

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
MARCH 8, 2010**

Mayor David W. Samuelson declared a Regular Meeting duly open for the transaction of business at 7:02 P.M. Councilmember Don Mueller led the opening devotion and then Mayor David W. Samuelson led the pledge of allegiance.

Councilmembers present were: Mayor David W. Samuelson, Councilmembers V. L. Wiley, Jr., Lewis Fortenberry, Jr., Terry David Lynch, Don Mueller, Domingo Montalvo, Jr., and Jeff Gubbels.

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Olmeda, Assistant to City Manager Jackie Jansky, EMS Director John Kowalik, Building Official Ronnie Bollom, and City Attorney Paul Webb.

Visitors present were: Barry Halvorson- Wharton Journal Spectator, David Schroeder- Wharton Economic Development Corporation, Carlos Cotton – Jones & Carter, Inc., Tracy Broadway with KIOX, I.O. Coleman, Jr., Michael West, Billie Jones, Larry Guerrero, Ray Williamson, and David Copeland.

The second item on the agenda was Roll Call and Excused Absences. All members were present. No action was taken.

The third item on the agenda was Public Comments. David Schroeder addressed the City Council and requested the City Council consider the tax abatement policy in regards to capital improvements to old buildings. He stated that the existing businesses should be eligible to receive abatement for their renovations. He said that Wharton Economic Development Corporation would continue to do everything to bring more capital into the City of Wharton. No action was taken.

The fourth item on the agenda was Wharton Moment. No comments were given. No action was taken.

The fifth item on the agenda was to review and consider the reading of the minutes from the regular meetings held February 8, 2010 and February 22, 2010. After some discussion, Councilmember Don Mueller made a motion to approve the minutes from the regular meetings held February 8, 2010 and February 22, 2010 as presented. Councilmember Terry David Lynch seconded the motion. All voted in favor.

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The sixth item on the agenda was the public hearing to receive public input regarding the proposed ordinance providing for the regulation of smoking in public places in the City of Wharton, Texas, by amending the City of Wharton Code of Ordinances, Chapter 34 Health and Sanitation by adding Article V Smoking; Providing for fines and penalties; Providing for a severability clause; Providing for an effective date; and Providing for a Repealer Clause. City Manager Andres Garza, Jr. stated that during the regular February 22, 2010 Wharton City Council meeting, the City Council requested that a Public Hearing be held in an effort to obtain public input regarding the proposed smoking ordinance for the City of Wharton. He then presented a copy of the Notice of Public Hearing that was published in the Wharton Journal Spectator and posted on the City's website.

Mayor David W. Samuelson opened the Public Hearing at 7:10 p.m.

Mr. Larry Guerrero addressed the City Council and stated that he was a business owner of Larry's Texas Café. He stated that recommendations for improving the air quality, such as installing humidifiers to reduce smoke in facilities should be addressed by the City Council. He stated that government should not impose additional regulations on businesses.

Mr. Ray Williamson addressed the City Council and stated that he was in opposition of the smoking ordinance. He said that he did not know why the ordinance was proposed, if for health reasons or for imposing regulations on merchants. He stated that in his place of business, there was a pool table and game room where his customers enjoyed smoking. He said that the business owners should decide if they would allow smoking or not. He stated that a sign stating smoking allowed would suffice and customers could decide if they wanted to come into a smoking facility.

Mr. David Copeland addressed the City Council and stated that the ordinance was not needed. He said that it would only be another ordinance to be included in the book of ordinances that needed to be enforced.

Mayor David W. Samuelson closed the Public Hearing at 7:18 p.m.

The seventh item on the agenda was to review and consider an ordinance providing for the regulation of smoking in public places in the City of Wharton, Texas, by amending the City of Wharton Code of Ordinances, Chapter 34 Health and Sanitation by adding Article V Smoking; Providing for fines and penalties; Providing for a severability clause; Providing for an effective date; and Providing for a Repealer Clause. City Manager Andres Garza, Jr. presented a draft copy of the proposed smoking ordinance to be considered by the Wharton City Council. He said that during the regular February 22, 2010 Wharton City Council meeting, City Attorney Paul Webb requested that any Councilmembers who had comments regarding the ordinance should submit them to him. He then presented a copy the comments received by Mr. Webb.

Mayor David W. Samuelson stated that the ordinance was proposed by himself and persons in the community to address a health issue. He stated that fifty cities in Texas adopted a smoking ordinance, which was self enforced. He stated that the festivals in the City would not be affected by the ordinance unless people were seated in permanent bleachers. He also said that walking in the town smoking was allowed; however, standing 25' from doorways was not allowed.

Councilmember Lewis Fortenberry, Jr. stated that entrances to businesses were less than 20' from the sidewalk and persons on the sidewalks would violate the ordinance. Councilmember Terry David Lynch stated that the ordinance was taking away choice. Councilmember Domingo Montalvo, Jr. stated that there are toxics everywhere. He said that there could be cooperation from the public without adoption of the ordinance. Councilmember Jeff Gubbels stated that the ordinance was for public health issues. Councilmember V. L. Wiley, Jr. said that the City should not infringe the rights of the people. After some discussion, Councilmember Jeff Gubbels made a motion to refer the ordinance back to the City Council Public Health Committee. Councilmember Don Mueller seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider the request by Mr. Bart Worthing, Owner of Gulf Coast Surplus, Inc. to terminate the agreement between the City of Wharton and Gulf Coast Surplus, Inc. for the property located at 800 South East Avenue, Wharton, Texas. City Manager Andres Garza, Jr. presented a copy of the letter dated March 1, 2010 submitted by Mr. Bart Worthing, Owner of Gulf Coast Surplus, Inc. providing the ninety (90) day notice to terminate the lease agreement between the City of Wharton and Gulf Coast Surplus, Inc. for the property located at 800 South East Avenue, Wharton, Texas. Councilmember Domingo Montalvo, Jr. asked if hazardous chemicals were stored at the location. City Manager Andres Garza, Jr. stated that an inspection would be conducted before releasing Mr. Worthing from his contract obligations. After some discussion, Councilmember Don Mueller made a motion to approve the request by Mr. Bart Worthing, Owner of Gulf Coast Surplus, Inc. to terminate the agreement between the City of Wharton and Gulf Coast Surplus, Inc. for the property located at 800 South East Avenue, Wharton, Texas. Councilmember Terry David Lynch 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 of the City of Wharton, Texas, establishing guidelines and criteria for granting tax abatement in a reinvestment zone created in the City of Wharton, Texas. City Manager Andres Garza, Jr. stated that the tax abatement policies should be adopted by the City Council every two years. He said that the most recent policy that was approved by the City Council expired on January 28, 2010; however, during the January 15, 2010 Finance Committee meeting, the Finance Committee took no action on the policy and instructed the City Staff to draft a policy that included tax abatement incentives for "established businesses." He said that during the March 3, 2010 City Council Finance Committee meeting, the Finance Committee voted to recommend the City Council consider approving the attached Tax Abatement Policy, Guidelines and Criteria for the City of Wharton. Councilmember Jeff Gubbels asked if the tax abatement would be tied to job creation. Mr. Garza stated that the jobs were important and were addressed in the factors for determining whether tax abatement would be granted. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve Resolution No. 2010-08, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2010 - 08**

A RESOLUTION OF THE WHARTON CITY COUNCIL OF THE CITY OF WHARTON, TEXAS, ESTABLISHING GUIDELINES AND CRITERIA FOR

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**GRANTING TAX ABATEMENT IN A REINVESTMENT ZONE CREATED IN
THE CITY OF WHARTON, TEXAS.**

WHEREAS, Texas law requires an eligible taxing jurisdiction to establish Guidelines and Criteria as to eligibility for tax abatement agreements; and

WHEREAS, heretofore previously, the City Council of the City of Wharton did provide certain rules, regulations, and procedures for tax abatement within the City of Wharton; and

WHEREAS, such adopted guidelines and criteria for granting tax abatement must be re-adopted or adopted, if modified, every two years in order for the City of Wharton to be able to grant tax abatements; and

WHEREAS, over two years have transpired since the adoption or re-adoption of such guidelines and criteria; and

WHEREAS, the City Council of the City of Wharton now finds and determines that it is in the best interest of the economic development of the City of Wharton that certain tax abatement guidelines and criteria now be adopted.

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

Section I: The Guidelines and Criteria for Granting Tax Abatements as herein contained and titled on Attachment "A" hereby adopted.

Section II: The effective date of these Guidelines and Criteria for Granting Tax Abatements shall be March 8, 2010.

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

Passed, Approved and Adopted this 8th day of March 2010.

CITY OF WHARTON, TEXAS

By: _____
DAVID W. SAMUELSON, Mayor

Attest:

LISA OLMEDA, City Secretary

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

The tenth item on the agenda was to review and consider the request by Ms. Jackie Previto, of Texas Mid-Gulf Cablevision for City Council approval to waive the requirement set forth in the City of Wharton Code of Ordinances, Chapter 34, Health and Sanitation, Sec. 34-4. Same-- Connections required. City Manager Andres Garza, Jr. stated that Texas Mid-Gulf Cablevision

(TGMC) had been experiencing problems with its existing on-site sewer system and was in need of repairs and/or replacement. He said that Ms. Jackie Previto, TGMC Area Manager had met with Public Works Director Carter Miska and himself in an effort to find a viable solution to improve the sewer system; however, it was determined that from a cost standpoint, it would be more feasible for the company to remain on a separate, private system than to connect to the City's system. He said that in accordance with the City of Wharton's Code of Ordinances, Chapter 34 Health and Sanitation, Sec 34-4. Same—Connections required, any residence, hotel, business, any house or business that was situated within 300 feet of a public sanitary sewer line or main in and under any public way or easement within the City shall connect any sewage or wastewater disposal to the sewer line or main belonging to the City. He then presented a copy of the letter dated March 3, 2010 from Ms. Previto, requesting City Council approval to waive the requirement set forth in the ordinance. He also presented a copy of a Diagram #1 indicating the location of the TMGC facility and the City's sewer system. He said that the TMGC building was located within 200 feet of the City's sewer line at a diagonal approach. He said that in Diagram #2, the existing sewer line would be approximately 407 feet from the sewer line in order to make a connection and there was not enough elevation difference to install a gravity line. He stated that Texas Mid-Gulf Cablevision would have to apply for a permit through TCEQ if repairing or replacing the private system. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Ms. Jackie Previto, of Texas Mid-Gulf Cablevision for City Council approval to waive the requirement set forth in the City of Wharton Code of Ordinances, Chapter 34, Health and Sanitation, Sec. 34-4. Same--Connections required. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider the Ambulance Provider Permits:

A. Request by R & W Medical Transport for City Council approval of a City of Wharton Ambulance Provider Permit.

City Manager Andres Garza, Jr. presented a copy of the Application for an Ambulance Provider Permit submitted by R & W Medical Transport. He also presented a copy of the memorandum dated March 3, 2010 from EMS Director John Kowalik and a copy of the letter dated March 2, 2010 from City Attorney Paul Webb indicating that they did not have any objections to the permit being issued. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the Application for an Ambulance Provider Permit submitted by R & W Medical Transport dba Paramed EMS. Councilmember Terry David Lynch seconded the motion. All voted in favor.

B. Request by Blue Cross EMS for City Council approval of a City of Wharton Ambulance Provider Permit.

City Manager Andres Garza, Jr. presented a copy of the Application for an Ambulance Provider Permit submitted by Blue Cross EMS. He also presented a copy of the memorandum dated March 3, 2010 from EMS Director John Kowalik indicating that he did not have any objections to the permit being issued. Councilmember Terry David Lynch asked if Blue Cross EMS was operating without a permit. City Secretary Lisa Olmeda stated that a letter was sent in October 2009 advising Blue Cross EMS to renew its permit. She said that the application must be submitted 60 days prior to expiration date of December 31, 2009. She stated that the application was faxed in January 2010 to Blue Cross EMS and she received it back from them on February 11, 2010 with the non-refundable \$500 application fee. EMS Director John Kowalik stated that

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on March 2, 2010, he was notified by Wharton Police Officer regarding the operations of Blue Cross EMS and advised them that they did not have a valid permit. After some discussion, Councilmember Terry David Lynch made a motion to deny the Application for an Ambulance Provider Permit submitted by Blue Cross EMS. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider the City Council Committees, Boards and Commission's Reports:

- A. Wharton Economic Development Corporation meeting held February 22, 2010.
 - B. City Council Finance Committee meeting held March 3, 2010.
- City Manager Andres Garza, Jr. presented the reports to the City Council. No action was taken.

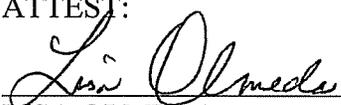
The thirteenth item on the agenda was adjournment. After some discussion, Councilmember Don Mueller made a motion to adjourn. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The meeting adjourned at 8:09 p.m.

CITY OF WHARTON, TEXAS

By: 
DAVID W. SAMUELSON
Mayor

ATTEST:


LISA OLMEDA
City Secretary

