

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
February 28, 2011**

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

Councilmember's present were: Mayor Domingo Montalvo, Jr., Councilmembers Terry David Lynch, Don Mueller, Bryce D. Kocian and Jeff Gubbels.

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joan Anandel, City Secretary Paula Favors, Assistant to City Manager Jackie Jansky, and City Attorney Paul Webb.

Visitors present were: John Mercurief II with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Carlos Cotton with Jones & Carter, Inc., Tommy Kuykendall, Ben Galvan, Lester Johnson, Maureen Voulgaris, and Maggie Mejorado.

The second item on the agenda was Roll Call and Excuses Absences. All members were present.

The third item on the agenda was Public Comments. No comments were given. No action was taken.

The fourth item on the agenda was the Wharton Moment. Councilmember Terry David Lynch complimented the 100 Club on a successful event. 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 January 2011. Finance Director Joan Anandel presented the financial report for the month of January 2011. Mrs. Anandel stated that the total ad valorem taxes collected were \$492,065.81 and the sales tax for the month of January 2011 was \$182,860.00. She further stated that the TexPool balance for January was \$49,237.06 with an average monthly yield of 0.16%. She said Prosperity Bank balance for January 2011 was \$2,524,405.79 with an average monthly yield of 0.15%. She further stated that other investments included \$2,657.08 at TexasGulf Federal Credit Union in the debt fund, and \$254,920.87 at Capital One Marketing at a rate of 2%. After some discussion, Councilmember Terry David Lynch moved to approve the City of Wharton Financial Report for the month of January 2011. Councilmember Don Mueller seconded the motion. All voted in favor.

The sixth item on the agenda item was to review and consider a recommendation by the Planning Commission for City Council approval of the request by Mr. Munir Munawar, Cracker Barrel Partnership, Ltd, represented by Mr. Lester Johnson of Max L. Hegan Surveying, for a preliminary/final replat of a 13.25 Acre Subdivision out of two tracts located in the William Kincheloe League, Abstract 38, Wharton Block 60-Ext 53-A-1 and 53A-3 Pt. Assistant to City Manager Jackie Jansky presented a copy of the Planning Commission Communications and a copy of the proposed replat drawings that indicated the property before replat. She stated that the replat contained all necessary building setback lines and the 50' drainage easement at the rear of the property. She said that Planning Commission approved the replat with the contingency that it contains monument and control measures to be used for the location purposes. City Attorney Paul Webb stated that the replat presented showed the property to be located in Matagorda County. Assistant to City Manager Jackie Jansky then stated that the request be approved contingent upon the replat being corrected to read the property was located in Wharton County. After some discussion, Councilmember Don Mueller moved to approve the replat of the 13.25 Acre Subdivision out of two tracts located in the William Kincheloe League, Abstract 38, Wharton Block 60-Ext 53-A-1 and 53A-3 Pt. contingent upon the replat being revised to replace Matagorda with Wharton. Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The seventh item discussed on the agenda was to review and consider the Wharton Police Department 2010 Annual Contact Report. Chief of Police Tim Guin City presented a copy of the Wharton Police Department Annual Contact Report for 2010 in accordance with the City of Wharton Resolution No. 2001-67, Racial Profiling Policy. Chief Guin stated that no complaints were received regarding racial profiling. He stated that the citations by race or ethnicity were:

Caucasian/White	1443	57.8%
Hispanic	344	13.8%
Black	658	26.4%
Asian/Pacific Islander	32	1.3%
Other	0	0.0%
Middle Eastern-Descent	17	0.7%
Native American	1	0.0%

He also stated that the report needs only to be presented and that action was not required by the City Council. After some discussion, no action was taken.

The eighth item on the agenda was to review and consider City of Wharton Medical Director Services for Wharton Emergency Medical Service (EMS).

- A. City Manager Andres Garza, Jr. presented a request by the City Staff for City Council to approve the termination of the City of Wharton Medical Director Services Agreement with Dr. Keith Moore. City Manager Andres Garza, Jr. presented a copy of the letter

dated January 26, 2011 to Dr. Keith Moore from him regarding the Medical Director Agreement between Dr. Moore and the City. He stated that Dr. Moore no longer practiced with South Texas Medical Clinic and his professional liability coverage was no longer in force, which the clinic provided. He said he requested in his letter that Dr. Moore submit his proof of insurance coverage in accordance with this agreement. He said the letter was mailed via certified mail, which was returned to the City unclaimed. City Manger Garza, further stated the City Staff had attempted to contact Dr. Moore via telephone, which proved unsuccessful. He said Dr. Moore's agreement with the City to provide his services as Medical Director was due to expire on March 31, 2011. He said the City Council Public Safety Committee had met on Monday, February 28, 2011 and voted to recommend the City Council approve the termination of the Medical Director Agreement between the City and Dr. Moore effective March 1, 2011. After some discussion, Councilmember Don Mueller moved to approve the termination of the City of Wharton Medical Director Services Agreement with Dr. Keith Moore effective March 1, 2011. Councilmember Bryce D. Kocian seconded the motion. Councilmember Jeff Gubbels abstained from the discussion and vote. Mayor Domingo Montalvo, Jr. and Councilmembers Terry David Lynch, Don Mueller, and Bryce D. Kocian voted in favor of the motion. The motion carried

- B. Resolution:** City of Wharton Medical Director Services:
1. Proposal Tabulation.
 2. **Resolution:** A resolution of the Wharton City Council approving the City of Wharton Medical Director Services Agreement between Dr. Mystan Gurkin and authorizing the Mayor of the City of Wharton to execute the agreement.

City Manager Andres Garza, Jr. stated that the City of Wharton received proposals for the City of Wharton Medical Director Services on February 22, 2011. City Manager Andres Garza, Jr. presented a copy of the proposal bid tabulation that indicated who had received a copy of the Request for Proposals. He stated Dr. Mystan Gurkin, MD was the only one who had submitted a proposal, which indicated that she would be willing to provide the City of Wharton Medical Director Services at a rate of \$1,500 per month. City Manger Garza also presented a copy of Dr. Gurkin's proposal. He stated the City Staff was recommending that Dr. Gurkin's contract begin March 1, 2011 and would terminate March 31, 2013. He said City Council Public Safety Committee met on Monday, February 28, 2011 and was recommending the City Council approve the agreement with Dr. Gurkin. City Manager Garza presented a draft resolution approving an agreement with Dr. Gurkin to provide medical director services. After some discussion, Councilmember Terry David Lynch moved to approve the City of Wharton Resolution No. 2011- 08, which reads as follows,

**CITY OF WHARTON
RESOLUTION NO. 2011 - 08**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE CITY OF WHARTON MEDICAL SERVICES AGREEMENT BETWEEN DR. MYSTAN GURKIN AND THE CITY OF WHARTON AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, the City of Wharton received requests for qualifications on February 22, 2011 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. Mystan Gurkin for medical director services for the City of Wharton Emergency Medical Services (EMS) program; and

WHEREAS, the City of Wharton and Dr. Mystan Gurkin wishes 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. Mystan Gurkin for medical director services for the City of Wharton Emergency Medical Services (EMS) program.

Section II. That the City of Wharton and Dr. Mystan Gurkin 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 28th day of February 2011.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

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Councilmember Donald Mueller seconded the motion. Mayor Domingo Montalvo, Jr., and Councilmembers Terry David Lynch, Donald Mueller, Bryce D. Kocian voted in favor of the motion. Councilmember Jeff Gubbels abstained from the discussion and vote. The motion carried.

The ninth item on the agenda was to review and consider the Federal Emergency Management Agency Texas Safe Shelter Initiative. City Manager Andres Garza, Jr. stated that the City Council Public Safety Committee met on Monday, February 28, 2011 and heard a presentation by Emergency Management Coordinator Jim Cooper regarding the Federal Emergency Management Agency (FEMA), Texas Safe Shelter Initiative. City Manger Garza added the meeting was to review the program and action was not required by the City Council. No Action was taken.

The tenth item on the agenda was to review and consider a recommendation by the City Council Finance Committee for City Council acceptance of the Wharton County Freedom Fest, Inc.'s donations of the stage owned by the organization. City Manager Andres Garza, Jr. presented a letter from Wharton County Freedom Fest Chairman David Copeland informing the City that the organization wished to donate the stage to the City of Wharton. City Manager Garza stated that the Finance Committee Members met on Wednesday, February 23, 2011 and discussed the letter dated February 10, 2011 from the WCFF and voted to recommend the City Council consider accepting the donation of the stage. After some discussion, Councilmember Don Mueller moved to approve the acceptance of the donation of the stage from the Wharton County Freedom Fest. Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider a resolution of the Wharton City Council authorizing the increase in funding for the City of Wharton's participation in the FM 102 Relocation and Overpass Project. City Manager Andres Garza, Jr. stated that the City of Wharton was moving forward with the FM 102 Relocation and Overpass Project. He added the Consultant Selection Committee reviewed the Statements of Qualifications received by engineering firms submitted on February 15, 2010 for the City's Request for Qualifications for the FM 102 Relocation and Overpass project. City Manger Garza presented a copy cost analysis for the project. He stated the new total project cost was \$9,227,810, of which \$4.75 million was funded by the Federal/State participation leaving the balance of \$4.76 million. City Manager Garza added that this total included an additional \$300,000 for relocation costs. He stated that these costs were associated with the acquisition of the right of way if the original route was kept. City Manager Garza added that the Wharton Economic Development Corporation had committed only \$600,000 toward the project from the \$1.2 million requested by the City, leaving the balance to be funded by the City at \$3.876 million. He added that the City Council had originally allocated \$3.0 million for the project and if no additional outside funding were received then that amount would need to be increased by \$876,000. City Manger Garza also presented a copy of the schedule provided by Coastal Securities for issuing Certificates of Obligation for the project. City Manager Garza stated the City Council Finance Committee met on Wednesday, February 23, 2011 and discussed the FM 102 Relocation and Overpass Project Budget. He also presented the project budget information to the City Council Public Works Committee on February 21, 2011. City Manager Garza stated that two Committees voted to recommend the City Council consider approving the increase for City of Wharton's contribution toward the project from the \$3 million to \$3,876,900. After some discussion, Councilmember

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Don Mueller moved to approve the City of Wharton Resolution No. 2011-09, which reads as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-09**

A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING THE INCREASE IN FUNDING FOR THE CITY OF WHARTON'S PARTICIPATION IN THE FM 102 RELOCATION AND OVERPASS PROJECT.

WHEREAS, the Wharton City Council wishes to make improvements to the City's transportation system in accordance with the priorities listed in the City of Wharton Resolution No. 2009-60 approving the City of Wharton Transportation Plan; and

WHEREAS, the Wharton City Council approved Resolution No. 2010-49 approving said project and to contribute \$3,000,000 toward the project; and

WHEREAS, the Wharton City Council wishes to increase its contribution toward the project to \$3,876,900.

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

Section I. The Wharton City Council hereby approves the City of Wharton to move forward with the FM 102 Relocation and Overpass Project.

Section II. The Wharton City Council hereby authorizes the City of Wharton's contribution toward the project to be \$3,876,900.

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

Passed, Approved, and Adopted this 28th day of February 2011.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider City of Wharton Highway 60 Drainage Project. City Manager Andres Garza, Jr. stated that during the regular June 28, 2010 Wharton City Council meeting, the City Council approved Resolution No. 2010-35 approving a professional engineering services contract with Jones & Carter, Inc. to design the Highway 60 Drainage Project. City Manager Garza added the purpose of the project was to re-route water run-off from Mahan and Kincaid Streets, south on Highway 60 on the east side and place two concrete pipe culverts under Highway 60 to the Santa Fe Drainage Outfall Channel. City Manager Garza added the plans have been submitted to the Texas Department of Transportation (TxDOT) for review and stated that TxDOT had approved the plans. City Manager Garza stated the City Staff was requesting authorization from the City Council to solicit bids for the placement of the culverts under Highway 60. City Manger Garza recommended that the City Council authorize the City Staff to move forward with the project. After some discussion, Councilmember Don Mueller moved to approve the City Staff to solicit bids for the placement of culverts under Highway 60. Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The thirteen item on the agenda was Executive Session: City Council may adjourn into an Executive Session in accordance with Sections 551.072 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:** Acquisition of real estate for the FM 102 Relocation and Overpass Project.
- B. **Discussion:** Acquisition of real estate for the City of Wharton Highway 60 Drainage Project.

Mayor Domingo Montalvo, Jr. adjourned the meeting into Executive Session at 7:34 p.m. Mayor Domingo Montalvo, Jr. returned the meeting to Open Session at 7:48 p.m.

The fourteenth item on the agenda was to Return to Open Session:

- A. **Discussion:** Acquisition of real estate for the FM 102 Relocation and Overpass Project.

Mayor Domingo Montalvo, Jr. stated that no action would be taken.

- B. **Discussion:** Acquisition of real estate for the City of Wharton Highway 60 Drainage Project.

After some discussion, Councilmember Terry David Lynch moved to approve the acquisition of real estate for the City of Wharton Highway 60 Drainage Project. Councilmember Don Mueller seconded the motion. All voted in favor.

The fifteen item on the agenda was to review and consider City of Wharton Emergency Generator Quick Connects for Certain City Facilities – Electrical Automation Controls – Change Order No. 1. Mr. Carlos Cotton, P.E. with Jones & Carter, Inc. presented a copy of the email dated February 22, 2011 from Ms. Mariah Miller, Contract Coordinator from Jones & Carter, Inc. providing a copy of the Change Order No. 1 to the contract with Electrical Automation

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Controls, Inc. for the City's Emergency Generator Quick-Connect for Certain City Facilities Project. Mr. Cotton stated the change order was requested due to the installation of automated transfer switches (ATS) at the EMS Building and City Hall, which added seven (7) days to the contract Period of Performance. Mr. Cotton added the City received a grant to purchase two generators, one for EMS and the other for City Hall. Mr. Cotton stated the Change Order also increased the contract by \$6,400 to the original contract price which brought the total contract price to \$178,050. Mr. Cotton said the changes were bid as an additive alternate in the original bid. Mr. Cotton stated Building Official Ronnie Bollom also reviewed the Change Order and found the Change Order to be acceptable. Mr. Cotton also presented a copy of his memorandum dated February 22, 2011 providing his recommendation. After some discussion, Councilmember Jeff Gubbels moved to approve Change Order No. 1 increasing Electrical Automation Controls Inc. bringing contract amount to \$178,050 to install automated transfer switches (ATS) at the EMS Building and City Hall and to increase the period of performance by seven (7) days. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The sixteenth was to review and consider City of Wharton Construction of Alabama Water Well Rework Project – Layne Christensen Company – Pay Request No. 3. Mr. Carlos Cotton, P.E. with Jones & Carter, Inc presented a copy of the email dated February 22, 2011 from Mr. Tommy Vance, P.E. of Jones & Carter, Inc. providing the Pay Request No. 3 submitted by Layne Christiansen Company in the amount of \$15,660.00 for the Alabama Water Well Rework Project. Mr. Cotton stated the well was working properly and recommended the City Council approve payment. After some discussion, Councilmember Bryce D. Kocian moved to approve payment of City of Wharton Construction of Alabama Water Well Rework Project – Layne Christensen Company – Pay Request No. 3. in the amount of \$15,660.00. Councilmember Don Mueller seconded the motion. All voted in favor.

The seventeenth item on the agenda was to review and consider the City of Wharton City Council Boards, Commissions, and Committees. City Manager Andres Garza, Jr. presented the following to the City Council:

- A. Wharton Regional Airport Board.
- B. Beautification Commission.
- C. Building Standards Commission.
- D. Electrical Board.
- E. Holiday Light Decorating Chairman.
- F. Mayor's Committee on People with Disabilities.
- G. City Council Committees:
 - 1. Housing Committee.
 - 2. Public Health Committee.
 - 3. Telecommunications Committee.
 - 4. Wharton Economic Development Corporation Board of Directors Selection Committee.

After some discussion, no action was taken.

The eighteenth item on the agenda was to review and consider Status Report on City of Wharton Projects. City Manager Andres Garza, Jr. presented a copy of his memorandum dated February

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28, 2011 to the Mayor and Councilmembers providing them with an update on City of Wharton Projects and 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 is 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 February 1, 2011 the Public Works Committee met to discuss issues with the levee. The group reviewed the possible levee realignment that would tie in with Caney Creek just Southeast of Glen Flora. In addition, the committee reviewed those areas where buyouts and/or relocations may be needed. The discussion focused on whether to avoid the buyouts by building a floodwall or continue with the earthen levee and buyout property owners. The consensus was that it would be more feasible to continue with the earthen levee. Public Works staff has been collecting data for Half Associates to assist in the final design.

DRAINAGE:

1. Santa Fe Outfall Channel.

The Public Works Department has finished excavation up to Alabama Road. Staff will now focus on installing grade stabilization structures and installing other best management practices needed to control erosion. Excavation will continue weather permitting.

2. Highway 60 & Old Lane City Road Drainage Improvements

The construction plans have been approved by the TxDOT Yoakum District Office.

City Staff is currently preparing cost estimates on the project.

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

Jones & Carter, Inc. is working to finalize the hydrology and hydraulics for the projects.

WATER/SEWER IMPROVEMENTS:

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

This project is 99% complete. Jones & Carter, Inc., AR Turnkey and City Staff conducted a final walk through and developed a punch list. One minor item remains to be completed on the punch list.

2. Water Storage Tank Maintenance Program.

City Staff met the week of December 20th to continue discussions and attempt to finalize plans for maintaining the water storage tanks. Staff continues to research different options.

3. Alabama Water Well Rework

Both Well No. 1 and No. 3 have been brought back on-line. A final walk through was completed January 25th at 9:00 a.m. This project is now complete. Currently both wells are functioning properly.

4. Quick Connect/Transfer Switch Project

Quick connects and transfer switches are 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 is approximately 70% complete.

5. Pressure Switches at City Water Plants

Public Works Staff has discovered a problem with the pressure control switches. The switches are very sensitive to temperature change, which creates false readings. The switches will require a controlled environment to function properly. Staff is working with Jones and Carter to resolve the issue. Staff is in the process of ordering heaters that will control the temperature inside the control boxes and should solve the problem.

6. Energy Efficiency Audit

City Staff is waiting for the final report from Siemens Industry, Inc.

STREET IMPROVEMENTS

1. FM 102 Relocation and Overpass Project

The Consultant Selection committee met on February 21, 2011 to discuss the criteria for selection. The group will be reviewing all proposals the week of February 21, 2011 and provide a short-list of five (5) candidates.

2. 2010 Street Improvement Program

This project is complete.

3. 2011-2012 Street Improvement Program

Public Works Staff is currently identifying and preparing cost estimates for possible street improvements during the next fiscal year.

4. Wharton Sidewalk Accessibility and Historic Streetscape Project

The State is currently finalizing the contract. Additionally, it has become a requirement of the State that governmental entities who wish to let their own construction projects that those entities must attend the

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States, Local Government Procedures Program (LGPP). Several City Staff members are scheduled to take the training on March 8 – 9, 2011, which will be held in Houston, TX.

OTHER PROJECTS

1. Fire Station Expansion Project

Public Works Staff completed the construction of the earthen pad required for the new building foundation on February 22, 2011. A soil testing lab was on-site and verified that all compaction and moisture requirements were met. Public Works is now in the process of providing a sewer tap and water tap for the new building.

Facilities Maintenance Director Bob Baker is the project manager and will be soliciting the necessary quotes and bids to move the project forward. The building has been ordered. After some discussion, no action was taken.

The nineteenth item on the agenda was to review and consider City Council, Committee, Commissions, and Board Reports. City Manager Andres Garza, Jr. presented the following City Council Committee, Commission and Board reports to the City Council:

- A. Consultant Selection Committee meeting held February 21, 2011.
- B. Public Works Committee meeting held February 21, 2011.
- C. Wharton Economic Development Corporation meeting held February 21, 2011.
- D. Planning Commission meeting held February 21, 2011.
- E. Finance Committee meeting held February 23, 2011.
- F. Public Safety Committee meeting held February 28, 2011.

After some discussion, no action was taken.

The twentieth item on the agenda was adjournment. After some discussion, Mayor Domingo Montalvo, Jr. moved to adjourn. Councilmember Don Mueller seconded the motion. All voted in favor.

The meeting adjourned at 7:53 p.m.

CITY OF WHARTON, TEXAS

By: _____
Domingo Montalvo, Jr
Mayor

ATTEST:

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Paula Favors
City Secretary