

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
APRIL 23, 2007**

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Councilmember Domingo Montalvo, Jr. 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, Domingo Montalvo, Jr., and Ray Linseisen.

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., City Secretary Lisa Stavena, Assistant to City Manager Jackie Jansky, Planning Director Prudencio Arriaga, Sr., Community Services Director Jo Knezek, and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Lewis Fortenberry, Carlos Cotton, Bill Joines, Louis Edwards, Ronald Marr, Nancy Buchana.

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. Councilmember David Samuelson invited the City Council to attend the dedication to the Habitat for Humanity resident located at 408 S. Sheppard on Sunday, April 29, 2007 at 3:00 p.m. He stated that they would begin construction on the third house soon. 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 March 2007. City Manager Andres Garza, Jr. presented the financial report for the month of March 2007 and stated that the fiscal year was at 50%. Mr. Garza stated that the general fund revenues were at 57.66% and the expenditures were at 52.55%. The total ad valorem taxes collected were \$1,751,339. The sales tax for the month of February 2007 was \$142,835 with \$95,223 to the City and \$47,612 to WEDCo. The TexPool balance for March 2007 was \$3,084,938.88 with an average monthly yield of 5.2933%. The Franklin Bank balance for March 2007 was \$1,161,029.06 with an average monthly yield of 5.250%. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the City of Wharton Financial Report for the month of March 2007. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider a resolution urging that Prayer be returned to the Public Schools and that Cities across the State of Texas join in an effort to reinstate Prayer in the Public Schools by passing similar resolution and uniting in a movement for that purpose. City Manager Andres Garza, Jr. presented a copy of the email dated April 13, 2007 from City of Brazoria City Secretary Sheila Williams, TRMC, regarding a resolution that supports prayer being reinstated in public schools. He stated that the City Council may consider the adoption of the draft resolution. He stated that it would allow the City Council to go on record urging prayer be returned to public schools. He stated that it would be non binding. Councilmember David Samuelson stated that the nation was founded on Christian beliefs not religious beliefs. He stated that he had a concern of the type of prayers to be said if returned to schools. He stated that prayer needed to be returned to the Christian roots. He stated that there was a difference in Christianity and other religions. Councilmember Domingo Montalvo, Jr. stated that he welcomes the beliefs of others. He stated that everyone as a nation needed to recognize a higher authority. Councilmember David Samuelson stated that the establishment of the constitution clause was not to remove Christianity from schools, but teaching principles of the bible with the Christianity intent. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2007-35, which read as follows:

**CITY OF WHARTON
RESOLUTION 2007-35**

A RESOLUTION URGING THAT PRAYER BE RETURNED TO THE PUBLIC SCHOOLS AND THAT CITIES ACROSS THE STATE OF TEXAS JOIN IN AN EFFORT TO REINSTATE PRAYER IN THE PUBLIC SCHOOLS BY PASSING SIMILAR RESOLUTIONS AND UNITING IN A MOVEMENT FOR THAT PURPOSE.

WHEREAS, this nation was founded upon the religious beliefs and ideals of settlers from other countries; and

WHEREAS, through time court decisions and certain interest groups have contributed to the deterioration of those religious beliefs and ideals to the extent that prayer has been banned from the public school system; and

WHEREAS, public schools are in a unique position to influence and guide the lives of this nation's youth; and

WHEREAS, the Wharton City Council strongly believes that reinstatement of prayer in public schools will move this nation toward those religious ideals and beliefs upon this nation was founded; and

WHEREAS, the City Council urges all cities across this State to join in an effort to reinstate prayer in the public schools by passing similar resolutions and uniting in a movement for that purpose;

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

Section I. That the Wharton City Council strongly urges that prayer be returned to the public school systems of this nation and invites all cities across the State to join in an effort to reinstate prayer in the public schools by passing similar resolutions and uniting in a grass roots movement for that purpose.

Section II. That this resolution become effective immediately upon its passage.

PASSED AND ADOPTED this 23rd day of April 2007.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA

City Secretary

Councilmember V. L. Wiley, Jr. seconded the motion. Councilmember V. L. Wiley, Jr., Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen voted for the motion. Councilmember David Samuelson abstained. Councilmember Ken Freese voted against the motion. The motion carried.

The seventh item on the agenda was to review and consider the request by Mr. Chester Houston of the Wharton Training High School & Ex-Students Association for City Council for the following:

- A. Authorization to host the annual Juneteenth Festival in Riverfront Park Friday, June 15, 2007 from 6:00 p.m. until 12:00 Midnight and Saturday, June 16, 2007 from 10:00 a.m. until 6:00 p.m.
- B. Variance from the City of Wharton Code of Ordinances, Chapter 54, Parks and Recreation, Section 54-2 Operating or parking motor vehicles in parks.

City Manager Andres Garza, Jr. presented a copy of the letter the City Staff received April 19, 2007 from Mr. Chester Houston, President of the Wharton Training High School Alumni & Ex-Students Association requesting the City Council consider approving the afore-mentioned items. He also presented a copy of the Wharton Parks Facility Reservation Agreement. After some discussion, Councilmember David Samuelson made a motion to approve the request by Mr. Chester Houston of the Wharton Training High School & Ex-Students Association for hosting the annual Juneteenth Festival in Riverfront Park Friday, June 15, 2007 from 6:00 p.m. until 12:00 Midnight and Saturday, June 16, 2007 from 10:00 a.m. until 6:00 p.m., and a variance from the City of Wharton Code of Ordinances, Chapter 54, Parks and Recreation, Section 54-2 Operating or parking motor vehicles in parks. Councilmember Ray Linseisen seconded the motion.

Councilmembers David Samuelson, Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen voted for the motion. Councilmember V. L. Wiley, Jr. abstained. The motion carried.

The eighth item on the agenda was to review and consider a resolution of the Wharton City Council approving the first amendment to the Texas Department of Housing and Community Affairs, HOME Program Contract No. 1000553, Owner Occupied Assistance; Authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of the letter dated March 14, 2007, which the City received April 17, 2007, from Ms. Lucy Trevino, CPA, Texas Department of Housing and Community Affairs (TDHCA) regarding the first amendment to the TDHCA HOME Contract No. 1000553, Owner Occupied Assistance. He stated that the amendment, if approved, would allow a 9.09% increase in funds for each contract household, but not more than \$5,000.00 per household. He stated that the total maximum amount of assistance for an OCC household would be increased from \$55,000.00 to \$60,000.00. He then presented a copy of a draft resolution approving the contract amendment. Community Services Director Jo Knezek stated that the State updated their guidelines due to an increase in material costs. She stated that the homes were 900 square feet to 980 square feet with three bedrooms. After some discussion, Councilmember David Samuelson made a motion to approve Resolution No. 2007-36, which read as follows:

**CITY OF WHARTON
RESOLUTION 2007-36**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE FIRST AMENDMENT TO THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, HOME PROGRAM CONTRACT NO. 1000553, OWNER OCCUPIED ASSISTANCE; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, the Texas Department of Housing and Community Affairs had awarded the City of Wharton the HOME Program Contract No. 1000553 for Owner Occupied Assistance; and

WHEREAS, the Board of Directors of the Texas Department of Housing and Community Affairs on February 1, 2007 approved an increase in funds for all 2005 and 2006 HOME Owner Occupied contracts; and

WHEREAS, the contract increase would allow a 9.09% increase in funds for each contract household, but not more than \$5,000.00 per household; and

WHEREAS, the Texas Department of Housing and Community Affairs wishes to increase the Owner Occupied Assistance household contract amount from \$55,000.00 to \$60,000.00; and

WHEREAS, the Wharton City Council wishes to approve the first amendment to the HOME Program Contract No. 1000553 increasing the contract amounts as mentioned above; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents related to said contract amendment.

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

Section I. That the Wharton City Council hereby approves the first amendment to the Texas Department of Housing and Community Affairs, HOME Program Contract No. 1000553, Owner Occupied Assistance.

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

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

PASSED AND ADOPTED this 23rd day of April 2007.

CITY OF WHARTON, TEXAS

By: _____

BRYCE D. KOCIAN

Mayor

ATTEST:

LISA STAVENA

City Secretary

Councilmember Don Mueller 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 rescinding Resolution No. 2007-29 that awarded the Administrative Management Services Contract for the Texas Capital Fund Contract No. 726322, US Highway 59/FM 102 Access Road Improvement Project to Midtown Interests, LLC; Approving to award said contract to The Ruiz Companies for said project; and authorizing the Mayor of the City of Wharton to execute all necessary documents related to said contract. City Manager Andres Garza, Jr. stated that during the April 9, 2007 regular Wharton City Council meeting, the City Council approved Resolution No. 2007-29 awarding the contract for Administrative Management Services for the Texas Capital Fund Contract No. 726322, US Highway 59/FM 102 Access Road Improvement Project to Midtown Interests, LLC. He stated that on Wednesday, April 18, 2007, Ms. Heather Chappell, President of Midtown Interests notified him that Midtown Interests would not be able to accept the contract for the project. He then presented a copy of her letter dated April 16, 2007 declining the contract. He stated that he had contacted Mr. Armando Ruiz, President of The Ruiz Companies and informed him that the contract was not accepted by Midtown Interests and inquired if The Ruiz Companies would consider accepting the contract. He stated that along with Midtown Interests, The Ruiz Companies had also submitted a proposal for consideration. He stated that Mr. Ruiz indicated that his firm was willing to accept the contract. He then presented a draft resolution rescinding Resolution No. 2007-29 that originally awarded the contract to

Midtown Interests. He stated that the resolution also awarded the contract to The Ruiz Companies. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2007-37, which read as follows:

**CITY OF WHARTON
RESOLUTION 2007-37**

A RESOLUTION OF THE WHARTON CITY COUNCIL RESCINDING RESOLUTION NO. 2007-29 THAT AWARDED THE ADMINISTRATIVE MANAGEMENT SERVICES CONTRACT FOR THE TEXAS CAPITAL FUND CONTRACT NO. 726322, US HIGHWAY 59/FM 102 ACCESS ROAD IMPROVEMENT PROJECT TO MIDTOWN INTERESTS, LLC; APPROVING TO AWARD SAID CONTRACT TO THE RUIZ COMPANIES FOR SAID PROJECT; AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL NECESSARY DOCUMENTS RELATED TO SAID CONTRACT.

WHEREAS, During the regular April 9, 2007 Wharton City Council meeting, the City Council awarded the Administrative Management Services contract for the Texas Capital Fund Contract No. 726322 to Midtown Interests, LLC for the US Highway 59/FM 102 Access Road Improvement Project; and

WHEREAS, Midtown Interests, LLC has notified the City of Wharton by letter dated April 16, 2007 that the firm could not accept the contract; and

WHEREAS, the Wharton City Council wishes to rescind Resolution No. 2007-29 awarding the contract to Midtown Interests, Inc. for said project; and

WHEREAS, the Wharton City Council wishes to award the Administrative Management Services contract for the Texas Capital Fund Contract No. 726322 to The Ruiz Companies for the US Highway 59/FM 102 Access Road Improvement Project; and

WHEREAS, the City of Wharton and the Ruiz Companies wishes to be bound by the conditions of said contract; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents related to said contract amendment.

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

Section I. That the Wharton City Council hereby rescinds Resolution No. 2007-29 and approves the contract for the Administrative Management Services contract for the Texas Capital Fund Contract No. 726322 be awarded to The Ruiz Companies for the US Highway 59/FM 102 Access Road Improvement Project.

Section II. That the City of Wharton and The Ruiz Companies are hereby bound by the conditions outlined in the agreement.

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

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

PASSED AND ADOPTED this 23rd day of April 2007.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA

City Secretary

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

The tenth item on the agenda was to review and consider the Wharton Fire Department request for the following:

A. Resolution: A Resolution of the Wharton City Council approving a contract for the purchase of one (1) 2008 Pierce Dash Custom Triple Combination Pumper Truck and authorizing the Mayor of the City of Wharton to execute all documents related to the agreement. City Manager Andres Garza, Jr. stated that during the regular March 26, 2007 Wharton City Council meeting, the City Council authorized the purchase of the 2008 Pierce Dash Custom Triple Combination Pumper Truck for the Wharton Fire Department. He then presented a copy of a draft agreement for the purchase of the pumper truck. He stated that the City Council previously approved the purchase through BuyBoard. He stated that if the City submitted a pre-payment, then an additional \$12,757.00 would be deducted. He stated that the maximum amount the City would allocate toward the purchase of the pumper truck was \$300,000 with the Fire Department paying the difference. He stated that with the deduction of \$12,757.00, the Fire Department would submit a Change Order in the amount of \$27,374.46 for the total price of \$504,958.46. He stated that a Payment and Performance Bond would be issued to the City of Wharton prior to the City paying for the pumper truck. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the Resolution No. 2007-38, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2007-38**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A CONTRACT FOR THE PURCHASE OF ONE (1) 2008 PIERCE DASH CUSTOM TRIPLE COMBINATION PUMPER TRUCK AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, During the March 26, 2007 regular City Council meeting, the City Council authorized the purchase of one (1) 2008 Pierce Dash Custom Triple Combination Pumper Truck for the Wharton Fire Department; and

WHEREAS, The Wharton City Council wishes to enter into an agreement with Pierce Manufacturing, Inc. (Manufacturer) and Martin Apparatus, Inc. (Vendor) for the purchase of said pumper truck; and

WHEREAS, The City of Wharton, Pierce Manufacturing, Inc. (Manufacturer) and Martin Apparatus, Inc. (Vendor) wishes to be bound by the terms and conditions of said agreement; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor of the City of Wharton to sign all documents related to 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 an agreement with Pierce Manufacturing, Inc. (Manufacturer) and Martin Apparatus, Inc. (Vendor) for the purchase of one (1) 2008 Pierce Dash Custom Triple Combination Pumper Truck for the Wharton Fire Department; and

Section II. That the Mayor of the City of Wharton is hereby authorized to sign all documents related to the contract.

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

Passed, Approved, and Adopted this 23rd day of April 2007.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA

City Secretary

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

B. Authorizing the sale of one (1) 1989 FMC Fire Truck, Unit 1134.

City Manager Andres Garza, Jr. presented a copy of the memorandum dated April 19, 2007 from Fire Chief Anthony Abbott requesting City Council authorization to sell the Unit 1134, which was

a 1989 FMC Fire Truck. He stated that the proceeds from the sale would be allocated toward the purchase of the new pumper truck. He stated that the minimum bid amount would be \$55,000. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the sale of one (1) 1989 FMC Fire Truck, Unit 1134 for the minimum amount of \$55,000. Councilmember David Samuelson seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider the City of Wharton Sewer & Water Crossings Project:

A. Bid Tabulation.

B. Resolution: A resolution of the Wharton City Council awarding Economic Construction, Inc. the bid for the City of Wharton Sewer & Water Crossings Project as per bid specifications; and authorizing the Mayor of the City of Wharton to execute all documents related to said contract. City Manager Andres Garza, Jr. stated that on April 10, 2007, the City Staff received bids for the City of Wharton Water & Sewer Crossings. He then presented a copy of the bid tabulation, and a copy of the bid submitted by Economic Construction, who was the lowest bidder. He stated that there was a discrepancy in the bid; however, the bid was submitted to the City Attorney's Office for review and interpretation. He stated that in accordance with the attorney's review, the City could award the bid to Economic Construction if they were deemed to be the lowest and best qualified bidder. He then presented a copy of the letter dated April 18, 2007 from Mr. Carlos Cotton, P.E. of Jones & Carter, Inc. also recommending the bid be awarded to Economic Construction in the amount of \$162,848.20. He stated that the City Council Public Works Committee reviewed the bids on April 18, 2007 and was recommending the bid be awarded to Economic Construction, Inc. He then presented a copy of a draft resolution awarding the bid to Economic Construction, Inc. Mr. Carlos Cotton with Jones & Carter stated that bids were received. He stated that Economic Construction's base bid and the alternate bid total amount was \$162,848.20. City Manager Garza stated that the budgeted amount was \$172,000. After some discussion, Councilmember Ray Linseisen made a motion to approve Resolution No. 2007-39, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2007-39**

A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDING ECONOMIC CONSTRUCTION THE BID FOR THE CITY OF WHARTON SEWER AND WATER CROSSINGS PROJECT AS PER BID SPECIFICATIONS; AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID CONTRACT.

WHEREAS, competitive, sealed bids were received on April 10, 2007 for the City of Wharton Sewer and Water Crossings Project; and

WHEREAS, Economic Construction, Inc. was deemed to be the lowest and best qualified bidder as per bid specifications in the base bid amount of \$148,923.20 and the alternate bid in the amount of \$13,925.00 for a total bid amount of \$162,848.20; and

