

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
JANUARY 25, 2010**

Mayor David W. Samuelson declared a Regular Meeting duly open for the transaction of business at 7:02 P.M. Councilmember V. L. Wiley, Jr. led the opening devotion and then Mayor David W. Samuelson led the pledge of allegiance.

Councilmember's present were: Mayor David W. Samuelson, Councilmembers V. L. Wiley, Jr., Lewis Fortenberry, Jr., Terry David Lynch, Don Mueller, Domingo Montalvo, Jr., and Jeff Gubbels.

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Olmeda, Assistant to City Manager Jackie Jansky, 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, Janet Goings, and Tammy Sewell.

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

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

The fourth item on the agenda was Wharton Moment. Councilmember Domingo Montalvo, Jr. stated that he attended the LCRA Coalition Meeting and was advised that the House requested \$15 million in the budget for the flood reduction project; however, the budget was not approved as of this date. 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 December 2009. Finance Director Joyce Vasut presented the financial report for the month of December 2009, which was at 25% or three month into the fiscal year. Mrs. Vasut stated that the total ad valorem taxes collected were \$272,772 and the sales tax for the month of November 2009 was \$118,143 with \$78,762 to the City and \$39,381 to WEDC. She further stated the TexPool balance for December was \$49,132.53 with an average monthly yield of 0.2090%. The Prosperity Bank balance for December 2009 was \$530,759.47 with an average monthly yield of 0.25%. She stated that other investments included \$2,649.11 at TexasGulf Federal Credit Union in the debt fund, \$252,807.92 at Capital One Marketing 2%; and Prosperity

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Bank \$1,000,000 3 months at .50% interest, \$1,500,000 6 month at 1% interest, and \$250,000 1 year at 1.25% interest. After some discussion, Councilmember Don Mueller made a motion to approve the City of Wharton Financial Report for the month of December 2009. Councilmember Lewis Fortenberry, Jr. 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 request by Mr. Gary Hmaidan for approval of the preliminary/final plat of HQ Properties Subdivision being a replat of a portion of a 2.820 Acre Tract and a 1.767 Acre Tract situated in the William Kincheloe League, Abstract 38, Wharton County, Texas. Assistant to City Manager Jackie Jansky presented a copy of the Planning Commission Application for Re-plat submitted by Mr. Gary Hmaidan. She also presented a copy of the plat and a drawing indicating the location of the property and the neighboring property owners. She said that HQ Properties owned the Reserve 2.730 Ac. and 1.767 Ac. Tracts located in the William Kincheloe League, Abstract 38. She said that Mr. Hmaidan was wishing to create three lots, one of which would be for a business relocation on Lot 1. She said that Lot 1 and Lot 2 was in the process of being sold. She said that the Planning Commission met January 19, 2010 and voted to recommend the City Council consider approving the replat. She said that access would be from Fulton Street, which Lots 1 and 2 would share access. After some discussion, Councilmember Don Mueller made a motion to approve the request by Mr. Gary Hmaidan for approval of the preliminary/final plat of HQ Properties Subdivision being a replat of a portion of a 2.820 Acre Tract and a 1.767 Acre Tract situated in the William Kincheloe League, Abstract 38, Wharton County, Texas. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider the request by Ms. Janet Goings, Ms. Tami Sewell and Ms. Nikki Araguz on behalf of the Monterey Square Merchants to hold the Merchant's Market in Guffey Park on the first Saturday of each month beginning in February 2010. City Manager Andres Garza, Jr. presented a copy of the letter received January 21, 2010 from Ms. Janet Goings, Ms. Tami Sewell and Ms. Nikki Araguz on behalf of the Monterey Square Merchants who were requesting the City Council's approval to hold the Merchant's Market event in Guffey Park on the first Saturday of each month beginning in February 2010. Ms. Tammy Sewell and Mrs. Janet Goings addressed the City Council and stated that the event would be incorporated with the Farmers Market and the Merchant's Market would not participate during the Freedom Fest event. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Ms. Janet Goings, Ms. Tami Sewell and Ms. Nikki Araguz on behalf of the Monterey Square Merchants to hold the Merchant's Market in Guffey Park on the first Saturday of each month beginning in February 2010. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider the 2010 City of Wharton Election:

A. **Ordinance:** An ordinance ordering a City Officer's Election to be held as a joint election with Wharton County Elections Department for the purpose of electing the positions of Mayor and Councilmembers; Providing for the date, time and place of the election, Notice of the Election, Filing Applications; Drawing for Ballot Positions, Use of Accessible Voting System, Appointment of Election Workers, Early Voting and Making Election Returns.

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Una ordenanza ordenando una elección de funcionarios de la ciudad a celebrarse de forma conjunta con el departamento de elecciones alcalde y del condado de Wharton con el propósito de elegir puestos de concejales; asignando la fecha, Horas, Y presentación de solicitudes, sorteo para lugares en la balota, uso de sistema de votación accesible, Nombramiento de los trabajadores de la elección, votación anticipada, Y entrega de los resultados de la elección.

City Secretary Lisa Olmeda presented a copy of the draft ordinance calling for a City Officers Election to be held as a joint election with Wharton County Elections Department for the purpose of electing the positions of Mayor and Councilmembers; Providing for the date, time and place of the election, Notice of the Election, Filing Applications; Drawing for Ballot Positions, Use of Accessible Voting System, Appointment of Election Workers, Early Voting and Making Election Returns. She stated that the first day for filing was February 6, 2010, with the deadline to file an application for place on ballot was March 8, 2010. She stated that early voting would be April 26-30, 2010 for the hours of 8:00 a.m. – 5:00 p.m. and May 3-4, 2010 for the hours of 7:00 a.m. - 7:00 p.m. She stated that the election would be May 8, 2010 for the hours of 7:00 a.m. - 7:00 p.m. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve Ordinance No. 2010-01, which read as follows:

**CITY OF WHARTON, TEXAS
ORDINANCE NO. 2010-01**

AN ORDINANCE ORDERING A CITY OFFICERS ELECTION TO BE HELD AS A JOINT ELECTION WITH WHARTON COUNTY ELECTIONS DEPARTMENT FOR THE PURPOSE OF ELECTING THE POSITIONS OF MAYOR AND COUNCILMEMBERS; PROVIDING FOR THE DATE, TIME, AND PLACE OF THE ELECTION, NOTICE OF THE ELECTION, FILING APPLICATIONS, DRAWING FOR BALLOT POSITIONS, USE OF ACCESSIBLE VOTING SYSTEM, APPOINTMENT OF ELECTION WORKERS, EARLY VOTING, AND MAKING ELECTION RETURNS.

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

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

Joint Election

Wharton County Elections Department will be conducting the duties as described in the Joint Election Agreement.

Position

An election shall be held in the City of Wharton, Texas, for the purpose of electing the following officials for the City:

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

Date

An election shall be held in the City of Wharton, Texas on **May 8, 2010**.

Time

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

Location

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

Notice of City Officers' Election

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

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

Eligibility to Vote

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

Candidate Names

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

Filing

Candidates must file applications for a place on the ballot with the City Secretary of the City of Wharton, Texas beginning on **February 6, 2010** and continuing through **5 p.m.** on **March 8, 2010**. A declaration of write-in candidacy must be filed not later than 5:00 P.M. on

March 15, 2010, the 5th day after an application for a place on the ballot is required to be filed that is on Saturday, March 13, 2010; therefore, the date is moved to Monday, March 15, 2010.

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

Drawing for Ballot Positions

On March 11, 2010 at 10:00 a.m., a drawing will take place in the office of the City Secretary for the purpose of determining the order of the candidates' names as they are to appear on the ballot.

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

Ballots

Paper ballots shall be used for the purposes of provisional and mail-out for early voting and provisional for election day.

Accessible Voting System

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

The Office of the Texas Secretary of State has certified that the iVotronic (DRE) voting machines is an accessible voting system that may legally be used in Texas elections.

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

The City of Wharton hereby adopts for use in Early Voting and Election Day Voting the iVotronic (DRE) voting machines as approved by the Secretary of State to comply with HAVA requirements.

Elections Recording Management Tabulation System

The City of Wharton shall lease or rent from the County the ERM (Elections Recording Management) systems for tabulation purposes, if needed.

Election Officers

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The Wharton County Elections Department (WCED) will be responsible for the appointment of the presiding judge and alternate judge. The following-named persons are appointed officers for the election:

Presiding Judge: Magdalena Rodriguez
Alternate Presiding Judge: Joyce Baker

WCED shall arrange the training. WCED is responsible for notifying the election presiding and alternate judges of the eligibility requirements of Subchapter C of Chapter 32 of the Texas Election Code, and will take the necessary steps to insure that the presiding and alternate judges appointed are eligible to serve. The presiding judge, with the assistance from WCED, will be responsible for insuring the eligibility of each appointed clerk hired to assist the judge in the conduct of the election.

Early Voting

Wharton County Elections Administrator Judy Owens is appointed early voting clerk and is authorized to appoint other deputies to serve as early voting clerks.

The early voting by personal appearance for the above-designated election shall take place at the Wharton Community/Civic Center at 1924 North Fulton Street, Wharton, Texas. The place for early voting shall remain open on each day that is not a Saturday, Sunday, or an official state holiday, between the hours of **8 a.m.** and **5 p.m.**, beginning on **April 26, 2010** and continuing through **April 30, 2010; Monday, May 3, 2010** and continuing through **Tuesday, May 4, 2010** between the hours of **7 a.m.** to **7 p.m.**

Voters may send ballot applications and mailed ballots to the Wharton County Elections Administrator's office at P.O. Box 390, Wharton, TX 77488.

Early Voting Ballot Board

An Early Voting Ballot Board is hereby established for the purpose of early voting results. Wharton County Elections Administrator shall appoint the Presiding Judge of the Early Voting Ballot Board. Wharton County Elections Administrator shall act as Early Voting Ballot Board Clerk.

Compensation for Election Officials and Clerks

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

The Election Judge for the May 8, 2010 General Election shall be paid \$9.00 per hour. The Election Judge shall also be paid \$25.00 for delivering the precinct records, keys to ballot box or other election equipment and unused election supplies after the election.

The Alternate Judge for the May 8, 2010 General Election shall be paid \$8.50 per hour.

The Election Clerk(s) for the May 8, 2010 General Election shall be paid \$8.50 per hour.

Writ of Election

Wharton County Elections Administrator shall deliver to the above-appointed presiding judge for the election not later than the **15th day** before election day.

Returns

"Section 41 of the City Charter provides that city elections shall be canvassed within one (1) week after the election; however, pursuant to changes in the Texas Election Code, Section 67.003, the local canvass shall convene not earlier than the third day or later than the 11th day after the election day." The period for official canvass shall be from May 11 - 19, 2010. The officers holding the election shall make returns of the results thereof to the Mayor of this City, as required by the Election Code of the State of Texas.

Order

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

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

Passage and Approval

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on this 25th day of January, 2010.

CITY OF WHARTON, TEXAS

ATTEST:

By: _____
David W. Samuelson
Mayor

Lisa Olmeda
City Secretary

APPROVED AS:

Paul Webb
City Attorney

CIUDAD DE WHARTON, TEXAS
ORDENANZA N° 2010-01

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UNA ORDENANZA ORDENANDO UNA ELECCIÓN DE FUNCIONARIOS DE LA CIUDAD A CELEBRARSE DE FORMA CONJUNTA CON EL DEPARTAMENTO DE ELECCIONES ALCALDE Y DEL CONDADO DE WHARTON CON EL PROPÓSITO DE ELEGIR PUESTOS DE CONCEJALES; ASIGNANDO LA FECHA, HORAS, Y LUGAR DE LA ELECCIÓN, EL AVISO DE LA ELECCIÓN, PRESENTACION DE SOLICITUDES, SORTEO PARA LUGARES EN LA BALOTA, USO DE SISTEMA DE VOTACIÓN ACCESIBLE, NOMBRAMIENTO DE LOS TRABAJADORES DE LA ELECCION, VOTACIÓN ANTICIPADA, Y ENTREGA DE LOS RESULTADOS DE LA ELECCION.

El Consejo Municipal de La Ciudad De Wharton, Texas ORDENA :

“La Sección 32 de la Carta Constitutiva establece que se realicen elecciones ordinarias de la ciudad anualmente el primer sábado de mayo; sin embargo, de acuerdo con los cambios del Código de Elecciones de Texas, Sección 41.001(a) la fecha de la Elección General ha sido cambiada al segundo sábado de mayo”

Elección conjunta

El Departamento de elecciones del condado de Wharton realizará las obligaciones descritas en el Acuerdo de Elección Conjunta.

Puesto

Se celebrará una elección en la ciudad de Wharton, Texas con el propósito de elegir a los siguientes oficiales de la Ciudad:

Alcalde – en Grande

Concejal - Distrito No. 2

Concejal - Distrito No. 4

Concejal de forma irrestricta - Posición No. 6

Fecha

Se celebrará una elección en la ciudad de Wharton, Texas el 8 de mayo de 2010.

Horas

Los lugares de votación abrirán para votar a las 7:00 a.m. y se cerrarán a las 7:00 p.m.

Lugar

La elección se celebrará en el Centro Cívico de la ciudad de Wharton, en 1924 North Fulton Street, Wharton, Texas.

Aviso de elección de oficiales municipales

El Alcalde anunciará el aviso de la elección mediante la publicación del aviso por lo menos una vez en un periódico publicado en la ciudad de Wharton, Texas, y que esté en la jurisdicción de la ciudad de Wharton, Texas, cuya publicación no sea anterior a **30 días** antes ni posterior a **10 días** antes de la fecha del día de la elección.

El Alcalde anunciará el aviso de la elección mediante la publicación del aviso en el tablero de anuncios ubicado en la Alcaldía, 120 East Caney, Wharton, Texas, utilizado para publicar los avisos de las reuniones del Concejo Municipal de Wharton no después de **21 días** antes de la elección. El aviso contendrá la ubicación del lugar de la votación.

Elegibilidad para votar

La elección se realizará de acuerdo con el Código de Elecciones del estado de Texas. Solamente los electores capacitados de la ciudad de Wharton, Texas serán elegibles para votar en la elección.

Nombres de los candidatos

La Secretaria Municipal de acuerdo con los términos y disposiciones del Código de Elecciones del estado de Texas ordenará que los nombres de los candidatos sean impresos en las balotas para dicha Elección General.

Período de presentación

Los candidatos deben presentar sus solicitudes para un lugar en la balota a la Secretaria Municipal de la Ciudad de Wharton, Texas a partir del **6 de febrero de 2010** y continuando hasta las 5:00 de la tarde del **8 de marzo de 2010**. La declaración de solicitud de candidato anotado se debe presentar no más tarde de las 5:00 de la tarde del **15 de marzo de 2010**, el quinto (5º) día después de que se requiere la solicitud para un lugar en la balota es el sábado 13 de marzo de 2010, así pues la fecha se cambia al lunes 15 de marzo de 2010.

Los candidatos para concejales municipales deben designar el puesto al que se están postulando, ya sea para Alcalde – en Grande, concejal del Distrito No. 2, concejal del Distrito No. 4, o concejal de forma irrestricta - Posición No. 6.

Sorteo para los lugares en las balotas

El 11 de marzo de 2010, a las 10:00 de la mañana se celebrará un sorteo en las oficinas de la Secretaria Municipal con el propósito de determinar el orden en que los nombres de los candidatos se imprimirán en la balota.

La Secretaria Municipal publicará el aviso de la fecha, hora y lugar del sorteo y este aviso deberá permanecer anunciado continuamente por lo menos las 72 horas inmediatamente anteriores a la hora programada para tal sorteo

Balotas

Se usarán balotas de papel con los propósitos de los votos provisionales y por correo para la votación anticipada y provisionales para el día de la elección.

Sistema de votación Accesible

La sección 61.012 del Código de Elecciones de Texas requiere que la Ciudad de Wharton deberá ofrecer al menos un sistema de votación accesible en cada lugar de votación usado en cualquier elección de Texas a partir del 1º de enero de 2006. Este sistema debe de cumplir con

