

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
JANUARY 28, 2008**

Mayor Bryce D. Kocian 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 Bryce D. Kocian led the pledge of allegiance.

Councilmembers present were: Mayor Bryce D. Kocian, Councilmembers V. L. Wiley, Jr., David Samuelson, Ken Freese, Don Mueller, and Domingo Montalvo, Jr.

Councilmember absent was: Ray Linseisen.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Stavena, Assistant to City Manager Jackie Jansky, Building Official Ronnie Bollom, Planning Director Prudencio Arriaga, Sr., and City Attorney Paul Webb.

Visitors present were: Lewis Fortenberry and Henry Thiele.

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

The fourth item on the agenda was Wharton Moment. Councilmember Don Mueller stated that an I-69 planning meeting was held in Rosenberg on January 24, 2008, which the City Council Public Works Committee along with Wharton County residents attended. He stated that Texas Department of Transportation representatives indicated that formal comments regarding the proposed project could be made during the public hearing on February 11, 2008 at Wharton High School with an open house forum at 500 p.m. and the official public hearing at 6:30 p.m. Mayor Bryce D. Kocian stated that the Regular City Council Meeting could be changed so the City Council could attend the Public Hearing Texas Department of Transportation regarding the I-69/Trans-Texas Corridor Project meeting.

Councilmember David Samuelson stated that the Pilot Club and members of the Bright Minds Scholarship Fund held a fundraiser, raising approximately \$80,000.00. He commended the community for supporting the fundraising efforts. 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 2007. Finance Director Joyce Vasut presented the financial report for the month of December 2007 and stated that the fiscal year was at 25%. Mrs. Vasut stated that the general fund revenues were at 21.82% and the expenditures were at 23.67%. The total ad valorem taxes collected were \$459,321. The sales tax for the month of November 2007 was \$149,269 with \$99,513 to the City and \$49,756 to WEDC. The bank balance for December 2007

was \$1,284,770.08 with an average monthly yield of 4.5%. TexPool balance for December 2007 was \$950,851.15 with an average monthly yield of 4.7144%. After some discussion, Councilmember David Samuelson made a motion to approve the City of Wharton Financial Report for the month of December 2007. Councilmember Ken Freese seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider the Planning Commission recommendation for City Council to consider approving the request by Mr. Shawn Kappes for approval of the final replat of Hawes 3, Block 3, Lots 1 and 2. City Manager Andres Garza, Jr. stated that the Planning Commission met January 22, 2008 and discussed the request by Mr. Shawn Kappes for approval of the final replat of Hawes 3, Block 3, Lots 1 and 2. He then presented a copy of the memorandum dated January 22, 2008 from Planning Commission Chairman A. J. Rath providing the Planning Commission recommendation for City Council consideration to approve Mr. Kappes request with the stipulation that City Staff acquire and show the necessary utility easements on the final plat. Planning Director Prudencio V. Arriaga, Sr. requested the item be deferred until the final plat contains the necessary information. No action was taken.

The seventh item on the agenda was to review and consider the request by Mr. Pete Cruz for a 30 feet – 9-inch exterior side yard setback variance from the required 35 feet setback to install a 20 feet x 20 feet storage building at 100 S. Resident Street. City Manager Andres Garza, Jr. presented a copy of the memorandum dated January 9, 2008 from Planning Director Prudencio V. Arriaga, Sr. providing the request by Mr. Pete Cruz for City Council consideration of a setback variance. He stated that the storage building would be 4 feet 3 inches from the exterior side yard property line. He also presented a copy of the application for variance submitted by Mr. Cruz. Planning Director Prudencio V. Arriaga, Sr. stated that the structure was constructed prior to obtaining a permit. He said that the structure was inside with the existing fence. Mr. Pete Cruz addressed the City Council and stated that the carport was bought from a local vendor. Mayor Bryce D. Kocian stated that the local vendor should be educated on the permit requirements. He stated that the carport was 30 feet from the adjacent property line. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Mr. Pete Cruz for a 30 feet – 9 inch exterior side yard setback variance from the required 35 feet setback to install a 20 feet x 20 feet storage building at 100 S. Resident Street. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider 2008 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.

City Manager Andres Garza, Jr. presented a copy of the draft ordinance calling for a City Officers Election, providing for the date, time and place of the election, the appointments of Officers and Clerks, early voting, Notice of the Election, drawing for ballot positions, filing applications, use of accessible voting system, establishing early voting hours and making election returns. City Secretary Lisa Stavena stated the Ordinance called for the City election to be held on May 10,

2008. She stated Wharton County Elections Administrator was proposing a joint election with City of Wharton, Wharton I.S.D., Wharton County Junior College, MUD District and surrounding entities. She stated that by having the Joint Election, it would allow the voter to qualify once and vote for all eligible ballots. She stated that the City Secretary's Office would be responsible for qualifying the candidate; however, the Wharton County Elections Administrator would be the Early Voting Clerk. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Ordinance No. 2008-02, which read as follows:

**CITY OF WHARTON, TEXAS  
ORDINANCE NO. 2008-02**

**AN ORDINANCE CALLING FOR A CITY OFFICERS ELECTION, PROVIDING FOR THE DATE, TIME, AND PLACE OF THE ELECTION, THE APPOINTMENT OF ELECTION OFFICERS AND CLERKS, EARLY VOTING, NOTICE OF THE ELECTION, DRAWING FOR BALLOT POSITIONS, FILING APPLICATIONS, USE OF ACCESSIBLE VOTING SYSTEM, ESTABLISHING EARLY VOTING HOURS, 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."

**Date and Position**

An election shall be held in the City of Wharton, Texas on **May 10, 2008**, for the purpose of electing the following officials for the City:

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

**Location**

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

**Time**

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

**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.

### **Election Officers**

The following-named persons are appointed officers for the election:

Presiding Judge: Magdalena Rodriguez  
Alternate Presiding Judge: Joyce Baker

The presiding judge shall have the authority to appoint no more than twelve (12) clerks in the holding of such election, but in no event shall the Presiding Judge appoint less than two (2) clerks.

### **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 are 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.

### **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 9, 2008** and continuing through **5 p.m.** on **March 10, 2008**. A declaration of write-in candidacy must be filed not later than 5:00 P.M. on **March 17, 2008**, the 5th day after an application for a place on the ballot is required to be filed that is on Saturday, March 15, 2008; therefore, the date is moved to Monday, March 17, 2008.

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

### **Ballot Positions**

On March 12, 2008 at 4:00 p.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 proceeding the scheduled time of the drawing.

### **Joint Election**

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

### **Early Voting**

Wharton County Elections Administrator Judy Owens is appointed early voting clerk and is authorized to appoint by written order one or more temporary 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 28, 2008** and continuing through **May 6, 2008** as required by state law, with the exception of **Monday, May 5, 2008** and **Tuesday, May 6, 2008** which shall be from **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, Texas 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 10, 2008 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 10, 2008 General Election shall be paid \$8.50 per hour.

The Election Clerk(s) for the May 10, 2008 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 11<sup>th</sup> day after the Election Day." The period for official canvass shall be from May 13 - 21, 2008. 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 **28th** day of **January, 2008**.

**ATTEST:**

**CITY OF WHARTON, TEXAS**

\_\_\_\_\_  
**Lisa Stavena**  
City Secretary

**By:** \_\_\_\_\_  
**Bryce D. Kocian**  
Mayor

**APPROVED AS:**

\_\_\_\_\_  
**Paul Webb**  
City Attorney

Councilmember David Samuelson seconded the motion. All voted in favor.

B. **Resolution:** A resolution of the Wharton City Council approving a Joint Election Agreement with the Wharton County Elections Administrator between Wharton County and the City of Wharton and authorizing the Mayor of the City of Wharton to execute the agreement.

City Manager Andres Garza, Jr. presented a draft copy of the resolution approving a Joint Election Agreement and Election Service Contract with Wharton County for the May 10, 2008 election. City Secretary Lisa Stavena stated that the estimated cost for Wharton County Elections Administrator to conduct the City of Wharton election would be \$3,287.66; however, the cost would vary depending on the other entities decision to have a joint election. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve Resolution No. 2008-07, which read as follows:

**CITY OF WHARTON**  
**RESOLUTION NO. 2008-07**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A JOINT ELECTION AGREEMENT WITH WHARTON COUNTY FOR THE CITY ELECTION;**

**AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID AGREEMENTS.**

**WHEREAS,** The Wharton City Council wishes to approve the joint agreement with Wharton County for the City election; and

**WHEREAS,** The City of Wharton and Wharton County wishes to be bound by the conditions of the agreement.

**WHEREAS,** The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents related to said agreements.

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

**Section I.** That the Wharton City Council hereby approves an agreement between the City of Wharton and Wharton County for the City election.

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

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

**Passed, Approved, and Adopted** this the 28<sup>th</sup> day of January 2008.

**CITY OF WHARTON**

**By:** \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**LISA STAVENA**

City Secretary

Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider a resolution of the Wharton City Council of the City of Wharton, Texas, establishing guidelines and criteria for granting tax abatement in a reinvestment zone created in the City of Wharton, Texas. City Manager Andres Garza, Jr. stated that the tax abatement policy must be adopted every two (2) years in accordance with State law. He stated that the current tax abatement policy expired on December 10, 2007; therefore, a new policy must be approved in order for the City to grant abatements. He said that the City Council Finance Committee had met January 7, 2008, January 17, 2008 and January 28, 2008 to review proposed amendments to the Tax Abatement Policy for the City of Wharton. He

then presented a recommendation from the Finance Committee and a copy of the proposed tax abatement policy amendments. Finance Director Joyce Vasut presented the recommended changes from the City Council Finance Committee. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve Resolution No. 2008-08, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2008 - 08**

**A RESOLUTION OF THE WHARTON CITY COUNCIL OF THE CITY OF WHARTON, TEXAS, ESTABLISHING GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT IN A REINVESTMENT ZONE CREATED IN THE CITY OF WHARTON, TEXAS.**

**WHEREAS,** Texas law requires an eligible taxing jurisdiction to establish Guidelines and Criteria as to eligibility for tax abatement agreements; and

**WHEREAS,** heretofore previously, the City Council of the City of Wharton did provide certain rules, regulations, and procedures for tax abatement within the City of Wharton; and

**WHEREAS,** such adopted guidelines and criteria for granting tax abatement must be re-adopted or adopted, if modified, every two years in order for the City of Wharton to be able to grant tax abatements; and

**WHEREAS,** over two years have transpired since the adoption or re-adoption of such guidelines and criteria; and

**WHEREAS,** the City Council of the City of Wharton now finds and determines that it is in the best interest of the economic development of the City of Wharton that certain tax abatement guidelines and criteria now be adopted.

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

Section I: The Guidelines and Criteria for Granting Tax Abatements as herein contained and titled on Attachment "A" hereby adopted.

Section II: The effective date of these Guidelines and Criteria for Granting Tax Abatements shall be January 28, 2008.

Section III: This resolution shall become effective immediately upon its passage.

**Passed, Approved and Adopted this 28<sup>th</sup> day of January 2008.**

**CITY OF WHARTON, TEXAS**

