

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
MARCH 24, 2008**

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:02 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 David Samuelson, Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen.

Councilmember absent was: V. L. Wiley, Jr.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Olmeda, Assistant to City Manager Jackie Jansky, Building Inspector Ronnie Bollom, EMS Director John Kowalik, Community Services Director Jo Knezek, Airport Manager David Allen, and City Attorney Paul Webb.

Visitors present were: David Schroeder with Wharton Economic Development Corporation, Carlos Cotton with Jones & Carter, Lewis Fortenberry, Joe Solito, Jackie Douglas, Bruce Williams, and Carter Miska.

The second item on the agenda was Roll Call and Excused Absences. Councilmember David Samuelson made a motion to excuse the absence of Councilmember V. L. Wiley, Jr. from the Regular City Council meeting held March 24, 2008. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The third item on the agenda was Public Comments. EMS Director John Kowalik invited the City Council to tour the Settrac CRV Emergency Management Vehicle on display on Friday, March 28, 2008 from 2:00 – 4:00 p.m. at the Wharton Civic Center. No action was taken.

The fourth item on the agenda was Wharton Moment. Councilmember Ken Freese publicly congratulated the Wharton School Boardmembers for selecting Mr. James Bartosh as a finalist as the new Wharton I.S.D. Superintendent. He requested the City Staff send a letter at the appropriate time. No action was taken.

The fifth item on the agenda was to review and consider the proclamation proclaiming April 2008 as Fair Housing Month. Mayor Bryce D. Kocian presented the proclamation, which read as follows:

**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, Bryce D. Kocian, 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 24<sup>th</sup> day of March in the year of our Lord two thousand eight A.D.

No action was taken.

The sixth item on the agenda was to review and consider the City of Wharton financial report for the month of February 2008. Finance Director Joyce Vasut presented the financial report for the month of February 2008 and stated that the fiscal year was at 42%. Mrs. Vasut stated that the general fund revenues were at 58.49% and the expenditures were at 36.89%. The total ad valorem taxes collected were \$1,785,082. The sales tax for the month of January 2008 was \$137,566 with \$91,711 to the City and \$45,855 to WEDC. The bank balance for February 2008 was \$1,960,398.75 with an average monthly yield of 4.5%. TexPool balance for February 2008 was \$671,908.66 with an average monthly yield of 3.4374%. After some discussion, Councilmember David Samuelson made a motion to approve the City of Wharton Financial Report for the month of February 2008. Councilmember David Samuelson seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider the City of Wharton Annual Financial Report for Fiscal Year October 1, 2006 to September 30, 2007 by Harrison, Waldrop & Uherek, L.L.P. City Manager Andres Garza, Jr. presented a draft copy of the City of Wharton Annual Financial Report for fiscal year October 1, 2006 to September 30, 2007 by Harrison, Waldrop & Uherek, L.L.P. Mr. Steve Van Manen presented the Comprehensive Annual Financial Report for the fiscal year ended September 30, 2007. He stated that the City Council Finance Committee reviewed the report in detail on March 14, 2008. He stated that the City of Wharton received the Certificate of Achievement for Excellence in Financial Reports in 2006. He stated that Harrison, Waldrop & Uherek, L.L.P. was issuing an unqualified opinion stating that the information was materially correct. He publicly commended the City Staff for working with the company to complete the audit process and preparing the Financial Report. After some discussion, Councilmember David Samuelson made a motion to approve the City of Wharton Annual

Financial Report for Fiscal Year October 1, 2006 to September 30, 2007 by Harrison, Waldrop & Uherek, L.L.P. Councilmember Ken Freese seconded the motion. All voted in favor.

The eighth 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.
- B. **Discussion:** Appointment of City of Wharton Public Works Director.

Mayor Bryce D. Kocian adjourned into Executive Session at 7:26 p.m.  
Mayor Bryce D. Kocian returned to Open Session at 8:15 p.m.

The ninth item on the agenda was **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 Bryce D. Kocian stated that no action would be taken on this item.

- B. **Review & Consider:** Appointment of City of Wharton Public Works Director.

Councilmember Don Mueller made a motion to confirm the appointment of Mr. Carter Miska as the City of Wharton's Public Works Director with the starting salary of \$65,000 contingent upon the required physical and drug testing in accordance with City policy. Councilmember David Samuelson seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider CenterPoint Energy:

A. Statement of Intent to Increase Natural Gas Rates for CenterPoint's Texas Coast Division. City Manager Andres Garza, Jr. presented copies of the letters dated March 6, 2008 and March 12, 2008 from Mr. Richard A. Zapalac, Regional Vice President-Texas, CenterPoint Energy, informing the City of Wharton of CenterPoint's intent to increase rates for CenterPoint's Texas Coast Division. He stated that he forwarded this information to Attorney Clarence A. West and City Attorney Paul Webb for their review. He said that representatives from CenterPoint Energy were available to answer any questions. Mr. Joe Solito thanked the City Council for allowing himself and Jackie Douglas to discuss the rate changes. He stated that the rates had not been changed in Wharton for the past thirty years. He stated that CenterPoint Energy was desiring to have a uniform rate. He stated that if the Railroad Commission or other cities that joined the coalition and felt that the rates were not justifiable, then the City of Wharton would receive the lowest rate among the cities or the Railroad Commission. He stated that the City Council could take the following steps: approve the rate, take no action and allow the rate to go into affect, or suspend the rates for 90 days. He stated that the rate increase was 2.6% or \$1.88 per bill per month. After some discussion, no action was taken.

- B. Coalition of Texas Cities.

City Manager Andres Garza, Jr. presented a copy of the email dated March 13, 2008 from Mr. West, which summarized a recent gas rate case and the proposed rates presented by CenterPoint.

He also presented a copy of the email dated March 13, 2008 from Mr. Kelvin Knauf of the City of Baytown inviting the City of Wharton, among other gulf coast cities, to attend a meeting to discuss the formation of a coalition of cities to study the Statement of Intent by CenterPoint and the affect on cities. He said that City representatives attended the meeting to obtain information regarding the proposed stance that other Cities were taking. He said that the consensus of those attending the meeting was that the Cities should join a coalition to suspend the rates and to consider engaging the services of a legal firm that specialized in this type of litigation to provide legal assistance in negotiating with CenterPoint. He said that as Mr. West stated, in accordance with the Texas Utility Code, the City would not be directly responsible for litigation costs. He said that a second meeting of the Cities had been scheduled in Baytown on March 26, 2008 in order for the Cities to meet with two law firms and to be provided with information concerning their experience with this type of coalition. City Attorney Paul Webb recommended that the City Council join the coalition. He stated that the City would have the option of remaining in the coalition or not participating in the coalition at any time. After some discussion, no action was taken.

**C. Resolution:** A resolution of the City of Wharton, Texas, (“City”) to authorize the suspension of the effective date of the rates and tariffs of CenterPoint Energy Entex (“CenterPoint”) for ninety days with regard to the Statement of Intent filed with the City of March 6, 2008; Requiring Centerpoint to reimburse reasonable rate case expenses; Authorizing a City Representative to join a coalition of cities to act on the City’s behalf; Finding that the meeting complies with the Open Meetings Act; Making such other findings and provisions related to the subject; and declaring an effective date for the resolution.

City Manager Andres Garza, Jr. presented a copy of the email dated March 20, 2008 from Mr. West providing a draft resolution and a memo explaining the process. He said that since the deadline for Cities to take action on whether to approve, reject or suspend CenterPoint’s application to the Railroad Commission was April 10, 2008, he was recommending that the City Council consider approving the attached draft resolution approving to suspend CenterPoint’s application in order for the City of Wharton time to study the request and to establish reasonable rates. After some discussion, Councilmember David Samuelson made a motion to approve Resolution No. 2008-22, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2008-22**

**RESOLUTION OF THE CITY OF WHARTON, TEXAS, (“CITY”) TO AUTHORIZE THE SUSPENSION OF THE EFFECTIVE DATE OF THE RATES AND TARIFFS OF CENTERPOINT ENERGY ENTEX (“CENTERPOINT”) FOR NINETY DAYS WITH REGARD TO THE STATEMENT OF INTENT FILED WITH THE CITY ON MARCH 6, 2008; REQUIRING CENTERPOINT TO REIMBURSE REASONABLE RATE CASE EXPENSES; AUTHORIZING A CITY REPRESENTATIVE TO JOIN A COALITION OF CITIES TO DIRECT EXPERTS AND SPECIAL COUNSEL TO ACT ON THE CITY’S BEHALF; FINDING THAT THE MEETING COMPLIES WITH THE OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE FOR THE RESOLUTION.**

**WHEREAS**, on or about March 6, 2008, CenterPoint Energy Entex filed a Statement of Intent to increase gas rates for its retail customers located in the Texas Coast Division; and

**WHEREAS**, the gas utility rates for CenterPoint Energy Entex have not been reviewed for over thirty years; and

**WHEREAS**, over the last thirty years there have been material changes in the corporate structure of CenterPoint Energy Entex; and

**WHEREAS**, CenterPoint Energy Entex is seeking to significantly increase the cost of non-gas costs (base rates) for residential customers; and

**WHEREAS**, in order to review the costs and rate changes proposed by CenterPoint it is necessary to suspend the effective date for 90 days; and

**WHEREAS**, in order to efficiently, meaningfully and comprehensively review the rate filing by CenterPoint Energy Entex it is advantageous for the City to join with other similarly affected cities in a coalition of cities; and

**WHEREAS**, typically coalitions of cities, in response to rate requests by gas utilities, provide direction to rate experts and utility lawyers.

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

**Section 1.** That the findings set out in the preamble are in all things approved and adopted.

**Section 2.** The effective date for the CenterPoint Statement of Intent and related tariffs are effectively suspended for 90 days, from April 10, 2008 until July 9, 2008.

**Section 3.** The statutory timeline may be further extended if CenterPoint does not provide timely and meaningful public notice of its request to increase rates or if its rate filing package is materially deficient.

**Section 4.** The City authorizes the City Manager his/her reasonable discretion in consultation with the City Attorney, on behalf of the City to join with a coalition of similarly situated cities for the purpose of providing direction and input to rate experts or utility lawyers hired by the coalition.

**Section 5.** The City retains its right to withdraw from the coalition of cities at any time without any financial obligation to the remaining coalition members or to the experts or lawyers hired by the coalition.

**Section 6.** The City is authorized to intervene in any proceeding at the Railroad Commission of Texas related to CenterPoint's Statement of Intent and any appeals thereof.

**Section 7.** CenterPoint is ordered to pay the City's reasonable rate case expenses in a timely manner.

**Section 8.** The meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

**Section 9.** This resolution shall be effective immediately upon passage.  
PASSED AND APPROVED this 24<sup>th</sup> day of March 2008.

**CITY OF WHARTON, TEXAS**

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**Bryce D. Kocian**  
**Mayor**

**ATTEST:**

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**Lisa Olmeda**  
**City Secretary**

Councilmember Ken Freese seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider the Planning Commission recommendation to City Council regarding the request by Ms. Tylene Gamble, Chief Appraiser for the Wharton County Appraisal District for a preliminary/final replat of Lots 1, 2, 3, 4, and 5, Out Lot 17, and a portion of Out Lot 18, Wharton. City Manager Andres Garza, Jr. stated that the Planning Commission met on Thursday, March 20, 2008 at 4:30 p.m. to discuss the request by Ms. Tylene Gamble, Chief Appraiser for the Wharton County Appraisal District for a preliminary/final replat of Lots 1, 2, 3, 4, and 5, Out Lot 17, and a portion of Out Lot 18, Wharton. He then presented the recommendation from the Planning Commission. He stated that Texas Department of Transportation and Mr. Carlos Cotton with Jones & Carter reviewed the plat. After some discussion, Councilmember Ken Freese made a motion to approve the Wharton County Appraisal District for a preliminary/final replat of Lots 1, 2, 3, 4, and 5, Out Lot 17, and a portion of Out Lot 18, Wharton. Councilmember Don Mueller seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 18, Building and Construction, Article V. Electrical Code; 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 an effective date. City Manager Andres Garza, Jr. stated that the Electrical Board met on Tuesday, March 18, 2008 and voted to recommend the City Council consider approving amendments to the City of Wharton Code of Ordinances, Chapter 18, Building and Construction, Article V. Electrical Code.

He then presented a copy of the memorandum dated March 19, 2008 from Electrical Board Chairman, Mr. Wayne Adam providing the recommendation. He also presented a copy of the draft ordinance indicating the proposed amendments. Building Official Ronnie Bollom said that the State would be adopting the 2008 Electrical Code in April 2008; therefore, requested City Council approval. He stated that the Electrical Board was recommending elimination of 14-gauge wire, and the service disconnects to be installed on the outside instead of the inside for emergency response purposes. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Ordinance No. 2008-03, which read as follows:

**CITY OF WHARTON  
ORDINANCE NO. 2008-03**

**AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 18, BUILDING AND CONSTRUCTION, ARTICLE V. ELECTRICAL CODE; 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.**

**BE IT ORDAINED** by the City Council of the City of Wharton, Texas:

**WHEREAS**, it is the desire of the City of Wharton to adopt, in all respects, the National Electrical Code, 2008 Edition with its latest revisions.

**DIVISION 1. ADOPTION OF THE TEXAS ELECTRICAL SAFETY AND LICENSING ACT.**

**Sec. 18-137. Codes and Rules adopted.**

- (a) The Administrative Rules of the Texas Department of Licensing and Regulation 16 Texas Administrative Code, Chapter 73 are here by adopted, except insofar as they may conflict with provisions of this article.
- (b) Effective April 1, 2008, the City of Wharton adopts the National Electric Code, 2008 Edition with its latest revisions except insofar as it does not conflict with amendments to the City of Wharton Code of Ordinances section 18-254 through section 18-261.
- (c) Any person violating any provision of these rules and regulations shall be subject to the penalties as provided in section 1-5 of this Code of Ordinances.

**Sec. 18-260. Use of 14-gauge conductor or wire in residential applications.**

The use of 14-gauge conductor or wire shall be prohibited for residential branch circuit applications.

**Sec. 18-261. Service Equipment** – Disconnecting Means, Article 230.70, Section A Location, Subsection Section (1) Readily Accessible Location. The service disconnecting means shall be installed at a readily accessible location outside of a building or structure nearest the point of entrance of the service conductors.

Exception: In large commercial and/or industrial application, this requirement could be waived by the authority of the City of Wharton Electrical Board.

### **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.

### **Fine and Penalty for Violations**

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.

### **Effective Date**

This Ordinance shall become effective on the 4<sup>th</sup> day of April 2008 at 12:01 a.m..

### **Passage and Approval**

**PASSED AND APPROVED** by the City Council of the City of Wharton, Texas, on the 24<sup>th</sup> day of March 2008.

CITY OF WHARTON, TEXAS

By: \_\_\_\_\_

**BRYCE D. KOCIAN**

Mayor

### **ATTEST:**

\_\_\_\_\_  
LISA STAVENA  
City Secretary

### **APPROVED AS TO FORM:**

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PAUL WEBB  
City Attorney

Published in the Wharton Journal Spectator Wednesday, March 26, 2008 and Wednesday, April 2, 2008.

Councilmember Ray Linseisen seconded the motion. All voted in favor.

The thirteenth item on the agenda was to review and consider the Wharton Fire Department Renovation Project, 319 North Fulton, Street:

A. Exterior Renovation Project:

