and requested a variance

to the ordinance to allow the park area to be used by the Wharton County Youth Football League. No action was taken.

The fourth item on the agenda was Wharton Moment. Councilmember Jeff Gubbels stated that the Wharton Tigers Tennis Team won first place in San Marcos and the Wharton High School Cross Country Track Team attended a track meet in Needville, which one member advanced to regionals. Mayor David W. Samuelson stated that the Wharton Tigers Football Team won three games consecutively. No action was taken.

The fifth item on the agenda was to review and consider the City of Wharton Financial Report for the month of September 2008. Finance Director Joyce Vasut presented the financial report for the month of September 2008 to the City Council and stated that the auditors would be reviewing the year-end financials. Mrs. Vasut stated that the total ad valorem taxes collected were \$1,882,725 and the sales tax for the month of August 2008 was \$140,880 with \$93,920 to the City and \$46,960 to WEDC. She further stated the TexPool balance for September was \$885,353.17 with an average monthly yield of 2.4068%. The Franklin Bank balance for September 2008 was \$607,515.93 with an average monthly yield of 2.00%. After some discussion, Councilmember Ken Freese made a motion to approve the City of Wharton Financial Report for the month of September 2008. Councilmember Don Mueller seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider the recommendation by the Planning Commission for City Council approval of the following requests by Mr. Glen Dyer, President of East Wharton County Habitat for Humanity:

- A. 5' feet front property line setback variance to construct a 30' x 60' warehouse facility to be located at Wharton, Block 57, Lot 14; 701 Jefferson Avenue.
- B. Waiver of required variance application fee.

Mayor David W. Samuelson abstained from discussion. Mayor Pro-Tem led the discussion on the sixth item on the agenda.

Assistant to City Manager Jackie Jansky stated that the Planning Commission met Monday, October 20, 2008 to discuss the request by Mr. Glen Dyer, President of East Wharton County Habitat for Humanity. She then presented a copy of the memorandum dated October 21, 2008 from Planning Commission Chairman A. J. Rath providing the Commission's recommendation for the City Council to consider approving the requests. She also presented a copy of the letter dated October 14, 2008 from Mr. Dyer requesting that the \$150.00 variance fee be waived. She stated that the set back requirement was 25' front property line. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the requests by Mr. Glen Dyer, President of East Wharton County Habitat for Humanity: 5' feet front property line setback variance to construct a 30' x 60' warehouse facility to be located at Wharton, Block 57, Lot 14; 701 Jefferson Avenue, and waiver of required \$150.00 variance application fee. Councilmember Lewis Fortenberry, Jr. seconded the motion. Mayor David W. Samuelson abstained. The motion carried.

The seventh item on the agenda was to review and consider the request by Mr. Jeff Rainer, Chairman for the Wharton Holiday Parade for the following:

- A. Ordinance: An ordinance approving the 2008 Chamber of Commerce & Agriculture Holiday Parade Permit and authorizing the Wharton Police Department to redirect traffic.
- B. City of Wharton to furnish five (5) tree lights for use at the point of line up. City Manager Andres Garza, Jr. presented a copy of the letter dated October 1, 2008 from Mr. Jeff Rainer, Parade Chairman requesting City Council approval of the afore-mentioned items. He also presented a copy of the draft ordinance approving the parade and authorizing the Wharton Police Department to redirect traffic. He said that Police Chief Tim Guin had reviewed the request and presented a copy of his memorandum dated October 23, 2008 indicating that the Wharton Police Department was prepared to assist with the parade. Mr. Ron Sanders addressed the City Council and stated that the request was the same as prior years. Mr. Garza stated that the City would be responsible for re-directing traffic on Highway 60. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Mr. Jeff Rainer, Chairman for the Wharton Holiday Parade for: the City of Wharton to furnish five (5) tree lights for use at the point of line up, and Ordinance No. 2008-14, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2008 - 14**

AN ORDINANCE APPROVING THE 2008 CHAMBER OF COMMERCE & AGRICULTURE HOLIDAY PARADE PERMIT AND AUTHORIZING THE POLICE DEPARTMENT TO REDIRECT TRAFFIC.

WHEREAS, the Wharton Chamber of Commerce and Agriculture has filed an application for a parade permit with the City of Wharton Police Department as required under the City of Wharton Code of Ordinances, Chapter 82, Article III, Sec. 82-91; and

WHEREAS, the requested parade route requires the City of Wharton to close State Highway 60 (Burleson Street and Milam Street) from its intersection with Alabama Road and Polk Street; and

WHEREAS, the closure of State Highway 60 will be for a time of less than four (4) hours; and

WHEREAS, the closure will require the detouring of all traffic according to the map (Attachment A) attached to this ordinance; and

WHEREAS, the routing of all traffic will include truck traffic to Alabama Road which is prohibited by ordinance; and

WHEREAS, the City Council wishes to suspend for the duration of the parade the enforcement of said ordinance of trucks traveling on Alabama Road; and

WHEREAS, if there are any other ordinances that would be violated because of the re-routing of all traffic their suspension is hereby authorized.

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

- Section I.** The parade permit for the Wharton Chamber of Commerce and Agriculture is hereby approved.
- Section II.** The parade route is hereby approved as detailed in the attached map (Attachment A) which is hereby made part of this ordinance.
- Section III.** The closure of all streets as indicated in said map identified in Section II are hereby authorized.
- Section IV.** The traffic detour plan as identified in Section III above is hereby approved.
- Section V.** The Chief of Police and City Staff are hereby authorized to make the necessary expenditures needed to ensure the safety of the public.
- Section VI.** This ordinance shall become effective on the 25th day of November 2008 and remain in effect until such time that the parade concludes.

Passed, Approved and Adopted this 27th day of October 2008.

CITY OF WHARTON, TEXAS

By: _____
DAVID W. SAMUELSON
Mayor

ATTEST

LISA OLMEDA
City Secretary

Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The eighth item discussed on the agenda was to review and consider an ordinance approving budget amendments to the Budget for the City of Wharton, Texas, for Fiscal Year 2007 - 2008. Finance Director Joyce Vasut stated that the City Council Finance Committee met October 21, 2008 and was recommending the City Council consider approving the fiscal year 2007 – 2008 budget amendments. She then presented a copy of the memorandum dated October 21, 2007 from the Finance Committee providing the recommendation, and a draft ordinance approving the amendments. After some discussion, Councilmember Ken Freese made a motion to approve Ordinance No. 2008-15, which read as follows:

CITY OF WHARTON, TEXAS
ORDINANCE NO. 2008 - 15

**AN ORDINANCE APPROVING AMENDMENTS TO THE
BUDGET FOR THE CITY OF WHARTON, TEXAS FOR
THE FISCAL YEAR 2007 - 2008.**

WHEREAS, the City Council of the City of Wharton, Texas finds and determines it necessary to revise the 2007-2008 budget to better reflect actual revenues and expenditures in operations and activities during the fiscal year; and,

WHEREAS, the City Council finds and determines that these amendments to the budget are for municipal purposes.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Wharton, Texas that the 2007-2008 Budget be amended as per Attachment "A."

And is adopted by the following favorable majority of votes of the members of the City Council of the City of Wharton, Texas in a duly assembled city council meeting by the following majority:

V. L. Wiley, Jr.	Voted	Absent	Lewis Fortenberry, Jr.	Voted	Yes
Councilmember District No. 1			Councilmember District No. 2		
Ken Freese	Voted	Yes	Donald Mueller	Voted	Yes
Councilmember District No. 3			Councilmember District No.4		
Domingo Montalvo, Jr.	Voted		Jeff Gubbels	Voted	Yes
Councilmember At Large Place No. 5	Yes		Councilmember at Large Place No. 6		

David W. Samuelson Voted Yes
Mayor

Severability

If any court of competent jurisdiction rules that any section, subsection, sentence, clause, or portion of this ordinance is invalid or unconstitutional, any such portion shall be deemed to be a distinct and independent provision, and any such ruling shall not affect the validity of the remaining portions hereof.

Passage and Approval

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, this 27th day of October 2008.

CITY OF WHARTON, TEXAS

By _____
DAVID W. SAMUELSON

City of Wharton
Regular City Council Meeting
October 27, 2008

Mayor

ATTEST:

LISA OLMEDA
City Secretary

APPROVED AS TO FORM:

PAUL WEBB
City Attorney

ADMISSION:

JOYCE VASUT
Director of Finance

City of Wharton
Regular City Council Meeting
October 27, 2008

City of Wharton
Regular City Council Meeting
October 27, 2008

City of Wharton
Regular City Council Meeting
October 27, 2008

City of Wharton
Regular City Council Meeting
October 27, 2008

Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The ninth item discussed on the agenda was to review and consider an Ordinance amending the City of Wharton Code of Ordinances, Chapter 54 Parks and Recreation; providing for severability; 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 and setting an effective date. City Manager Andres Garza, Jr. stated that on October 16, 2008, he met with Ms. Tara Krushall of the Wharton Youth Football Association regarding the use of Harris Park for football practice. He said that since Harris Park was under utilized for baseball or softball practice, the City Staff was requesting City Council approval to amend the City of Wharton Code of Ordinances, Chapter 54, Parks and Recreation. Specifically, Section 54-5 Sports Fields to state that Harris Park may be used for other sports (soccer, football, etc.) for use by organizations. He said that the field at Harris Park was also equipped with lighting, which would allow for practices to be held during night hours. He presented a copy of a draft ordinance amending the section. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Ordinance No. 2008-16, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2008-16**

AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 54 PARKS AND RECREATION; PROVIDING FOR SEPARABILITY; 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 AND SETTING AN EFFECTIVE DATE.

BE IT ORDAINED by the City Council of the City of Wharton, Texas, that Chapter 54 Parks and Recreation be amended to read as follows:

Sec. 54-1. Definitions

- (a) "City Park" means all parks in the corporate limits of the City of Wharton that have been dedicated to the public, including all such parks that are subsequently annexed into the city limits or dedicated to the public in the Wharton corporate limits.
- (b) "Community Event" means an event in the City that is open to the public in general and approved by City Council.
- (c) "Non-Profit" means an organization that operates in a not-for-profit manner and is classified under the federal tax code as 501(c) (3). Proof of status must be provided to the City of Wharton. Failure to provide proof of status will eliminate the non-profit exemption and the organization shall comply with revenue generating function requirements.
Person(s) means an individual, corporation, partnership, entity, or non-profit organization.
- (d) Special Use Permit means a permit issued by the City of Wharton for exclusive use of City owned park facilities.

Sec. 54-2 Park Property

No person in a City park shall:

- (a) Interfere with city scheduled park activities.
- (b) Interfere with an activity operating under a special use permit.
- (c) Willfully mark, deface, disfigure, injure, tamper with any building, table, bench, railing, signs, notices, placards, boundary markers, or other structures or equipment.
- (d) Dig or remove any soil, rock, stones, trees, shrubs, or plants or other wood or materials, or make any excavations by tool, equipment, blasting or other means or agency.
- (e) Damage, cut, carve, transplant or remove any tree or plant or injure the bark.
- (f) Dig in or otherwise disturb grass areas, or in any other way, injure or impair the natural beauty or usefulness of the area.
- (g) Possess, use, or discard any glass containers upon or within any City park or sports fields.
- (h) Bathe, swim, stand, walk, or jump in any fountain. The fountain shall be kept free from animals and/or persons. The fountain shall be kept free from any foreign substances, liquid and/or solid.
- (i) Operate or park any motorized vehicle in an area not specifically designated or intended to be used for the parking or movement of motorized vehicles. Vehicles shall not be left in the park when closed.
- (j) Start a campfire, except for cooking in the designed bar-b-que grills provided at the park sites.

Sec. 54-3 Hours of Operation

- (a) City parks shall be open to the public daily from 6:00 a.m. to 10:00 p.m., except for the Santa Fe Trail, which times are provided in subsection (d) below.
- (b) It shall be unlawful for a person to be in a city park except when the park is open to the public. Persons shall obtain a variance from City Council to use the park during the hours it is closed to the public. Any person or entity that desires to use the park during closed hours shall file a written application with the city, on a form provided by the City Secretary. The City Secretary shall present the application to the City Council for consideration. If the application is approved, the City Secretary or designated personnel shall issue a variance containing the terms and conditions as imposed by the City Council as a condition for use of the park during closed hours.
- (c) It shall be unlawful for any person to enter, loiter, remain, refuse to leave, or be in and on any public park, playground or field in the city between the hours of 10:00 p.m. and 6:00 a.m. unless they have obtained a variance approved by the City Council, and/or except as provided in Subsection (d).
- (d) The Santa Fe Trail shall be open to the public daily from 4 a.m. to midnight.

Sec. 54-4 Exclusive Use of Park Pavilions

- (a) The City of Wharton park facilities are intended for general public use; however, upon request and approval, the park pavilions may be made available for the exclusive use of specific persons for a specific period of time, provided the exclusive use does not conflict with the use and policies of the City of Wharton.

- (b) Request for exclusive use of pavilions shall be directed to the City Secretary's Office. An application shall be completed and submitted to the City Secretary's Office and a special use permit may be issued by the City Secretary.
- (c) All persons requesting the exclusive use of park pavilions shall pay a \$50.00 refundable deposit at the time of reservation. If the site and facilities are cleaned and returned to their original condition upon completion of the event, and all debris, paper, cans, signs, decorations, etc, are collected and placed in the trash receptacles, the deposit shall be refunded. However, if the above conditions are not met, the deposit shall be forfeited.
- (c) City of Wharton residents requesting exclusive use of a city park pavilion will be required to pay a \$25.00 non-refundable fee for such use.
- (d) Persons not residing in the City of Wharton requesting exclusive use of a city park pavilion will be required to pay a \$35.00 non-refundable fee for such use.
- (e) It shall be the user's responsibility to see that all special arrangements for their intended use are made.

Sec. 54-5 Sports Fields

- (a) Pleasure Park North and Mayfair Park sports fields shall only be used for their intended purpose. Harris Park may be used for other sports (soccer, football, etc.) for baseball or softball practices, games, tournaments, or league play purposes.
- (b) Persons requesting use of the sports fields at Pleasure Park North, Mayfair Park, or Harris Park must complete an application with the City Secretary's Office.
- (c) The application form shall include the name and address of the applicant, the number of persons or number of teams to be using the park, the dates, times requested for use, and the purpose of such use (company picnic, family reunion, non-profit organization fundraiser, revenue generating function).
- (d) All persons requesting the use of a city maintained sports field shall pay a \$50.00 reservation deposit at the time of reservation. If the park is cleaned up in a reasonable manner, all trash is placed in receptacles after use of the park, and any keys are returned by 12:00 noon of the first working day following the reservation, the deposit shall be refunded. However, if the above conditions are not met, the deposit shall be forfeited.
- (e) All persons requesting to use the city's scoreboard box will pay a \$100.00 refundable deposit for score box usage to the city at the time of reservation. If the scoreboard box is returned by 12:00 noon of the first working day following the reservation, the deposit shall be refunded. However, if the above conditions are not met, the deposit shall be forfeited.) Upon completion of an application and payment of reservation deposit(s), the following fees shall also be paid:
 - (1) Fees for any revenue generating function that is not a non-profit organization fundraiser are as follows:

(a)	One-time use (Game or practice)	\$15.00 per hour
(b)	Tournament (1-3 Days)	\$100.00
(c)	League Play (for each session (up to four months).	\$250.00
 - (2) Fees for use of lights (All applicants to pay for use of lights.)

