

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
JANUARY 26, 2009**

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

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

Councilmember absent was: V. L. Wiley, Jr. and Domingo Montalvo, Jr.

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, and City Attorney Paul Webb.

Visitors present were: Barry Halvorson with Wharton Journal Spectator, Carlos Cotton with Jones & Carter, Miguel Cruz, Allen Pepper, Mr. McGill, Diana Gajewsky, I. O. Coleman, Jr., and Christine Stransky.

The second item on the agenda was Roll Call and Excuses Absences. Councilmember Don Mueller made a motion to excuse the absence of Councilmember V. L. Wiley, Jr. and Domingo Montalvo, Jr. from the Regular City Council meeting held January 26, 2009. Councilmember Ken Freese seconded the motion. All voted in favor.

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. Mayor David W. Samuelson publicly commended City Secretary Lisa Olmeda for re-certifying as a Texas Registered Municipal Clerk. 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 2008. Finance Director Joyce Vasut presented the financial report for the month of December 2008 which was at 25% or three months into the fiscal year. Mrs. Vasut stated that the general fund revenues were at 20.14% and the expenditures were at 24.61%. The total ad valorem taxes collected were \$442,511. She said the sales tax for the month of November was \$138,214 with \$92,143 going to the City and \$46,071 to WEDC. The bank balance for October was \$771,605.85 with an average monthly yield of 1.00% for the period December 1 – 30, 2008 and 0.25% for the period December 31, 2008. She said that TexPool balance for

December was \$48,649.15 with an average monthly yield of 1.4855%. After some discussion, Councilmember Don Mueller made a motion to approve the City of Wharton Financial Report for the month of December 2008. Councilmember Ken Freese seconded the motion. All voted in favor.

The sixth on the agenda was to review and consider the Planning Commission recommendation for City Council to consider approving the request by Mr. Val Gutierrez, representing Wharton Church of God located at 404 Moutray Avenue, to use the right-of-way to construct twelve (12) parking spaces. Assistant to City Manager Jackie Jansky stated that the Planning Commission met Tuesday, January 20, 2009 and discussed the request by Mr. Val Gutierrez, representing Wharton Church of God located at 404 Moutray Avenue, to use the right-of-way to construct twelve (12) parking spaces. She then presented a copy of the memorandum dated January 20, 2009 from Chairman A. J. Rath providing the Planning Commission recommendation for the City Council to consider approving the request to use the right-of-way to construct twelve (12) parking spaces. She said that during the Planning Commission meeting, Mr. Gutierrez indicated to the Planning Commissioner's that the curb would be removed along Maple Street, if the request was approved, and that the gutters would remain in place. She said that he also indicated that the driveway approach existed along Moutray; therefore, no curb would need to be removed from the parking location. Mr. Gutierrez addressed the City Council and stated the drainage drawing were presented to Public Works Director Carter Miska. Mr. Miska stated that the drawing was received; therefore, he would have to review for adequacy. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve the request by Mr. Val Gutierrez, representing Wharton Church of God located at 404 Moutray Avenue, to use the right-of-way to construct twelve (12) parking spaces contingent upon approval of the drainage. Councilmember Don Mueller seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider the request by Ms. Diana Gajewsky, representative for Stray Pet Outreach Team (SPOT) to hold an annual "Dog Walk" fundraiser event on the Santa Fe Trail, April 18, 2009. City Manager Andres Garza, Jr. presented a copy of the email dated January 14, 2009 from Ms. Diana Gajewsky, a representative for Stray Pet Outreach Team (SPOT) requesting City Council approval to hold an annual "Dog Walk" fundraiser event on the Santa Fe Trail, April 18, 2009. He stated that the proposed event would be held April 18, 2009 beginning at 9:00 a.m. and would take approximately two (2) hours. He said that she also indicated in her email that a registration tent could be set up near the water fountain and a booth for refreshments. He said additionally, the organization would request that proof of vaccinations be provided along with a signed release of liability form. Ms. Gajewsky addressed the City Council and stated that the route was revised and only a part of Santa Fe Trail was requested. She stated that there would not be anything set up on the trail as previously requested and requested use of the Jr. High street. She stated that she was seeking approval from Police Chief Tim Guin. Councilmember Don Mueller asked about clean up efforts. She stated that the participants and other organizations would conduct clean up efforts. After some discussion, Councilmember Ken Freese made a motion to approve the request by Ms. Diana Gajewsky, representative for Stray Pet Outreach Team (SPOT) to hold an annual "Dog Walk" fundraiser event on the Santa Fe Trail, April 18, 2009 contingent upon approval by Police Chief Tim Guin. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The eighth item discussed on the agenda was to review and consider the Kansas City Southern Railroad proposed street closure, safety and operations through the City of Wharton. City Manager Andres Garza, Jr. presented a copy of the letter dated January 24, 2009 to Mayor David W. Samuelson from Mr. Allen Pepper, KCS Director of Public Safety regarding the proposed street closure and FM 1301 at grade crossings. Mr. Allen Pepper addressed the City Council and submitted a proposal to close Spanish Camp Road and to provide the City with an at-grade crossing at FM 1301, which would include an incentive of \$50,000. He stated that there would be approximately 50 crossings throughout the Rosenberg subdivision (Rosenberg to Victoria line) and that the three crossings in the City of Wharton would eventually have lights and gates, unless Spanish Camp was closed. He stated that a full train would be approximately 85 to 100 cars. He said the lights and gates would be constructed one county at a time; however, the trains would operate at a speed of 10 mph without the lights and gates until the construction was completed. He stated that publications would be in the local newspapers. He said that there would be an emergency 800 number posted at all crossings. He then stated that crossings would be inspected annually. Mr. McGill addressed the City Council and stated that tie cars hauling rail and rock would be passing through during construction; however, flaggers would be at each crossing during that period. After some discussion, no action was taken.

The ninth item discussed on the agenda was to review and consider the 2009 City of Wharton Election:

A. **Ordinance:** An ordinance calling for a City Officer's Election, providing for the date, time and place of the election, the appointment of Election Officers and Clerks, Notice of the Election, drawing for ballot positions, filing applications, use of Accessible Voting System, establishing early voting hours, and making election returns.

Una Ordenanza ordenando una elección de funcionarios de la ciudad a celebrarse de forma conjunta con el departamento de elecciones 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, 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 Manager Andres Garza, Jr. presented the draft ordinance. City Secretary Lisa Olmeda stated that the City Election would be held on May 9, 2009 from 7:00 a.m. until 7:00 p.m. She stated that the Early Voting period was April 27 – May 1, 2009 from 8:00 a.m. until 5:00 p.m. and May 4-5, 2009 from 7:00 a.m. until 7:00 p.m. She stated that the first day for filing an application for place on the ballot was February 7, 2009, and the drawing for place on the ballot would be held March 12, 2009. She then stated that the candidate packets would be available on Friday, January 30, 2009. She stated that there would be a full contract with the Wharton County Elections Department. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve Ordinance No. 2009-02, which read as follows:

**CITY OF WHARTON, TEXAS
ORDINANCE NO. 2009-02**

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 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:

Councilmember - District No. 1
Councilmember - District No. 3
Councilmember at Large - Place No. 5

Date

An election shall be held in the City of Wharton, Texas, on **May 9, 2009**.

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 7, 2009** and continuing through **5 p.m.** on **March 9, 2009**. A declaration of write-in candidacy must be filed not later than 5:00 P.M. on **March 16, 2009**, the 5th day after an application for a place on the ballot is required to be filed that is on Saturday, March 14, 2009; therefore, the date is moved to Monday, March 16, 2009.

Candidates for City Councilmember must designate the position filed for either Councilmember District No. 1, Councilmember District No. 3, or Councilmember at Large - Place No. 5.

Drawing for Ballot Positions

On March 12, 2009 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

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 27, 2009** and continuing through **May 1,**

2009; Monday, May 4, 2009 and continuing through **Tuesday, May 5, 2009** 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 9, 2009 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 9, 2009 General Election shall be paid \$8.50 per hour.

The Election Clerk(s) for the May 9, 2009 General Election shall be paid \$8.00 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 12 - 20, 2009. 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 26th day of January, 2009.

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° 2009-02

UNA ORDENANZA ORDENANDO UNA ELECCIÓN DE FUNCIONARIOS DE LA CIUDAD A CELEBRARSE DE FORMA CONJUNTA CON EL DEPARTAMENTO DE ELECCIONES 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:

**Concejal - Distrito No. 1
Concejal - Distrito No. 3
Concejal de forma irrestricta - Posición No. 5**

Fecha

Se celebrará una elección en la ciudad de Wharton, Texas, el 9 de mayo de 2009.

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.

