

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
FEBRUARY 22, 2010**

Mayor David W. Samuelson declared a Regular Meeting duly open for the transaction of business at 7:03 P.M. Mayor David W. Samuelson led the opening devotion and then led the pledge of allegiance.

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

Councilmember absent was: Councilmember Terry David Lynch.

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, Building Official Ronnie Bollom, Police Chief Tim Guin, Emergency Management Coordinator Jim Cooper, and City Attorney Paul Webb.

Visitors present were: Barry Halvorson with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, and Carlos Cotton with Jones & Carter.

The second item on the agenda was Roll Call and Excused Absences. Councilmember V. L. Wiley, Jr. made a motion to excuse the absence of Councilmember Terry David Lynch from the regular City Council meeting held February 22, 2010. Councilmember Lewis Fortenberry, Jr. 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. No comments were given. No action was taken.

The fifth item discussed on the agenda was a proclamation proclaiming the week of February 21 – 27, 2010 as Severe Weather Awareness Week. Mayor David W. Samuelson presented a copy of a proclamation proclaiming the week of February 21 – 27, 2010 as Severe Weather Awareness Week. No action was taken.

The sixth item discussed on the agenda was to review and consider the City of Wharton Financial Report for the month of January 2010. Finance Director Joyce Vasut presented the financial report for the month of January 2010, which was at 33% or four month into the fiscal year. Mrs.

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Vasut stated that the total ad valorem taxes collected were \$815,816 and the sales tax for the month of December 2009 was \$178,544 with \$119,029 to the City and \$59,515 to WEDC. She further stated the TexPool balance for January was \$49,139.30 with an average monthly yield of 0.1630%. The Prosperity Bank balance for January 2010 was \$2,522,481.83 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 Bank \$1,500,000, six months at .50% interest, and \$250,000, one year at 1.25% interest. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the City of Wharton Financial Report for the month of January 2010. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The seventh item discussed on the agenda was to review and consider the request by Mr. Darren Helms, Contractor, on behalf of Wayne L. and Sally Mathis, for City Council approval of the following:

A. Request by Wayne L. and Sally Mathis, Property Owners, for an Over 50% Variance to construct a 4' x 24' handicap ramp ten (10) feet from the front property line.

City Manager Andres Garza, Jr. presented a copy of the letter dated February 17, 2010 from Mr. Darren Helms, Contractor, on behalf of Wayne L. and Sally Mathis, for City Council approval of the variance request submitted by Mr. and Mrs. Mathis and to waive the fees associated with the variance and the construction permit needed for the handicap ramp. He said that the request was submitted to the Code Enforcement Department and the Planning Department on February 17, 2010, which he reviewed and instructed the Building Official Ronnie Bollom to allow the ramp to be constructed due to the medical need involved and the time constraints expressed in their letter. Assistant to City Manager Jackie Jansky stated that the ramp would extend 8' feet from the top step of the front porch and then turn 90 degrees toward the driveway for 24'. She said that the ramp would be 10' from the property line. She stated that the City Staff was requesting ratification of the construction of the handicap ramp. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Wayne L. and Sally Mathis, Property Owners, for an Over 50% Variance to construct a 4' x 24' handicap ramp ten (10) feet from the front property line. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

B. Waiver of application and permit fees.

Mrs. Jansky stated that volunteers constructed the handicap ramp and the materials were donated. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve the request by Wayne L. and Sally Mathis, Property Owners, for waiver of application and permit fees for the construction of a 4' x 24' handicap ramp ten (10) feet from the front property line. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The eighth item discussed on the agenda was to review and consider the Wharton Police Department 2009 Annual Contact Report. City Manager Andres Garza, Jr. presented a copy of the Wharton Police Department Annual Contact Report for 2009 submitted by Police Chief Tim Guin in accordance with the City of Wharton Resolution No. 2001-67, Racial Profiling Policy. Chief Guin stated that no complaints were received regarding racial profiling. He stated that the citations by race or ethnicity were:

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Caucasian/White	1152	49.1%
Hispanic	437	18.7%
Black	732	31.2%
Asian/Pacific Islander	8	0.3%
Unknown	13	0.6%
Hispanic-Negro/Black	1	0.0%
American Indian/Alaskan	1	0.0%

He said that the number of citation that resulted in a search was 106 out of 2344, the number of searches that were consensual was 38, and the number of citations that resulted in custodial arrest was 112 out of 812. After some discussion, no action was taken.

The ninth item discussed on the agenda was to review and consider a resolution of the Wharton City Council approving an amendment to the City of Wharton Solid Waste Collection and Disposal Services Franchise Agreement with Waste Corporation of America and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. stated that during the February 8, 2010 City Council Finance Committee meeting, the Finance Committee voted to recommend the City Council consider approving the Amendment No. 3 to the City of Wharton franchise agreement for the Solid Waste Collection and Disposal Services with Waste Corporation of America. He said that he submitted the proposed amendment to Mr. Jim Larson, of Waste Corporation of America (WCA), who approved the proposed changes. He said that the contract amendments would allow for the deletion of the requirements in the franchise agreement for the operation of the transfer station and to add that WCA would provide 20 – 40 cubic yard roll off containers for use by the City of Wharton at no cost. He then presented a copy of the proposed amendment and a resolution approving the contract. He stated that the contract period was October 1st through September 30th. He stated that no carry over would be allowed. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve Resolution No. 2010-07, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2010-07**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE AMENDMENT NO. 3 TO THE FRANCHISE AGREEMENT FOR SOLID WASTE COLLECTION SERVICES WITH WASTE CORPORATION OF AMERICA AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, On August 7, 2008, the Wharton City Council approved Resolution No. 2008-50 approving the franchise agreement between the City of Wharton and Waste Corporation of America to be effective October 1, 2008; and

WHEREAS, The Wharton City Council wishes to amend Exhibit “A” and Exhibit “B” of the franchise agreement as per the attached Exhibits; and

WHEREAS, WCA and the City of Wharton wishes to be bound by the conditions outlined the agreement; and

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WHEREAS, the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents related to the agreement; and

WHEREAS, this resolution is passed in accordance with said contract.

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 to amend Exhibit “A” and Exhibit “B” of the franchise contract as per the attached Exhibits and between the City of Wharton and Waste Corporation of America.

Section II. That the Mayor of the City of Wharton is hereby authorized to execute the contract amendment.

Passed, Approved, and Adopted this 22nd day of February 2010.

CITY OF WHARTON, TEXAS

By: _____
DAVID W. SAMUELSON
Mayor

ATTEST:

LISA OLMEDA

City Secretary

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

The tenth item discussed on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 34, Health and Sanitation; Article II Cleanliness and Sanitation of Premises; Littering; Section 34-51 Accumulation or growth of weeds or brush; Item (b) Duty to Cut Growth; Item (2); 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; providing for severability and setting and effective date. City Manager Andres Garza, Jr. stated that during the November 20, 2009 City Council Public Health Committee meeting, the Committee was presented a draft copy of a proposed amendment to the City of Wharton Code of Ordinances, Chapter 34, Health and Sanitation; Article II Cleanliness and Sanitation of Premises; Littering; Section 34-51 Accumulation of growth of weeds or brush. Building Official Ronnie Bollom said that issues had arisen regarding the duty to cut growth as outlined in the City’s Code. He said that a citizen was cutting their grass at ten (10) inches on a lot that was not a five (5) acre lot and was baling the grass without a valid permit. He said that the lot was not considered to be a hay lot by definition; however, the property owner was baling the grass as hay. Mr. Garza said that City Attorney Paul Webb has spoken with Mr. Scott Houston of the Texas Municipal League and has revised the proposed ordinance amendment. He then presented a draft ordinance that was considered by the City Council Public Health Committee on Monday, February 22, 2010, recommended the City Council consider approving the proposed amendment. After some

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discussion, Councilmember Jeff Gubbels made a motion to approve Ordinance No. 2010-02, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2010 - 02**

AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 34 HEALTH AND SANITATION; ARTICLE II. CLEANLINESS AND SANITATION OF PREMISES; LITTERING; SECTION 34-51 ACCUMULATION OR GROWTH OF WEEDS OR BRUSH; ITEM (b) DUTY TO CUT GROWTH; ITEM (2); PROVIDING THAT A VIOLATION FO THE ORDINANCE OR ANY PART OF THE CODE AS ADOPTED HEREBY SHALL CONSTITUTE A PENALTY UPON CONVICTION OF A FINE; PROVIDING FOR SEPARABILITY AND SETTING AN EFFECTIVE DATE.

BE IT ORDAINED by the City Council of the City of Wharton, Texas, that the City of Wharton Code of Ordinances, Chapter 34 Health and Sanitation; Article II. Cleanliness and Sanitation of Premises; Littering; Section 34-51 Accumulation or growth of weeds or brush through Section 34-55. Same—Performance by City shall read as follows:

Sec. 34-51. Accumulation or growth of weeds or brush.

- (a) Nuisance declared. It shall be unlawful for any owner(s) of any premises within the city to allow weeds, grass or uncultivated plants to grow upon such premises or to allow trash or rubbish to accumulate upon such premises to such an extent as is reasonably calculated to create a fire hazard or to become injurious to the health of the citizens. Any such act is declared to constitute a public nuisance.

- (b) Duty to cut growth.
 - (1) It shall be unlawful for any owner(s) of any premises to permit weeds, grass or uncultivated plants to grow upon such premises to a height greater than ten (10) inches on an average or to grow in rank profusion thereon. Any premises upon which any weeds, grass or uncultivated plants grow above such height or in rank profusion shall be deemed a public nuisance. Provided, however, the provisions of this subsection shall not apply to any owner(s) of any premises who has received and maintains a valid permit to grow and harvest hay within the city limits.

 - (2) It shall be the duty of the owner(s) of any premises to remove or cause to be cut all weeds, grass or uncultivated plants as often as may be necessary to comply with subsection (a) of this section, said removal shall not be accomplished by bailing of the weeds, grass or uncultivated plants unless the property owner has obtained a hay harvesting permit.

 - (3) The requirements for receiving and maintaining a valid permit to grow and harvest hay within the city limits are:

- a. Applications for permits shall be obtained by the owner(s) of the property upon forms provided by the Code Enforcement Department and shall contain or have attached thereto information including, but not necessarily limited to, the following:
 1. Name, address and telephone number of the owner(s) and/or entity holding any lien against the premises.
 2. The legal property description (lot and block number) of the premises and the amount of acreage per contiguous lot.
 - b. Permits shall be issued upon the payment of a fee of \$20.00 per contiguous five (5) acre or greater meadow and each permit shall be valid for one calendar year, expiring on December 31st. Permits shall be renewed annually upon the payment of an annual fee of \$20.00 per approved meadow and before December 31st of the next calendar year. If a permit is not obtained prior to the deadline date, the property shall no longer be considered as a hay meadow and shall be subjected to the requirements of this section in its entirety until a hay permit is issued for the following year.
 - c. Hay cannot be stored on a meadow within the city limits if the permitted parcel is adjacent to a developed property, residential or commercial, and must be removed within seven (7) days after the hay is harvested.
 - d. All hay meadows must be cut and harvested a minimum of two (2) times during the calendar year. Additionally, the meadow shall be mowed within ten days after the first frost and shall be maintained at a height not to exceed ten (10) inches, and in accordance with Sec. 34-51, Item (b) (1), set forth above until the next harvesting season begins.
 - e. Notwithstanding any provision contained herein to the contrary, the use of meadows for harvesting hay shall not excuse the requirement that a width of at least ten (10) feet between property lines shall be kept mowed below the required ten (10) inch height at all times if the permitted parcel is adjacent to a developed property, residential or commercial.
 - f. Any violation of any applicable section of this article shall result in the revocation of the permit for the remainder of the permitted year and consideration of any violations may reflect the issuance of permit in the future.
- (c) *Partial exception.* With respect to lots or parcels of land of contiguous five (5) acres or more under single ownership, the provision of this section shall not be applicable to the area in excess of ten (10) feet from any open public street or alley or to the area in excess of ten (10) feet from any adjacent property under different ownership on which habitable structures are located. Lot and parcels of the land less than five (5) acres must be maintained in accordance with this Sec. 34-51, Item (b) (1), set for above.

Sec. 34-52. Stagnant water.

It shall be unlawful for any person to permit or allow the accumulation of stagnant water on any lot owned or occupied by him within the city or to permit stagnant water to remain thereon. It shall likewise be unlawful for any person to permit or allow holes on such lot where water may accumulate and become stagnant.

Sec. 34-53. Fire code violations.

It shall be unlawful for any person to permit or allow any conditions to exist that violate any provisions of Chapter 30, relating to fire prevention and protection, of this Code or the fire prevention code adopted in Section 18-66.

Sec. 34-54. Abatement--Notice to remedy.

- (a) Whenever any condition described in this article is found to exist upon any premises in the city, any officer or authorized employee of the city shall notify the owner of such premises or the owner's authorized agent or representative, if known, and any person holding a recorded lien on the property to remove or remedy the condition within ten (10) days after the date of such notice.
- (b) Such notice shall be in writing and shall be served on the owner, the owner's authorized agent or representative, if known, and any person holding a recorded lien on the property, at the last known address of any such person.
- (c) If the address of any lien holder is unknown, the city may give notice to the lien holder by sending written notice in care of the owner or the owner's authorized agent or representative.

Sec. 34-55. Same--Performance by city.

- (a) If the owner of any lot or premises fails to remove or remedy any condition described in this division within the required period after notice has been given as provided in Section 34-54, the city may do whatever is necessary to remove or remedy the condition or cause the same to be done and charge the expenses incurred thereby to the owner of such lot or premises, and such expenses shall be assessed against the real estate upon which the work was done. The doing of such work and the charging and assessing of the expenses thereof against the owner shall not relieve the owner or occupant of any such prosecution for such violation.
- (b) One (1) notice, sent by certified mail, shall be given prior to removal of weeds during the current calendar year. Once the city has given notice to remove or remedy any condition and the owner or the owner's authorized agent or representative has failed to remove or remedy the condition within the required time period, the city shall have the right to continue to do such work as is necessary to keep any such weeds, grass or uncultivated plants at or below the required height and to continue charging and assessing the expenses thereof against the owner without the necessity of giving further notices until and unless the owner or the owner's authorized agent or representative removes or remedies the condition.

(c) In the event an owner(s) of any hay meadow or premises is in violation more than one (1) time per the current calendar year the owner(s) is subject to penalties as set forth in the Section 1 – 5 of the Code of Ordinances of the City of Wharton, Texas, which may result with a complaint filed in municipal court.

Penalty Clause

Except as otherwise provided in this chapter, any person found guilty of intentionally, knowingly or recklessly violating any provision of this article and upon conviction thereof in the municipal court shall be fined in accordance with the terms of Section 1-5 of the Code of Ordinances of the City of Wharton, Texas.

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.

Effective Date

This Ordinance shall become effective on the 5th day of March 2010 at 12:01 a.m.

Passage and Approval

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on the 22nd day of February 2010.

CITY OF WHARTON, TEXAS

By: _____

DAVID W. SAMUELSON

Mayor

ATTEST:

LISA OLMEDA
City Secretary

APPROVED AS TO FORM:

PAUL WEBB
City Attorney

Published in the Wharton Journal Spectator on Wednesday, February 24, 2010 and Wednesday, March 3, 2010.

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

The eleventh item discussed on the agenda was to review and consider an ordinance providing for the regulation of smoking in public places in the City of Wharton, Texas, by amending the City of

