

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
FEBRUARY 9, 2009**

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

Councilmembers present were: Mayor David W. Samuelson, Councilmembers V. L. Wiley, Jr., Lewis Fortenberry, Jr., Ken Freese, 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, Ron Sanders with Chamber of Commerce and Agriculture, Carlos Cotton with Jones & Carter, Louis Edwards, I.O. Coleman, Jr., Ellis Hurd, Ethel Hurd, Ernest Armstrong, Sr., Greg Baines, Chari Jackson, Mary Nell Wiley, Rein G. Moses, Argerine Gillis, Eddie L. Brinkley, Sr., Clifford Jackson, Rudolph Henry, Shelby Shavers, and Bertha Edwards.

The third item on the agenda was Public Comments. Mr. I. O. Coleman, Jr. addressed the City Council and stated that he was opposed to closing Spanish Camp Road and requested the City Staff to work with the Rail Road Company. No action was taken.

The fourth item on the agenda was to review and consider Wharton Moment. Councilmember Ken Freese publicly commended the Wharton High School Senior Class of 2009 for the successful Senior Serve fundraiser raising fund for Project Graduation. He publicly commended the students, parents and the citizens in the community for making the fundraiser a success. No action was taken.

The fifth item on the agenda was a proclamation proclaiming February 2009 as Black History Month. Mayor David W. Samuelson presented the proclamation, which read as follows:

WHEREAS, February has been designated as Black History Month, and will be observed in our community with a series of special presentations and exhibits; and,

WHEREAS, this observance affords the special opportunity to become more knowledgeable about the black heritage, and to honor the many black leaders who have contributed to the progress of our nation; and,

WHEREAS, such knowledge can strengthen the insight of all our citizens regarding the issues of human rights, the great strides that have been made in the crusade to eliminate the barriers of equality for minority groups, and the continuing struggle against racial discrimination and poverty; and,

WHEREAS, Special Recognition should be extended to Ms. Chelbi Shavers, Ms. Chari Jackson and Mr. Tracy McClatchy for their contributions and service to the Wharton Community and for their dedication and efforts to promote Black History Month.

NOW, THEREFORE, I, David W. Samuelson, by the authority vested in me as Mayor of the City of Wharton, Texas, do hereby proclaim February 2009 as Black History Month and urge all residents to join together in making this a period of rededication to the principles of justice and equality for all people.

IN WITNESS THEREOF, I have set my hand and caused the seal of the City of Wharton to be affixed this 9th day of February, in the year of our Lord two thousand nine A.D.
Ms. Chari Jackson performed the "Battle Hymn of the Republic." No action was taken.

The sixth item on the agenda was a proclamation proclaiming February 22 – 28, 2009 as Severe Weather Awareness Week. Mayor David W. Samuelson presented the proclamation, which read as follows:

Whereas, Severe Weather Awareness Week is February 22, 2009 through February 28, 2009; and

Whereas, Each year brings the potential for violent weather to Texas; and

Whereas, Large portions of our State, including the City of Wharton, can be devastated by flooding, tornadoes, hail, windstorms and other emergencies; and

Whereas, The Governor's Division of Emergency Management, the National Weather Service and the Federal Emergency Management Agency (FEMA) have joined together urging all citizens to prepare for severe weather events and to educate themselves on safety strategies; and

Whereas, Governor Rick Perry has declared the week of February 22, 2009 through February 28, 2009 as Severe Weather Awareness Week in Texas.

Now, Therefore, Be It Resolved, I, Bryce D. Kocian, Mayor of the City of Wharton urge everyone in our community to learn and to participate in severe weather preparedness activities available through the City of Wharton, Texas.

Therefore, In Official Recognition, I, the undersigned do hereby proclaim **February 22, 2009 through February 28, 2009 as Severe Weather Awareness Week in the City of Wharton, Texas.**

IN WITNESS THEREOF, I have set my hand and caused the seal of the City of Wharton to be affixed this 9th day of February, in the year of our Lord two thousand nine A.D.
No action was taken.

The seventh item on the agenda was to review and consider the reading of the minutes from the regular meetings held January 12, 2009 and January 26, 2009 and the special meeting held January 20, 2009. After some discussion, Councilmember Don Mueller made a motion to approve the Wharton City Council minutes of the regular meeting held January 12, 2009 and January 26, 2009 and the special meeting held January 20, 2009 as presented. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider the request by Stephen and Vicki Schneider for City Council consideration to abandon City of Wharton right-of-way located to the west side of Lot 43, Lake Nett Subdivision. Mayor David W. Samuelson stated that the item would be deferred until a later date. No action was taken.

The ninth item on the agenda was to review and consider the Kansas City Southern Railroad Company:

A. Proposal submitted by Kansas City Southern for the Spanish Camp Road.

City Manager Andres Garza, Jr. stated that during the January 26, 2009 Public Works Committee Meeting, the Committee met with Mr. Allen Pepper of KCS and discussed the proposed closure of Spanish Camp Road. He then presented a copy of the email dated February 2, 2009 from Mr. Pepper to Mayor David Samuelson providing a revised letter regarding the terms KCS was willing to provide the City of Wharton if the City would consider closing Spanish Camp Road. He said that the City Council Public Works Committee met February 6, 2009 and voted to recommend that the City Council consider rejecting the proposal and not close Spanish Camp and to continue negotiations with the railroad company. He stated that the City Staff would also be requesting stop signs to be installed until the installation of lights and gates. Mayor David W. Samuelson stated that the stop signs would only be temporary. He stated that yield signs would be installed on FM 102. Councilmember Don Mueller stated that the train would only travel 30 mph while on the bridge and would remain at that speed until off the bridge. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to accept the recommendation by the City Council Public Works Committee of rejecting the proposal and not close Spanish Camp Road and to continue negotiations with the railroad company. Councilmember Don Mueller seconded the motion. All voted in favor.

B. **Resolution:** A resolution of the Wharton City Council approving the Kansas City Southern Crossing Project, Work Authorization Contracts for Milam Street and Spanish Camp Road and authorizing the Mayor of the City of Wharton to execute the agreements.

City Manager Andres Garza, Jr. presented a copy of the Kansas City Southern (KCS) Crossing Project – Work Authorization Agreements for Milam Street and Spanish Camp Road. He said that with the approval of the contracts, KCS would be authorized to conduct the railroad work across the two streets. He also said that the City Staff would be meeting with KCS and Wilson & Company, the company that would conduct the crossing work on February 5, 2009 to discuss the construction process. He stated that he forwarded copies of the contracts to City Attorney Paul Webb for his review. He said that the City Council Public Works Committee met February 6, 2009 and voted to recommend the City Council consider approving the agreements and to request that KCS construct the crossings utilizing Texas Department of Transportation specifications. He stated that there would be flaggers during the construction phase and the closures would be temporary; however, Milam Street and Spanish Camp Road would be not closed at the same time since the traffic would be re-routed. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve Resolution No. 2009-10, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2009 - 10**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE KANSAS CITY SOUTHERN CROSSING PROJECT, WORK AUTHORIZATION CONTRACTS FOR MILAM STREET AND SPANISH CAMP ROAD AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENTS.

WHEREAS, the Kansas City Southern Railroad Company is extending its line from Rosenberg, Texas, to Victoria, Texas; and

WHEREAS, the proposed railroad will cross Milam Street and Spanish Camp Road in the City of Wharton, Texas; and

WHEREAS, Work Authorization Contracts for the Crossing Project is required for Kansas City Southern to conduct the necessary railroad improvements at the afore-mentioned crossings; and

WHEREAS, the City of Wharton and Kansas City Southern Railroad Company wishes to be bound by the conditions 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. That the Wharton City Council hereby approves the following Crossing Project, Work Authorization Agreements:

1. Rosenberg Sub, DOT#743361G, Railroad Mile Post 917.80
Spanish Camp, Wharton County, City of Wharton
2. Rosenberg Sub, DOT#743363V, Railroad Mile Post 918.00
Milam Street, Wharton County, City of Wharton

Section II. That the City of Wharton and Kansas City Southern Railroad Company are hereby bound by the conditions set forth in the agreement.

Section III. That the Mayor of the City of Wharton is hereby authorized to execute the agreement.

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

Passed, Approved, and Adopted this 9th of February 2009.

CITY OF WHARTON, TEXAS

By: _____

DAVID W. SAMUELSON

Mayor

ATTEST:

LISA OLMEDA

City Secretary

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

C. Joining Wharton County in the formation of a coalition regarding Kansas City Southern railroad improvements.

City Manager Andres Garza, Jr. presented a copy of the letter dated January 29, 2009 from Mr. Mickey Reynolds, Halff & Associates, regarding the formation of a coalition regarding Kansas City Southern railroad improvements. He said that a meeting was held with Wharton County Officials regarding the proposed coalition. He said that there would be costs involved with the coalition; however, the amount per entity would depend on the number of participants. He said that Wharton County Judge John W. Murrile requested the City of Wharton to consider joining the coalition. He stated that the coalition would consist of Wharton and Jackson counties. He stated that the coalition would develop a plan and the cost would be approximately \$25,000, which would be \$5,000 to \$6,000 per joining entity. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve joining Wharton County in the formation of a coalition regarding Kansas City Southern railroad improvements. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider a resolution of the Wharton City Council approving the inclusion of Wharton Industrial District No. 1 in the proposed Emergency Services District No. 3. City Manager Andres Garza, Jr. stated that in accordance with the Local Government Code, Section §775.014, Item's (e) and (f), if a municipality's governing body consents to the inclusion of territory within its limits or extraterritorial jurisdiction, or in an industrial district, it may be included in the district in the same manner as other territory was

included under this chapter. He said also a governing body's consent to include territory in the district and to initiate proceedings to create a district as prescribed under the chapter expired six months after the date on which the consent was given. He said that the City Council would need to consider a resolution approving the inclusion of the Wharton Industrial District No. 1 in boundaries of the proposed Emergency Services District No. 3. He then presented a draft copy of the resolution. City Attorney Paul Webb stated that the petition was presented to Wharton County Judge Murrile. After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2009-11, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2009-11**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE INCLUSION OF WHARTON INDUSTRIAL DISTRICT NO. 1 IN THE PROPOSED EMERGENCY SERVICES DISTRICT NO. 3.

WHEREAS, during the January 20, 2009 Wharton City Council meeting, the City Council approved Resolution No. 2009-06 that approved the City of Wharton to petition the Wharton County Commissioner's Court to call an election for the creation of the proposed Emergency Services District No. 3; and

WHEREAS, the Local Government Code, Section §775.014, allows for a municipality's governing body to consent to the inclusion of an industrial district designated under Local Government Code, Section §42.044, that is located within the City limits or extraterritorial jurisdiction; and

WHEREAS, the Wharton City Council wishes to include the Wharton Industrial District No. 1 in the boundaries of the proposed Emergency Services District No. 3.

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

Section I. The Wharton City Council hereby approves the inclusion, in accordance with Local Government Code, Section §775.014, the Wharton Industrial District No. 1 in the proposed boundaries of the proposed Emergency Services District No. 3.

Section II. This resolution shall take effect immediately from and after its passage by the City Council of the City of Wharton, Texas.

PRESENTED, PASSED AND APPROVED by the City Council of the City of Wharton, Texas, this the 9th day of February 2009.

CITY OF WHARTON

David W. Samuelson, Mayor

ATTEST:

Lisa Olmeda, City Secretary

APPROVED AS TO FORM:

Paul Webb, City Attorney

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

The eleventh item on the agenda was to review and consider the request by Councilmember Domingo Montalvo, Jr. for the City Council to discuss the City of Wharton Animal Control efforts. City Manager Andres Garza, Jr. presented a copy of the letter dated February 4, 2009 from Councilmember Domingo Montalvo, Jr. requesting the City Council hold a discussion regarding the City of Wharton Animal Control efforts. Councilmember Domingo Montalvo, Jr. stated that he had been experiencing animal control problems with cats in his neighborhood and it seemed to be a problem throughout the City. He stated that the animals were diseased and was causing a public health issue. He requested that Animal Control Department purchase additional traps in order to correct this matter. Police Chief Tim Guin stated that the City currently had ten traps. He also stated that February was National Spay and Neuter Month. City Manager Andres Garza, Jr. stated that there could be a public campaign to educate the public regarding the animal issues. After some discussion, no action was taken.

The twelfth item on the agenda was to review and consider the Wharton City Council Boards, Commissions, and Committees:

A. Resignation of Mr. Donald Allen from the Mayor's Committee on People with Disabilities. City Manager Andres Garza, Jr. presented a copy of the letter dated January 20, 2009 from Mr. Donald Allen providing his formal resignation from the Mayor's Committee on People with Disabilities. He said that City Council acceptance of his resignation was required. Mayor David W. Samuelson publicly thanked Donald Allen for the contributions he put forth in serving on the committee. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve the resignation of Mr. Donald Allen from the Mayor's Committee on People with Disabilities. Councilmember Don Mueller seconded the motion. All voted in favor.

B. Appointments to the following:

1. Beautification Commission – two vacancies
2. Holiday Light Decorating Chairperson – one vacancy
3. Mayor's Committee on People with Disabilities – one vacancy
4. Youth Advisory Commission – Adult Advisor – one vacancy

Mr. Garza stated that there were vacancies on the Boards, Committees and Commissions. He said that recommendations could be made to fill the positions. After some discussion, no action was taken.

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

A. Wharton Regional Airport Board Meeting held February 3, 2009.

B. City Council Public Works Committee meeting held February 6, 2008.

City Manager Andres Garza, Jr. presented the reports to the City Council. No action was taken.

City of Wharton
Regular City Council Meeting
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The fourteenth item on the agenda was adjournment. After some discussion, Councilmember Don Mueller made a motion to adjourn. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The meeting adjourned at 7:57 p.m.

CITY OF WHARTON, TEXAS

By: _____
DAVID W. SAMUELSON
Mayor

ATTEST:

LISA OLMEDA
City Secretary