

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
MARCH 23, 2009**

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

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

Councilmember absent was: 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, EMS Director John Kowalik, Public Works Director Carter Miska, Community Services Director Jo Knezek, and City Attorney Paul Webb.

Visitors present were: Barry Halvorson with Wharton Journal Spectator, Dan Mathews with KIOX, Carlos Cotton with Jones & Carter, Ron Sanders with Wharton Chamber of Commerce & Agriculture, Steve Van Manen of Harrison, Waldrop & Uherek, L.L.P., Henry Baade, and Landon Sneed.

The second item on the agenda was Roll Call and Excuses Absences. Councilmember Lewis Fortenberry, Jr. made a motion to excuse the absence of Councilmember Domingo Montalvo, Jr. from the Regular City Council meeting held March 23, 2009. Councilmember V. L. Wiley, 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. City Manager Andres Garza, Jr. stated that the Wharton Tennis Team ranked 7th in State out of 16 teams. He stated one of the players was in attendance, Landon Sneed. He also stated that the Wharton Baseball team defeated El Campo. No action was taken.

The fifth item on the agenda was a proclamation proclaiming April 2009 as Fair Housing Month. Mayor David W. Samuelson read the following proclamation:

WHEREAS, Title VII of the Civil Rights Act of 1968, as amended, prohibits discrimination in housing and declares it is a national policy to provide, within constitutional limits, for fair housing in the United States; and,

WHEREAS, The principal of Fair Housing is not only national law and national policy, but a fundamental human concept and entitlement for all Americans; and,

WHEREAS, The thirty-ninth anniversary of this National Fair Housing Law, during the month of April, provides an opportunity for all Americans to recognize that complete success in the goal of equal housing opportunity can only be accomplished with the help and cooperation of all Americans.

NOW, THEREFORE, I, David W. Samuelson, by the authority vested in me as Mayor of the City of Wharton, Texas, do hereby proclaim April as Fair Housing Month in the City of Wharton and do hereby urge all the citizens of this locality to become aware of and support the Fair Housing Law.

IN WITNESS THEREOF, I have set my hand and caused the seal of the City of Wharton to be affixed this 23rd day of March in the year of our Lord two thousand nine A.D.

No action was taken.

The sixth item on the agenda was to review and consider the request by Ms. Hanna Montgomery to address the City Council regarding cell phone usage. Ms. Hanna Montgomery was not in attendance; therefore, no action was taken.

The seventh item on the agenda was to review and consider the City of Wharton Financial Report for the month of February 2009. Finance Director Joyce Vasut presented the financial report for the month of February 2009, which was at 42% or five months into the fiscal year. Mrs. Vasut stated that the general fund revenues were at 55.77% and the expenditures were at 41.93%. The total ad valorem taxes collected were \$1,804,836. She said the sales tax for the month of January was \$175,788 with \$117,192 to the City and \$58,596 to WEDC. The bank balance for February was \$2,048,746.89 with an average monthly yield of 0.25%. She said that TexPool balance for December was \$48,713.43 with an average monthly yield of 0.6690%. After some discussion, Councilmember Ken Freese made a motion to approve the City of Wharton Financial Report for the month of February 2009. Councilmember Don Mueller seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider the request by Rev. Polly D. Standing, Pastor of First United Methodist Church, on behalf of Mr. Landon Sneed of Boy Scout Troop 499, for the following:

A. An over 50% variance to place a free standing sign between the two entrance driveways off of Pioneer Avenue.

B. Waiver of the fees.

Assistant to City Manager Jackie Jansky presented a copy of the Application for an Over 50% Variance submitted by Rev. Polly D. Standing, Pastor of the First United Methodist Church requesting a 0' setback for the installation of a free standing sign between the parking lot entrances located off of Pioneer Avenue. She stated that Rev. Standing, was submitting the request on behalf of Mr. Landon Sneed of Boy Scout 499, who was proposing to construct the

sign to earn his Eagle Scout Badge. Mr. Sneed addressed the City Council and stated that the sign would be parallel to the road on 8' poles and being 1' to 2' off the ground. He stated that the sign would not obstruct the view of traffic from WCJC. Jackie Jansky stated that Building Inspector Ronnie Bollom did not have any issues with the placement of the sign. Councilmember Don Mueller requested the sign be constructed more than 1' to 2' off the ground. Mr. Sneed stated that with high winds, there could be a possibility of the sign being blown off the poles; whereas, having the sign lower to the ground would create a solid foundation. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve the request by Rev. Polly D. Standing, Pastor of First United Methodist Church, on behalf of Mr. Landon Sneed of Boy Scout Troop 499, for an over 50% variance to place a free standing sign between the two entrance driveways off of Pioneer Avenue, and waiver of the fees contingent upon approval by Building Inspector Ronnie Bollom. Councilmember Ken Freese seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider the request by East Wharton County Habitat for Humanity for the following:

- A. An over 50% variance to construct an ADA accessible ramp 2' 8" from the interior side property line located at 701 Jefferson Street, Wharton, Block 57, Lot 14.
- B. Waiver of the fees.

Mayor David W. Samuelson abstained from any discussion on this item and recused himself from the Mayor Chair. Mayor Pro-Tem then presided over the item. Assistant to City Manager Jackie Jansky presented a copy of the Application for an Over 50% Variance submitted by East Wharton County Habitat for Humanity requesting approval to construct an ADA Accessible ramp 2' 8" from the interior side property line located at 701 Jefferson Street, Wharton, Block 57, Lot 14. Mr. Henry Baade addressed the City Council and stated that there was a ten foot utility easement and there would be access to the rear of the property. After some discussion, Councilmember Ken Freese made a motion to approve the request by East Wharton County Habitat for Humanity for an over 50% variance to construct an ADA accessible ramp 2' 8" from the interior side property line located at 701 Jefferson Street, Wharton, Block 57, Lot 14, and waive the fees. Councilmember Jeff Gubbels seconded the motion. All voted in favor. Mayor David W. Samuelson abstained. The motion carried.

The tenth item on the agenda was to review and consider the City of Wharton Annual Financial Report for Fiscal Year October 1, 2007 to September 30, 2008 by Harrison, Waldrop & Uherek, L.L.P. Mr. Steve Van Manen presented a copy of the City of Wharton Annual Financial Report for fiscal year October 1, 2007 to September 30, 2008 prepared by Harrison, Waldrop & Uherek, L.L.P. He stated that the report was accurate and there was an unqualified opinion. He expressed thanks to the City Staff for their assistance with the audit process. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve the City of Wharton Annual Financial Report for Fiscal Year October 1, 2007 to September 30, 2008 by Harrison, Waldrop & Uherek, L.L.P. Councilmember Ken Freese seconded the motion. All voted in favor.

The eleventh item on the agenda was **Executive Session:** City Council may adjourn into an Executive Session in accordance with Section 551.074 of the Government Code, Revised Civil Statutes of Texas. Final action, decision or vote, if any with regard to any matter considered in Executive Session shall be made in Open Meeting:

A. **Discussion:** The evaluation of City Manager and Finance Director regarding the City's financial matters.

Mayor David W. Samuelson adjourned the City Council into Executive Session at 7:35 p.m.
Mayor David W. Samuelson returned the City Council to Open Session at 7:42 p.m.

The twelfth item on the agenda was to **Return to Open Session:** Action on items discussed in Executive Session:

A. **Review & Consider:** The evaluation of City Manager and Finance Director regarding the City's financial matters.

Mayor David W. Samuelson stated that no action would be taken.

The thirteenth item on the agenda was to review and consider the request by Mr. Greg Baines, Executive Director of Just Do It Now for City of Wharton assistance by waiving the water and sewer cost at the Dawson Community Resource Center, 1619 Martin Luther King. Councilmember Lewis Fortenberry, Jr. abstained from discussion. City Manager Andres Garza, Jr. presented a copy of the letter dated February 18, 2009 from Mr. Greg Baines, Executive Director of Just Do It Now, Inc. for City Council consideration to waive the water and sewer costs at the Dawson Community Resource Center, 1619 Martin Luther King. He stated that the Finance Committee met on March 10, 2009 and voted to recommend the City Council consider approving assistance be made available to Just Do It Now with utility (water and sewer) costs associated with the Dawson Community Resource Center with a maximum cap of \$3,600 per year. He stated that garbage service would not be included. He stated that the City of Wharton provides a cash contribution to the Boys & Girls Club. Councilmember Don Mueller asks if the City would provide such contributions for other organizations seeking assistance. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the request by Mr. Greg Baines, Executive Director of Just Do It Now for the City of Wharton to provide assistance in the amount equal to the water and sewer cost at the Dawson Community Resource Center, 1619 Martin Luther King with a maximum cap of \$3,600 per year and the amount would not include garbage service. Councilmember Ken Freese seconded the motion. Councilmembers V. L. Wiley, Jr. and Ken Freese voted for the motion. Councilmember Don Mueller voted against the motion. Councilmembers Lewis Fortenberry, Jr. and Jeff Gubbels abstained. The motion carried.

The fourteenth item on the agenda was to review and consider resolution of the Wharton City Council approving a Medical Services Director Contract and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. stated that the City of Wharton requested proposals for the City of Wharton Medical Director Services on Monday, March 16, 2009 at 10:00 a.m.; however, no proposals were received. He said that the Request for Proposals was extended an additional week to March 23, 2009. He then presented a copy of a draft agreement, a resolution for the services, and a copy of the proposal submitted by Dr. Francisco J. Ortiz, M.D, which was the only proposal submitted for the requested service to the City of Wharton. He said that Dr. Ortiz was currently the City's Medical Director. He said that in the current contract, the amount paid to Dr. Ortiz was \$1250 per month and Dr. Ortiz was requesting the amount be increased to \$1500 per month. He said that was the only change to the

contract. After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2009-22, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2009-22**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING
THE MAYOR OF THE CITY OF WHARTON TO EXECUTE A CONTRACT
FOR MEDICAL DIRECTOR SERVICES FOR THE EMERGENCY
MEDICAL SERVICE (EMS) DEPARTMENT.**

WHEREAS, the City of Wharton received requests for qualifications on March 23, 2009 for Medical Director Services for the Emergency Medical Service (EMS) Department; and

WHEREAS, the City of Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute on behalf of the City of Wharton an agreement Dr. Francisco Juan Ortiz, M.D. for medical director services for the City of Wharton Emergency Medical Services (EMS) program; and

WHEREAS, the City of Wharton and Dr. Francisco Juan Ortiz, M.D. wish to be bound by the conditions as set forth in 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 authorizes the Mayor of the City of Wharton to execute on behalf of the City of Wharton an agreement with Dr. Francisco Juan Ortiz, M.D. for medical director services for the City of Wharton Emergency Medical Services (EMS) program.

Section II. That the City of Wharton and Dr. Francisco Juan Ortiz, M.D. are hereby bound by the conditions as set forth in the agreement.

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

Passed, Approved, and Adopted this 23rd day of March 2009.

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 fifteenth item on the agenda was to review and consider the request by Mr. Ron Sanders, Executive Director of the Wharton Chamber of Commerce to submit the following Texas Department of Agriculture, GO Texan Grant Applications:

A. Resolution: A resolution of the City of Wharton, Texas, designating an Official(s) as being responsible for the applicant in dealing with the Texas Department of Transportation (“TDA”), for the purpose of Participating in TDA’S GO Texan Rural Community Bootstrap Bucks Program (the “Program”) and Certifying that the applicant is eligible to receive program Assistance for the City-Wide Garage Sale.

City Manager Andres Garza, Jr. stated that the City of Wharton was a certified member of the Texas Department of Agriculture GO Texan Program and the Chamber of Commerce was an Associate Member of the GO Texan Program and therefore the City could submit applications for funding under the program. He then presented an application and a draft resolution for funding for the proposed City-wide Garage Sale. He said that Executive Director Ron Sanders was seeking City Council authorization to submit the applications for funding. Mr. Sanders stated that it was not a matching grant and it would allow the Chamber of Commerce to advertise for the City-wide garage sale. After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2009-23, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2009-23**

A RESOLUTION OF THE CITY OF WHARTON, TEXAS (the “Applicant”), DESIGNATING THE WHARTON CHAMBER OF COMMERCE & AGRICULTURE EXECUTIVE DIRECTOR AS BEING RESPONSIBLE FOR THE APPLICANT IN DEALING WITH THE TEXAS DEPARTMENT OF AGRICULTURE (“TDA”), FOR THE PURPOSE OF PARTICIPATING IN TDA’S GO TEXAN RURAL COMMUNITY BOOTSTRAP BUCKS PROGRAM (the “Program”) AND CERTIFYING THAT THE APPLICANT IS ELIGIBLE TO RECEIVE PROGRAM ASSISTANCE FOR THE CITY WIDE GARAGE SALE.

WHEREAS, the Applicant is a GO TEXAN Rural Community Program certified member and is fully eligible to receive assistance under the Program; and

WHEREAS, The Applicant acknowledges that it is applying for a grant from the GO TEXAN Rural Community Bootstrap Bucks Program to help offset the cost of promotional activities associated with marketing local tourism events; and

WHEREAS, the Applicant wishes to authorize an official to represent the Applicant in dealing with TDA concerning the Program.

BE IT RESOLVED BY THE APPLICANT:

SECTION 1: That the Applicant hereby certifies that it is eligible to receive assistance under the Program.

SECTION 2: The Applicant hereby authorizes and directs the Wharton Chamber of Commerce & Agriculture to act for the applicant in dealing with TDA for the purpose of the Program, and Executive Director Ron Sanders is officially designated as the representative of the Applicant in this regard.

SECTION 3: The Applicant hereby specifically authorizes the above-named official to do all acts necessary to apply for and receive assistance from the Program related to the City Wide Garage Sale that will take place in the City of Wharton on the 12th and 13th of the month of June 2009. Wharton Chamber of Commerce & Agriculture Executive Director Ron Sanders is hereby authorized to execute on behalf of the Applicant any agreements, licenses or other documents required by TDA for Applicant's participation in the Program.

Introduced, read and passed by the affirmative vote of the Applicant on this 23rd day of March 2009.

Passed, Approved, and Adopted this 23rd day of March 2009.

CITY OF WHARTON, TEXAS

By: _____
DAVID W. SAMUELSON
Mayor

ATTEST:

LISA OLMEDA

City Secretary

Councilmember Don Mueller seconded the motion. All voted in favor.

B. **Resolution:** A resolution of the City of Wharton, Texas, designating an Official(s) as being responsible for the applicant in dealing with the Texas Department of Transportation ("TDA"), for the purpose of Participating in TDA'S GO Texan Rural Community Bootstrap Bucks Program (the "Program") and Certifying that the applicant is eligible to receive program Assistance for the Wharton County Freedom Fest.

He then presented an application and a draft resolution for funding for the proposed Wharton County Freedom Fest. Mr. Sanders stated that the grant was for \$2,500, which the Chamber of Commerce could utilize for expenses. After some discussion, Councilmember Jeff Gubbels made a motion to approve Resolution No. 2009-24, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2009-24**

**A RESOLUTION OF THE CITY OF WHARTON, TEXAS (the "Applicant"),
DESIGNATING THE WHARTON CHAMBER OF COMMERCE & AGRICULTURE**

EXECUTIVE DIRECTOR AS BEING RESPONSIBLE FOR THE APPLICANT IN DEALING WITH THE TEXAS DEPARTMENT OF AGRICULTURE (“TDA”), FOR THE PURPOSE OF PARTICIPATING IN TDA’S GO TEXAN RURAL COMMUNITY BOOTSTRAP BUCKS PROGRAM (the “Program”) AND CERTIFYING THAT THE APPLICANT IS ELIGIBLE TO RECEIVE PROGRAM ASSISTANCE FOR THE WHARTON COUNTY FREEDOM FEST.

WHEREAS, the Applicant is a GO TEXAN Rural Community Program certified member and is fully eligible to receive assistance under the Program; and

WHEREAS, The Applicant acknowledges that it is applying for a grant from the GO TEXAN Rural Community Bootstrap Bucks Program to help offset the cost of promotional activities associated with marketing local tourism events; and

WHEREAS, the Applicant wishes to authorize an official to represent the Applicant in dealing with TDA concerning the Program.

BE IT RESOLVED BY THE APPLICANT:

SECTION 1: That the Applicant hereby certifies that it is eligible to receive assistance under the Program.

SECTION 2: The Applicant hereby authorizes and directs the Wharton Chamber of Commerce & Agriculture to act for the applicant in dealing with TDA for the purpose of the Program, and Executive Director Ron Sanders is officially designated as the representative of the Applicant in this regard.

SECTION 3: The Applicant hereby specifically authorizes the above-named official to do all acts necessary to apply for and receive assistance from the Program related to the Wharton County Freedom Fest that will take place in the City of Wharton on the 26th and 27th of the month of June 2009. Wharton Chamber of Commerce & Agriculture Executive Director Ron Sanders is hereby authorized to execute on behalf of the Applicant any agreements, licenses or other documents required by TDA for Applicant’s participation in the Program.

Introduced, read and passed by the affirmative vote of the Applicant on this 23rd day of March 2009.

Passed, Approved, and Adopted this 23rd day of March 2009.

CITY OF WHARTON, TEXAS

By: _____
DAVID W. SAMUELSON
Mayor

ATTEST:
