

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

Mayor Domingo Montalvo, Jr. declared the Regular Meeting duly open for the transaction of business at 7:00 P.M. Mayor Domingo Montalvo, Jr. led the opening devotion and then led the pledge of allegiance.

Councilmember's present were: Mayor Domingo Montalvo, Jr., Councilmembers V. L. Wiley, Jr., Lewis Fortenberry, Jr., Terry David Lynch, and Jeff Gubbels.

Councilmember absent was: Bryce D. Kocian.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joan Anandel, Assistant to City Manager Jackie Jansky, City Secretary Lisa Olmeda, Public Works Director Carter Miska, EMS Director John Kowalik, and City Attorney Paul Webb.

Visitors present were: Barry Halvorson with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Carlos Cotton with Jones & Carter, Sybil Inman with NanYa Plastics Corporation, USA, John Drapela, Billie Jones, Ray Linseisen, and I. O. Coleman, Jr.

The second item on the agenda was Roll Call and Excused Absences. Councilmember Don Mueller made a motion to excuse the absence of Councilmember Bryce D. Kocian from the Regular City Council meeting held November 22, 2010. 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. Councilmember Terry David Lynch stated that Mrs. Evanelina Alanis, spouse of Mr. Hector Alanis, Utility Department Crew Leader passed away on Saturday. City Manager Garza stated that the visitation was on Monday, November 22, 2010 at the Wharton Funeral Home from 6:00 – 9:00 p.m. with a Rosary at 7:00 p.m. and the funeral service was Tuesday, November 23, 2010 at Mount Carmel Catholic Church at 10:00 a.m.

Mayor Domingo Montalvo, Jr. stated that he attended several meetings and the legislators were addressing the floodplain maps. He stated that the depository of information would be with the Water Development Board, which would create a better map at lower costs. He stated that the Texas Department of Transportation Segment 3 meeting discussed the priorities of Wharton County and the Fort Bend County line. He stated that funding of the projects would be

conducted in accordance with funds received. He stated that the Corp of Engineers was addressing the levees. 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 October 2010. Finance Director Joan Anandel presented the financial report for the month of October 2010, which was at 8% or the first month into the fiscal year. Mrs. Anandel stated that the total ad valorem taxes collected were \$364 and the sales tax received in October 2010 was \$158,207 with \$105,471 to the City and \$52,736 to the Wharton Economic Development Corporation. She further stated the TexPool balance for October was \$159,200.57 with an average monthly yield of 0.2036%. The Prosperity Bank balance for October 2010 was \$2,551,122.14 with an average monthly yield of 0.15%. She stated that other investments included \$2,655.09 at TexasGulf Federal Credit Union in the debt fund, and \$254,451.98 at Capital One Marketing 2%. After some discussion, Councilmember Terry David Lynch made a motion to approve the City of Wharton Financial Report for the month of October 2010. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider the request by NanYa Plastics Corporation, USA for the City Council to reconsider the Tax Abatement Agreement approved November 8, 2010. City Manager Andres Garza, Jr. stated that on Monday, November 8, 2010 at the regular City Council meeting, the City Council approved a tax abatement contract granting NanYa Plastics Corporation, USA a tax abatement on their proposed improvements as follows:

- 1) 100% for 10 year on the building and utility improvements – Costs - \$610,000.00.
- 2) 50% for 5 years on the equipment – Costs - \$4,390,000.00.

Total Improvements being \$5,000,000.

He said that after meeting with company representatives, they had requested the City Council to reconsider their request for 100% abatement for 10 years for the building, utilities and equipment. He said that NanYa Plastics Corporation, USA informed him that the proposed improvements would allow them to produce a new product, thus, providing an opportunity to diversify their product lines and remain competitive in the global market. He said that the City Council Finance Committee met on Monday, November 22, 2010 to discuss the request and was recommending that the City Council reconsider the abatement request and grant a 100% abatement for 10 years on the proposed improvements. Ms. Sybil Inman addressed the City Council and stated that the new line was a new product, since PVC would be replaced in the future. She stated that 15 people would be hired and there would be a possibility of another line added in the future. She stated that the employees should be hired by January 2012 with full operation by June 2011. Mr. Garza stated that the verification of jobs could be accomplished by using a procedure similar to the Texas Capital Funds job creation requirements; therefore, if the jobs would fall below 15, then the tax abatement could be addressed. Ms. Inman stated that there were currently 205 jobs at NanYa Plastics Corporation, USA. Councilmember Jeff Gubbels stated that the tax abatement agreement should be amended to address the continuation of the 15 new jobs and if not compliant, then the tax abatement would be addressed by City Council. City Attorney Paul Webb stated that issue could be addressed. Ms. Inman stated that NanYa Plastics Corporation, USA would comply with the tax abatement agreement. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve the request by NanYa Plastics Corporation, USA for the City Council to reconsider the Tax Abatement Agreement for 100% for 10 year on the building, utility improvements – Costs - \$610,000.00, and equipment – Costs -

\$4,390,000.00, with the total improvements being \$5,000,000 with the verification of the 15 new jobs using a similar process as the Texas Capital Fund to include verification of the jobs to be conducted on an annual basis. Councilmember V. L. Wiley, Jr. seconded the motion.

Councilmembers V. L. Wiley, Jr., Lewis Fortenberry, Terry David Lynch, voted for the motion. Mayor Domingo Montalvo, Jr. also voted for the motion. Councilmember Don Mueller voted against the motion. Councilmember Jeff Gubbels stated that he abstained. The motion carried.

The seventh item on the agenda was to review and consider the Wharton Economic Development Corporation Annual Report for 2009- 2010. City Manager Andres Garza, Jr. presented a copy of the letter dated November 15, 2010 from Mr. David L. Schroeder, Executive Director of the Wharton Economic Development Corporation (WEDC) that provided a copy of the WEDC Annual Report for 2009-2010. Mr. Schroeder addressed the City Council and stated sales tax was at \$1,840,392, Hotel/Motel taxable receipts was at \$2.4 million. He stated that some projects funded by WEDC was Regency Nursing Home \$109,700 for City street, water, and sewer improvements; Marshall Francis Richmond Road Car Wash \$13,515 for City water infrastructure improvements; Right-of-way for the expansion of FM 1301 at Highway 59 \$131,787. He stated that total revenues included \$1,263,860 and expenditures \$1,263,860. After some discussion, no action was taken.

The eighth item on the agenda was to review and consider the Waste Corporation of America Solid Waste and Collection Service Franchise Agreement:

A. **Resolution:** A resolution of the Wharton City Council approving the Amendment No. 4 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.

B. **Ordinance:** An ordinance repealing and replacing the City of Wharton Code of Ordinances, Chapter 86 Utilities & Services, Article III, Solid Waste Disposal Exhibit A; 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 and setting an effective date.

Attached is a copy of the letter submitted by Mr. Jim Larson with Waste Corporation of America (WCA) regarding the Rate Modification Solid Waste Collection and Disposal Service Contract (franchise agreement) Amendment to be effective January 1, 2011.

City Manager Andres Garza, Jr. stated that the rate would need to be approved by the City Council on November 22, 2010 in order for it to be effective January 1, 2011. He stated that this would give the customer a 30-day notice of the rate increase. He said as Mr. Larson stated in the letter, the rate increase was 2.23% in accordance with the price index mentioned in the City's franchise agreement with WCA. He also presented a draft copy of a resolution amending the franchise agreement and the revised Exhibit A. He said additionally, an ordinance would need to be approved by the City Council to modify the rates for the City's customers. He then presented a draft ordinance amending the rates in the City of Wharton Code of Ordinances, Chapter 86 Utilities and Service, Article III, Solid Waste Disposal. He stated that the increase would be \$0.39 for residential and \$0.51 for commercial hand collection. After some discussion, Councilmember Don Mueller made a motion to approve Resolution No. 2010-89 and Ordinance No. 2010-16, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2010-89**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE AMENDMENT NO. 4 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" of the franchise agreement to reflect the increase in rates as set forth in Section 14.02 Modification of Rates of the contract; and

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

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

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 of the franchise contract between the City of Wharton and Waste Corporation of America.

Section II. That the Wharton City Council hereby establishes the rates outlined in the Exhibit "A" of the contract.

Section III. That the effective date of the Exhibit "A" will be the 1st day of January 2010.

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

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

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.

Mayor

ATTEST:

LISA OLMEDA
City Secretary

**CITY OF WHARTON
ORDINANCE NO. 2010-16**

AN ORDINANCE REPEALING AND REPLACING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 86 UTILITIES & SERVICE, ARTICLE III, SOLID WASTE DISPOSAL EXHIBIT A; 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 AND SETTING AN EFFECTIVE DATE.

BE IT ORDAINED by the City Council of the City of Wharton, Texas, that Chapter 86 Utilities & Service, Article III Solid Waste Disposal Exhibit A shall be replaced as follows:

**SCHEDULE "A"
Base Rates**

Monthly Residential Waste Collection \$21.00 per Residential Unit which includes a \$3.00 per month fee.

Monthly Commercial Hand Collection 26.98 per Commercial Unit which includes a \$3.50 per month fee.

Container Service (per month) includes a \$3.50 fee:

2 yd 1xwk	57.52
2xwk	102.90
3xwk	132.27
4xwk	182.42
5xwk	227.15
Additional Pick-up	62.74
3yd 1xwk	84.53
2xwk	151.52
3xwk	202.45
4xwk	271.88
5xwk	338.98
Additional Pick-up	90.66
4yd 1xwk	105.61
2xwk	184.23

3xwk	261.04
4xwk	361.34
5xwk	450.80
Additional Pick-up	113.83
6yd 1xwk	150.09
2xwk	287.44
3xwk	401.39
4xwk	540.26
5xwk	674.46
Additional Pick-up	160.56
8yd 1xwk	186.03
2xwk	346.88
3xwk	518.58
4xwk	719.18
5xwk	898.10
Additional Pick-up	196.92

Rates for Roll-offs:

Delivery Fee	104.35
Monthly Rental	125.21
Pull Price (per pull)	133.31
Disposal Fee-Loose (per yard)	7.30
Disposal Fee-Compact (per yard)	8.61

Rates for Other Services:

Hourly Rate	104.55
Disposal per cubic yard	7.30

PENALTY

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 at 12:01 a.m. on the 1st day of January 2011.

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

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

LISA OLMEDA
City Secretary

APPROVED AS TO FORM:

PAUL WEBB
City Attorney

Published in the Wharton Journal Spectator Wednesday, November 24, 2010 and Wednesday, December 1, 2010.

Councilmember Lewis Fortenberry, Jr. seconded the motion. Councilmembers V.L. Wiley, Lewis Fortenberry, Jr., Don Mueller, and Jeff Gubbels voted for the motion. Councilmember Terry David Lynch voted against the motion. The motion carried.

The ninth item on the agenda was to review and consider a resolution of the Wharton City Council approving the purchase of two (2) generators for the City of Wharton through the Houston-Galveston Area Council Cooperative Purchasing Program and authorizing the Mayor of the City of Wharton to execute all documents related to said purchase. City Manager Andres Garza, Jr. stated that during the November 8, 2010 Wharton City Council meeting, the City Council approved an agreement between the Texas Department of Public Safety and the City of Wharton under the Homeland Security Grant Program for funding for the City of Wharton Emergency Generators Project. He said that since that time, Emergency Management Coordinator Jim Cooper obtained a quote for the purchase of two (2) generators through the Houston-Galveston Area Council (H-GAC) Cooperative Purchasing Program in the amount of \$90,860.00. He then presented a copy of the quote, and a draft copy of the resolution approving the purchase. He stated that the quote was for 150 kilowatts. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve Resolution No. 2010-90, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2010-90**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE
PURCHASE OF TWO (2) GENERATORS FOR THE CITY OF WHARTON THROUGH
THE HOUSTON-GALVESTON AREA COUNCIL COOPERATIVE PURCHASING**

PROGRAM AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ANY DOCUMENTS RELATED TO SAID PURCHASE.

WHEREAS, the Wharton City Council determined it was in the best interest of the citizens of the City of Wharton to purchase two generators for the City of Wharton; and

WHEREAS, The Wharton City Council wishes to purchase the generators from Cummins Southern Plains through the Houston-Galveston Area Council Cooperative Purchasing Program in the amount of \$90,860; and

WHEREAS, The City of Wharton and Cummins Southern Plains 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 all documents related to said purchase.

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 purchase of two generators from Cummins Southern Plains in the amount of \$90,860.

Section II. That the Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute all documents related to said purchase.

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

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

CITY OF WHARTON

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

LISA OLMEDA

City Secretary

Councilmember Terry David Lynch 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 an agreement between the City of Wharton and the Texas Engineering Extension Service (TEEX) EMS Students to conduct clinical rotations with the Wharton EMS and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of the memorandum dated November 9, 2010 from EMS Director John Kowalik that provided a copy of the proposed agreement between the City of Wharton and the Texas Engineering Extension

Service (TEEX) EMS Students to conduct clinical rotations with the Wharton EMS. He stated that he submitted the agreement to City Attorney Paul Webb for his review. Mr. Paul Webb stated that he reviewed and recommended approval. Mr. Garza then presented a draft copy of the resolution approving the agreement. EMS Director John Kowalik stated that time slots were available for the students. He stated that LCRA would also be requesting clinical rotations with Wharton EMS in the future. After some discussion, Councilmember Terry David Lynch made a motion to approve Resolution No. 2010-91, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2010-91**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN AGREEMENT BETWEEN THE CITY OF WHARTON AND THE TEXAS ENGINEERING EXTENSION SERVICE (TEEX) EMS STUDENTS TO CONDUCT CLINICAL ROTATIONS WITH THE WHARTON EMS AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, the City of Wharton and the Texas Engineering Extension Service (TEEX) EMS Students wish to conduct clinical rotations with the Wharton EMS; and

WHEREAS, the City of Wharton and the TEEX wishes to be bound by the conditions as outlined 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 that;

Section I. The Wharton City Council hereby approves an agreement between the City of Wharton the Texas Engineering Extension Service (TEEX) EMS Students to conduct clinical rotations with the Wharton EMS.

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

Section III. This resolution shall become effective immediately upon its passage.

PASSED, APPROVED AND ADOPTED this 22nd day of November 2010.

CITY OF WHARTON

DOMINGO MONTALVO, JR., MAYOR

ATTEST:

LISA OLMEDA, CITY SECRETARY

Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider an ordinance of the City of Wharton, Texas, prohibiting the sale or delivery of restricted smoking materials; prohibiting the possession of restricted smoking materials, whether labeled for such purposes or not; prohibiting the sale, use, distribution or gifting, whether labeled for such purpose or not, subject to this regulation shall be those substances known as synthetic cannabinoids or salvia divinorum which are frequently known as or marketed as products such as “K-2”, “K-2 Summit”, “K-2 Sex”, “Genie”, “Dascents”, “Zohai”, “Sage”, “Spice”, “Ko Knock-Out 2”, “Spice Gold”, “Spice Diamond”, “Yucatan Fire”, “Solar Flare”, “Pep Spice”, “Fire N Ice”, and “Salvia Divinorum”; providing a savings clause; Providing a severability clause; providing a penalty of a fine not to exceed two thousand dollars (\$2,000.00); and providing for an effective date.

City Manager Andres Garza, Jr. stated that the City Council Public Safety Committee met on Monday, November 22, 2010 to review the proposed ordinance prohibiting the sale or delivery of restricted smoking materials prohibiting the possession of restricted smoking materials, whether labeled for such purposes or not; prohibiting the sale, use, distribution or gifting, whether labeled for such purpose or not, subject to this regulation shall be those substances known as synthetic cannabinoids or salvia divinorum which are frequently known as or marketed as products such as “K-2”, “K-2 Summit”, “K-2 Sex”, “Genie”, “Dascents”, “Zohai”, “Sage”, “Spice”, “Ko Knock-Out 2”, “Spice Gold”, “Spice Diamond”, “Yucatan Fire”, “Solar Flare”, “Pep Spice”, “Fire N Ice”, and “Salvia Divinorum”; providing a savings clause; Providing a severability clause; providing a penalty of a fine not to exceed two thousand dollars (\$2,000.00); and providing for an effective date. He said that the Committee was recommending approval. He then presented a copy of the Drug Alert Watch and a copy of the Poison Alert referenced in the proposed ordinance that was provided by Police Chief Tim Guin. He stated that El Campo and Bay City had adopted an ordinance similar to the one being proposed. He stated that the proposed ordinance would control the activity in the City of Wharton. Councilmember Terry David Lynch stated that this was a nationwide issue and the federal government would be addressing in the future. Councilmember Jeff Gubbels stated that he was contacted by a Texana Psychologist regarding the use and the effects. After some discussion, Councilmember Jeff Gubbels made a motion to approve Ordinance No. 2010-17, which read as follows:

**CITY OF WHARTON, TEXAS
ORDINANCE NO. 2010-17**

AN ORDINANCE OF THE CITY OF WHARTON, TEXAS, PROHIBITING THE SALE OR DELIVERY OF RESTRICTED SMOKING MATERIALS; PROHIBITING THE POSSESSION OF RESTRICTED SMOKING MATERIALS, WHETHER LABELED FOR SUCH PURPOSES OR NOT; PROHIBITING THE SALE, USE, DISTRIBUTION OR GIFTING, WHETHER LABELED FOR SUCH PURPOSE OR NOT, SUBJECT TO THIS REGULATION SHALL BE THOSE SUBSTANCES KNOWN AS SYNTHETIC CANNABINOIDS OR SALVIA DIVINORUM WHICH ARE FREQUENTLY KNOWN AS OR MARKETED AS PRODUCTS SUCH AS “K-2”, “K-2 SUMMIT”,

“K-2 SEX”, “GENIE”, “DASCENTS”, “ZOHAI”, “SAGE”, “SPICE”, “KO KNOCK-OUT 2”, “SPICE GOLD”, “SPICE DIAMOND”, “YUCATAN FIRE”, “SOLAR FLARE”, “PEP SPICE”, “FIRE N ICE”, AND “SALVIA DIVINORUM”; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING PENALTIES OF A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Wharton, Texas has been informed by school officials and law enforcement officials of the growing presence of a new and potentially dangerous substance affecting the public health, safety and welfare of the citizens, particularly the youth of the City of Wharton, Texas; and

WHEREAS, in response to these warnings, the City Council has secured information indicating that this threat is presented in the form of retail products sold or distributed as a mixture of dried vegetation that when covered or mixed with certain specific chemicals, produces the physiological and psychological effects of a controlled substance such as marijuana; and

WHEREAS, such substances are competently reported to cause hallucinations, vomiting, agitation, panic attacks, tachycardia, elevated blood pressure, pallor, numbness and tingling, disorientation, loss of time awareness and, in some cases, tremors and seizures as documented by the National Drug Intelligence Center of the United States Department of Justice in EWS Report 000006 issued May 18, 2010; and

WHEREAS, the medical evidence and treatment response and documentation of these symptoms and events have been confirmed by Doctor Anthony J. Scalzo, the Medical Director of the State of Missouri Poison Control Center in a special newsletter alert to the medical community generated as Volume 4, Issue 1, 2010; and

WHEREAS, the substances identified above are considered to be generally described as synthetic cannabinoids or salvia divinorum distributed, sold and marketed under such names as “K-2”, “K-2 SUMMIT”, “K-2 SEX”, “GENIE”, “DASCENTS”, “ZOHAI”, “SAGE”, “SPICE”, “KO KNOCK-OUT 2”, “SPICE GOLD”, “SPICE DIAMOND”, “YUCATAN FIRE”, “SOLAR FLARE”, “PEP SPICE”, “FIRE N ICE”, AND “SALVIA DIVINORUM”; and

WHEREAS, the substances identified above have not yet been designated as controlled substances under the laws of the State of Texas or under the laws of the United States; and

WHEREAS, the substances described above may be marketed as incense but are commonly being used as an alternative to marijuana which is an identified and documented controlled substance, the sale and use of which is prohibited under the laws of the State of Texas and the United States; and

WHEREAS, the synthetic cannabinoids substances identified above may be presented under a variety of street names but share common ingredients including JWH-018 and JWH-073; and

WHEREAS, salvia divinorum contains the ingredient known as Salvinorin A; and

WHEREAS, these unregulated synthetic cannabinoids and salvia divinorum produce a very potent, intoxicating effect which is estimated by the medical community to produce effects ranging from three to one hundred times greater and more potent than THC, the active ingredient in marijuana; and

WHEREAS, the substances identified above manifest all of the demonstrated attributes of substances that deprive individuals of judgment, coordination and the ability to conduct themselves in a safe and appropriate manner in modern society; and

WHEREAS, the available medical and law enforcement information on these products indicates that individuals under the effects of these substances may be a clear and present danger to themselves and others; and

WHEREAS, information is available to the City Council documenting that these substances are available for sale or distribution to individuals below the age of twenty-one (21) who lack the life experience and maturity to make informed judgments about whether the use or possession of such substances will negatively impact their ability to function in a safe and appropriate manner; and

WHEREAS, Texas law has long recognized the need to limit the access to intoxicating substances such as alcoholic beverages and to prevent those individuals below a general age benchmark of maturity from acquiring or using those products in order to protect the minors from the risk of a harm that they cannot effectively evaluate; and

WHEREAS, it is anticipated that the Texas Legislature will consider appropriate regulation of these type of commodities in its upcoming legislative session but that it is essential for the municipality to impose some type of reasonable restriction on these products until a state wide regulatory system may be properly implemented; and

WHEREAS, the risk posed by these substances creates a danger to the public health and safety that must be immediately addressed by the adoption of a local ordinance to protect the interests of the citizens of Wharton, Texas;

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

SECTION 1.

The Code of Ordinances of the City of Wharton, Texas, be, and the same is hereby, amended by changing the title of Chapter 10 to read “Alcoholic Beverages and Restricted Smoking Materials”, and shall further be amended by adding the following definitions and sections to Chapter 10 of the Wharton Code of Ordinances. The changes shall read as follows:

Sections 4-6 through 4-11 shall be added as follows:

Sec. 10-6. Definitions.

Restricted smoking material means any substance, however marketed, and whether labeled for such purposes or not, which can reasonably be converted for smoking purposes whether it is presented as incense, tobacco, herbs, spices or any blend thereof if it includes any of the following chemicals or a comparable chemical:

- (1) *Salvia divinorum* or salvinorin A; all parts of the plant presently classified botanically as *salvia divinorum*, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts;
- (2) 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues;
- (3) (6aS,10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)6a,7,10,10a-tetrahydrobenzo[*c*]chromen-1-ol also known as HU-211 or Dexanabinol);
- (4) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018);
- (5) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073); or
- (6) 1-pentyl-3-(4-methoxynaphthoyl)indole (also known as JWH-081).

Products containing some of the above substances are currently being marketed under the following commercial names:

“K-2”, “K-2 SUMMIT”, “K-2 SEX”, “GENIE”, “DASCENTS”, “ZOHAI”, “SAGE”, “SPICE”, “KO KNOCK-OUT 2”, “SPICE GOLD”, “SPICE DIAMOND”, “YUCATAN FIRE”, “SOLAR FLARE”, “PEP SPICE”, “FIRE N ICE”, AND “SALVIA DIVINORUM”.

It is anticipated by the Council that new products will be marketed under different names but will be subject to this definition if they contain any of the chemical components set forth above.

Restricted smoking material paraphernalia means any paraphernalia, equipment or utensil that is used or intended to be used in ingesting or inhaling illegal or restricted smoking materials, whether labeled for such purpose or not, and may include:

- (1) A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- (2) A water pipe;
- (3) A carburetion tube or device;

- (4) A smoking or carburetion mask;
- (5) A chamber pipe;
- (6) A carburetor pipe;
- (7) An electric pipe;
- (8) An air-driven pipe;
- (9) A chillum;
- (10) A bong; or
- (11) An ice pipe or chiller.

Sec. 10-7. Restricted smoking materials; purpose.

The purpose of this section is to prohibit the sale or delivery of restricted smoking materials as defined herein within the city limits of the City of Wharton and to prohibit the possession of restricted smoking materials by any individual within the city limits of the City of Wharton. Any form of delivery to include a simple gift constitutes a violation of this ordinance.

Sec. 10-8. Sale, delivery, offer, gift or use.

It shall be unlawful for any person to sell, offer to sell, deliver to or to give any restricted smoking material, whether labeled for such purposes or not, to anyone or to use same.

Sec. 10-9. Use or possession of restricted smoking material.

It shall be unlawful for any person to have in their possession or to use restricted smoking materials, whether labeled for such purposes or not, within the corporate limits of the City of Wharton.

Sec. 10-10. Use or possession of restricted smoking paraphernalia.

It shall be unlawful for any person to have in their possession any restricted smoking paraphernalia with the intent to use it, to ingest, inhale or otherwise consume restricted smoking material, whether labeled for such purposes or not. If an individual is found in possession of this type of paraphernalia it will be a violation of this ordinance if appropriate forensic testing is done on the paraphernalia and traces of restricted smoking material are present on the device.

Sec. 10-11. Defenses to prosecution.

(a) It shall be a defense to the prosecution for violation of this section if the use of the restricted smoking material, whether labeled for such purposes or not, is at the direction or under a prescription issued by a licensed physician or dentist authorized to prescribe controlled substances within the State of Texas.

(b) It shall be a defense to prosecution under the terms of this section if an individual charged with a violation can provide proper and complete historic documentation that the use of such materials is a portion of a religious undertaking or activity of a religious denomination in which they have long standing historic membership supported by documentation from clergy or spiritual leader recognized by the State of 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.

Fine and Penalty for Violations

Any person violating this ordinance or any portion thereof shall upon conviction be guilty of a misdemeanor and shall be fined in any sum not less than \$100.00 nor more than the maximum fine of \$2,000.00 as provided in section 1-5 for each offense, and each day that such violation continues shall be considered a separate offense and punishable accordingly.

Effective Date

This Ordinance shall become effective on the 6th day of December 2010 at 12:01 a.m.

Passage and Approval

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

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

LISA OLMEDA
City Secretary

APPROVED AS TO FORM:

PAUL WEBB

City Attorney

Published in the Wharton Journal Spectator on Saturday, November 27, 2010 and Saturday, December 4, 2010.

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

The twelfth item on the agenda was Executive Session: City Council may adjourn into an Executive Session in accordance with Sections 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:** City Manager Performance and/or Evaluation.

Mayor Domingo Montalvo, Jr. adjourned into Executive Session at 7:44 p.m.

Mayor Domingo Montalvo, Jr. returned to Open Session at 7:54 p.m.

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

A. **Review & Consider:** City Manager Performance and/or Evaluation.

Councilmember Jeff Gubbels made a motion to increase the total annual salary of City Manager Andres Garza, Jr. to \$135,000 annually.

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

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

- A. Beautification Commission.
- B. Building Standards Commission.
- C. Holiday Lighting Chairman.
- D. Mayor's Committee on People with Disabilities.
- E. Wharton Economic Development Corporation Board of Directors.

City Manager Andres Garza, Jr. presented a copy of the list of City Council Boards, Commissions and Committees. He stated that the afore-mentioned list each have vacant positions respectively. He stated that he would like to hold a Committee meeting the week of 29th to discuss the Wharton Economic Development Corporation Board of Directors. Councilmember Terry David Lynch asked if the members had to be residents of the City of Wharton. Mr. Garza stated that was a requirements as well as a registered voter. After some discussion, no action was taken.

The fifteenth item on the agenda was Status Report on City of Wharton Projects. City Manager Andres Garza, Jr. presented a copy of the memorandum dated November 22, 2010 providing an update on the City of Wharton on-going projects, which read as follows:

FLOOD REDUCTION (LEVEE) PROJECT

The U.S. Army Corp of Engineers (USACE) Lower Colorado River Phase I Report - City of Wharton Flood Prevention Project and Recommended report was located at the Wharton County

Library and the office of the City of Wharton City Secretary for viewing or the report may be viewed on line at <http://www.swf.usace.army.mil/pubdata/notices/LowerColorado/>.

On November 18, 2010 City Staff met with representatives from the USACE, Halff Assoc., and FEMA in Fort Worth to discuss issues concerning FEMA freeboard requirements that may affect the final levee design. Discussions also included issues concerning the tie-in of the levee with railroad, FM 102, Hwy 59 and Richmond Rd. Additional meetings would be scheduled between representatives of the City, the USACE, Halff Assoc., and FEMA to further discuss the freeboard requirements.

DRAINAGE:

1. Santa Fe Outfall Channel.

City employees and Wharton County Precinct 1 resumed excavation on August 9, 2010. Currently, crews were excavating approximately 100' upstream of Hodges Ln. The Public Works Department was in the process of purchasing two drop structures to assist in controlling erosion between Hwy 60 and FM 1299. In addition, Public Works was obtaining quotes for drop structures upstream of Hodges Ln. Also, quotes for guard rails along Hodges Ln. and Delmas Ln. were currently being solicited. The Department intended to have these installed within the next couple of months weather permitting. Excavation would continue weather permitting.

2. Highway 60 & Old Lane City Road Drainage Improvements

Jones & Carter, Inc., City Staff and TxDOT met during the month of November to review the plans. Mark Wooldridge, TxDOT Area Engineer would be submitting these plans to the TxDOT office in Yoakum for review and comment. City staff was currently preparing cost estimates on the project.

3. Richmond Rd., Fulton St., and Armstrong St. Drainage Improvements

City Staff met with Jones & Carter, Inc. the week of October 18th to discuss several options including dividing the project into different phases or priority areas. Jones & Carter was working to finalize the hydrology and hydraulics for the projects.

WATER/SEWER IMPROVEMENTS:

1. Ahldag Addition Sanitary Sewer Project – TxCDBG Contract No. R729710.

AR Turnkey Construction Company Inc. began construction on October 15, 2010 on Mulberry St. As of November 18, 2010, Mulberry and Wayside streets from Richmond to Fulton were 95% complete. Work began on West Belle on November 18, 2010. Upon completion of West Belle the crews would move to Dahlgren to complete the project.

2. Water Storage Tank Maintenance Program.

City Staff met the week of October 18th to continue discussions and attempt to finalize plans for maintaining the water storage tanks. Staff continued to research different options.

3. Alabama Water Well Rework

As of October 28, 2010, Water Well No. 3 had been put back on line. Water Well No. 1 had been temporarily taken off line to install new electrical motor. Once the motor was installed, Well No. 1 would be brought back on line.

4. Quick Connect/Transfer Switch Project

Quick connects and transfer switches were being installed at all city lift stations, city water plants, City Hall, the Fire Station, EMS Headquarters, WWTP #1, and WWTP#2. Electrical Automation Controls began work at EMS Headquarters on November 10, 2010.

5. Pressure Switches at City Water Plants

Construction began May 24th and was completed on August 17, 2010. City staff had adjusted the controls and monitors their performance daily. As of November 18, 2010, the pressure switches were performing as intended.

6. Energy Efficiency Audit

City Staff met with Siemens Industry, Inc. and Jones & Carter, Inc. on November 18, 2010. The group met at Wastewater Treatment Plant No. 1 to discuss how to convert the aeration system to a fine bubble system.

STREET IMPROVEMENTS

1. Phase I - FM 102 Relocation and Overpass Project and Phase II - Road Extension Project between FM 102 to US Highway 59 and Service Roads project.

Overall - The City had submitted the US DOT TIGER II Grant application for funding for the project. Information was posted in the internet informing the public of the projects that were awarded funding under the grant. The City of Wharton was not among those who received funding. Additional, a Phase I Environmental Assessment had been completed and surveying was underway.

Phase I – FM 102 Relocation and Overpass Project – The City Staff and Texas Department of Transportation (TxDOT) representatives were currently working on the TxDOT Advance Funding Agreement for this phase of the project.

Phase II - Road Extension Project between FM 102 to US Highway 59 and Service Roads project. - The City of Wharton had also closed on the land purchase agreement with Ms. Myrtis Outlar for her portion of the required land for this phase of the project.

2. 2010 Street Improvement Program

All streets approved by City Council for rework had been completed. However, Old Lane City Road needed to be re-striped. City staff had obtained quotes for the striping and had scheduled Batterson, LLP to do the work. Striping should be completed in the next two to three weeks.

3. Wharton Sidewalk Accessibility and Historic Streetscape Project

City Staff met on October 25, 2010 with Mr. Billy J. Goodrich, P.E. of the Texas Department of Transportation to walk thru the project. The State was currently finalizing the contract.

Additionally, it had become a requirement of the State that governmental entities who wished to lead their own construction projects that those entities must attend the States, Local Government Procedures Program (LGPP). Several City Staff members were scheduled to take the training.

OTHER PROJECTS

1. Fire Station Expansion Project

Designs had been finalized and bids were received for this project on November 16th for the new construction at the Fire Station. The bids were being reviewed by KSA Engineers who would provide their recommendation. The apparent lowest bid was received from L.L. & F Construction Management, Inc. in the amount of \$350,728.00. The City Staff was reviewing other alternatives to see if the project could be completed with the available funds. The City Staff would present their findings to the City Council Public Safety Committee for a final recommendation to the City Council.

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

The sixteenth item on the agenda was to review and consider the City Council, Committee, Commissions, and Boards Reports:

- A. Wharton Economic Development Corporation meeting held November 15, 2010.
- B. City Council Public Health Committee meeting held November 22, 2010.
- C. City Council Finance Committee meeting held November 22, 2010.

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

The seventeenth item on the agenda was to review and consider the City Manager's Reports:

- | | |
|---|--------------------------------|
| A. City Secretary/Personnel. | I. Legal Department. |
| B. Code Enforcement. | J. Municipal Court. |
| C. Community Services Department /Civic Center. | K. Police Department |
| D. Emergency Management. | L. Public Works Department. |
| E. E.M.S. Department. | M. Water/ Sewer Department. |
| F. Engineer/Planning Department. | N. Weedy Lots/ Sign Ordinance. |
| G. Facilities Maintenance Department. | O. Wharton Municipal Pool. |
| H. Fire Department. | P. Wharton Regional Airport. |

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

The eighteenth item on the agenda was adjournment. After some discussion, Councilmember Don Mueller made a motion to adjourn. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The meeting adjourned at 7:56 p.m.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.

City of Wharton
Regular City Council Meeting
November 22, 2010

Mayor

ATTEST:

LISA OLMEDA
City Secretary