

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
September 12, 2011**

Mayor Pro-Tem Don Mueller declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Mayor Pro-Tem Don Mueller led the opening devotion and led the pledge of allegiance.

Councilmember's present were: Mayor Pro-Tem Don Mueller, Councilmembers Al Bryant, Jeff Gubbels, Terry David Lynch, Russell Machann, and Karen Schulz.

Councilmember absent was: Mayor Domingo Montalvo, Jr.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joan Anandel, City Secretary Paula Favors, Assistant to City Manager Jackie Jansky, Public Works Director Carter Miska, P.E., EMS Director John Kowalik, Fire Chief Anthony Abbott and Assistant City Attorney Amy Rod.

Visitors present were: David Schroeder with Wharton Economic Development Corporation, David Copeland, Jim Cockrell, Lewis Fortenberry, Jr., Amy Brandt, Jim Dunham, P.E., with Dunham Engineering, Russell Hill with KULP, Kenneth Saulua, Bill Copeland, Rachel Rust, Paul Sherland, I.O. Colman, Jr., Sherman Miller, Anthony Abbott, Larry Hollingsworth, Drew Clayton, Micheal Furrh, Johnny Cano, Jimi S. Copeland, Jeremy Copeland, Paul Muldordt, Brad Konvicka, Arthur Araguz, Jesus Gutierrez, David Mata, Elston Eckhart, P.E., and Kathy Gately, P.E., with United States Corp of Engineers, Dan Yates with Lower Colorado River Authority, Andrew Ickert, P.E., with Halff Associates and Bradley C. Loehr P.E., with BEFCO Engineering.

The second item on the agenda was Roll Call and Excuses Absences. Councilmember Terry David Lynch moved to excuse Mayor Domingo Montalvo, Jr. Councilmember Russell Machann seconded the motion. All voted in favor.

The third item on the agenda was Public Comments. Mr. David Copeland addressed the City Council with his concerns regarding the proposed ordinance amending the City of Wharton Code of Ordinances, Chapter 30 Fire Prevention and Protection that included the creation of a full time Fire Chief. Mr. Copeland stated the proposed ordinance was not the best thing to do at the current time. Mr. Copeland further stated that historically, having a full time Fire Chief over

City of Wharton
Regular City Council Meeting
September 12, 2011

Volunteer Firefighters would not work. Mr. David Mata addressed the City Council with his concerns regarding the proposed ordinance. Mr. Mata stated that he believed the volunteer firefighters should be able to chose who led them and that it should continue to be a democracy.

The fourth item on the agenda was the Wharton Moment. There were none.

The fifth item on the agenda item was to review and consider the reading of the minutes from the regular meetings held August 8, 2011 and August 22, 2011 and the special meeting held August 9, 2011. After some discussion, Councilmember Al Bryant moved to approve the minutes from August 8, 2011 and August 22, 2011 and the special meeting held August 9, 2011. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The sixth item on the agenda was a public hearing on the proposed budget for the City of Wharton, Texas, fiscal year October 1, 2011 to September 30, 2012. Mayor Pro-Tem Don Mueller opened the Public Hearing at 7:12 p.m. No comments were made. Mayor Pro-Tem Mueller closed the Public Hearing at 7:13 p.m.

The seventh item on the agenda was to review and consider action on changes to the proposed budget for the City of Wharton, Texas, fiscal year October 1, 2011 to September 30, 2012. City Manager Andres Garza, Jr. stated that during the August 22, 2010 regular City Council meeting the City Council received under separate cover a copy of the proposed budget for the City of Wharton, Texas, fiscal year October 1, 2011 to September 30, 2012. City Manager Garza stated this item would allow the City Council to direct the City Staff on any changes to the proposed budget prior to its formal adoption, which was scheduled for September 26, 2011. After some discussion, no action was taken.

The eighth item on the agenda was to review and consider a presentation by the United States Army Corp of Engineers (USACE) and Halff Associates regarding the Lower Colorado River Basin Phase I, Texas, City of Wharton Flood Reduction Project. Mr. Andrew Ickert, P.E., with Halff Associates presented the City Council with an update on the City of Wharton Flood Reduction Project. Mr. Ickert stated the proposed project started ten years ago and would help aid in flood reduction. Mr. Ickert provided an overview of the background and project details regarding the feasibility study that was conducted. He said that funding was allocated by Congress to conduct the pre-construction, engineering and design of the project for phase I, which included the levee design along the Colorado River and FM 102 or "Segments" 1-4. He also stated that since Hurricane Katrina, the Federal Emergency Management Administration (FEMA) revised its freeboard requirements concerning levees and that the levee would need to be constructed three feet above Base Flood Elevation (BFE). Mr. Ickert stated that the plans for the project were 35% complete and have been submitted for review and comment by the appropriate agencies. He further stated that decisions needed to be made concerning the alignment of the levee at the landfill and along FM 102. He said that since the tie in at FM 102 was not feasible due to FEMA's freeboard requirements, Halff proposed to take the levee along FM 102 (realignment) and tie in at Caney Creek or to align the levee closer to the Colorado River (optional alignment) in an effort to place the levee behind homes along FM 102. He said the City Staff was assisting with obtaining the necessary Right of Entry (ROE) agreement necessary for the project and to complete the geo-technical analysis, finalize hydraulics,

complete the plans to 65% and then submit the Conditional Letter of Map Revisions (CLOMR) to FEMA. After some discussion, no action was taken.

The ninth item on the agenda was to review and consider a resolution of the Wharton City Council approving the Third Amended and Restated Interlocal Agreement between the Lower Colorado River Authority and the City of Wharton, Texas, for the Pre-construction, Engineering and Design for the Wharton Flood Reduction Project and 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 24, 2011 from Mr. Timothy R. Tynes, US Army Corp of Engineers (USACE), Chief, Budget and Manpower Management Branch, to Ms. Karen Bondy, P.E. Manager, River Services of the Lower Colorado River Authority (LCRA) regarding the agreement with LCRA for the Lower Colorado River, Phase I, Texas, City of Wharton Flood Reduction Project. City Manager Garza stated the City of Wharton funding requirement was \$85,000 in accordance with the 3rd amendment to the original agreement and that amount had been approved by the City Council to be funded through the 2011 Bond Program; therefore, the funds were available. City Manager Garza further stated he contacted Mr. Elston Eckhardt, P.E. of the USACE to inquire if the increase in the contract was due to the additional design for the levee extension along FM 102. City Manager Garza presented a copy of Mr. Eckhardt's his email dated March 28, 2011 that indicated the increase was due to the additional design for the extension of the levee parallel to FM 102, supplemental environmental assessments, review of design submittals, etc. City Manager Garza advised the City Council that on May 2, 2011, the City Council Public Works Committee reviewed the proposed Amendment No. 3 to the agreement and voted to recommend the City Council consider the contract amendment and that the City's portion be \$85,000. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Resolution No 2011-65, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-65**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THIRD AMENDMENT AND RESTATED INTERLOCAL AGREEMENT BETWEEN THE LOWER COLORADO RIVER AUTHORITY AND THE CITY OF WHARTON FOR THE PRE-CONSTRUCTION, ENGINEERING AND DESIGN PHASE FOR THE WHARTON FLOOD REDUCTION PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID AGREEMENT.

WHEREAS, On August 27, 2007, the Wharton City Council approved the agreement between the City of Wharton and the Lower Colorado River Authority for the Preconstruction, Engineering and Design Phase for the Wharton Flood Reduction Project; and

WHEREAS, the Wharton City Council and the Lower Colorado River Authority wishes to amend by modifying the total cost of the City of Wharton component from \$267,000 to \$1,638,000, and accounts for \$85,000 of payments made by the City of Wharton under the original amount; and

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

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

Section I. That the Wharton City Council hereby approves the Third Amendment to the agreement between the City of Wharton and the Lower Colorado River Authority for the Preconstruction, Engineering and Design Phase for the Wharton Flood Reduction Project.

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

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

Passed, Approved, and Adopted this 12th day of September 2011.

CITY OF WHARTON, TEXAS

By: _____
DON MUELLER
Mayor Pro-Tem

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Karen Schultz seconded the motion. All voted favor.

The tenth item on the agenda was to review and consider a request by Mr. Ron Sanders, Executive Director of the Chamber of Commerce for the following:

- A. Approval of the Third Annual Wine and Arts Fair to be held Saturday, October 8, 2011 from 3:00 p.m. to 10:00 p.m.
- B. Approval to close Houston Street, from Milam to Burleson Streets, from 12:00 Noon to 10:00 p.m.
- C. Allow "open containers" for the wine on City property on the exterior sides of Monterey Square and approximately one adjoining block to include all participating businesses.

City Manager Andres Garza, Jr. presented a copy of the letter dated August 24, 2011 from Mr. Ron Sanders, Executive Director of the Wharton Chamber of Commerce requesting City Council approval of the afore-mentioned items. Mr. Ron Sanders stated the Third Annual Wine and Arts Fair would be the same as in previous years. After some discussion, Councilmember Terry

City of Wharton
Regular City Council Meeting
September 12, 2011

David Lynch moved to approve the afore-mentioned items A, B, and C. Councilmember Karen Schulz seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider the City of Wharton Ground Storage Tank Rehabilitation Project:

- A. Bid Tabulation.
- B. **Resolution:** A resolution awarding the bid for the City of Wharton Ground Storage Tank Rehabilitation Project and authorizing the Mayor of the City of Wharton to execute the agreement.

City Manager Andres Garza, Jr. stated that on September 1, 2011, the bid opening was held for the City of Wharton Ground Water Storage Tank Rehabilitation Project. City Manager Garza presented a copy of the bid tabulation and a copy of the letter dated September 1, 2011 from Mr. Jimmy D. Dunham, P.E. of Dunham Engineering providing his recommendation for City Council consideration. Mr. Dunham addressed the City Council and stated that M. K. Painting, Inc. was the lowest and best qualified bidder. Mr. Dunham stated that the City received seventeen bids for the project with M. K. Painting, Inc. bidding the lowest at \$284,000 for the base bid and the required additive bid No. 1 in the amount of \$3,000. After some discussion, Councilmember Jeff Gubbels moved to approve City of Wharton Resolution No. 2011-66, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-66**

A RESOLUTION AWARDING A CONTRACT FOR THE CITY OF WHARTON GROUND WATER STORAGE TANK REHABILITATION PREJECT TO M. K. PAINTING, INC.; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.

WHEREAS, competitive sealed bids were received September 1, 2011 for the City of Wharton Ground Water Storage Tank Rehabilitation Project; and

WHEREAS, M. K. Painting, Inc. was deemed the best lowest qualified bidder in the amount of \$284,000.00; and

WHEREAS, the Wharton City Council wishes to award a contract to M. K. Painting, Inc. for the City of Wharton Elevated Water Storage Tank Rehabilitation Project in the amount of \$284,000.00; and

WHEREAS, the City of Wharton and M. K. Painting, Inc. wish to be bound by the conditions as set forth in the agreement.

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 as follows:

Section I. The Wharton City Council hereby authorizes the Mayor of the City of Wharton, Texas, to execute a contract for the City of Wharton Ground Water Storage Tank Rehabilitation Project to M. K. Painting, Inc. in the amount of \$284,000.00.

Section II. The City of Wharton and M. K. Painting, Inc. 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 12th day of September 2011.

CITY OF WHARTON, TEXAS

By: _____
DON MUELLER
Mayor Pro-Tem

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Karen Schulz seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider the City of Wharton Emergency Generators Quick Connects for Certain City Facilities Project - Electrical Automation Controls – Fifth and Final Pay Request. City Manager Andres Garza, Jr. presented the Fifth and Final Pay Request in the amount of \$11,553.85 submitted by Electrical Automation Controls (EAC) for the City of Wharton Emergency Generator Quick Connects for Certain City Facilities. After some discussion, Councilmember Terry David Lynch moved to approve the City of Wharton Emergency Generators Quick Connects for Certain City Facilities Project - Electrical Automation Controls – Fifth and Final Pay Request. Councilmember Al Bryant seconded the motion. All voted in favor.

The thirteenth item on the agenda was a resolution of the Wharton City Council approving a professional engineering services agreement between the City of Wharton and BEFCO Engineering, Inc. for the City of Wharton Sidewalk Accessibility and Historic Streetscape Project and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. stated that during the June 27, 2011 regular Wharton City Council meeting, the City Council accepted the final ranking of the engineering firms that were as follows:

BEFCO	479	95.8
Jones & Carter, Inc.	471	94.2

CivilCorp	465	93
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City Manager Garza further stated that since that time, the City Staff had been working with BEFCO Engineering representatives to develop the professional engineering services agreement and on September 7, 2011, the Consultant Selection Committee for this project met and voted to recommend the City Council consider approving the professional engineering services agreement with BEFCO Engineering. City Manager Garza stated the contract amount would be for \$65,000 engineering fees and \$15,000 environmental assessment fees for a total contract price of \$80,000. After some discussion, Councilmember Terry David Lynch moved to approve City of Wharton Resolution No. 2011-67 ,which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-67**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A PROFESSIONAL ENGINEERING SERVICES AGREEMENT BETWEEN THE CITY OF WHARTON AND BEFCO ENGINEERING, INC. FOR THE CITY OF WHARTON SIDEWALK ACCESSIBILITY AND HISTORIC STREETScape PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, On April 19, 2011 the City of Wharton received proposals for the City of Wharton Sidewalk Accessibility and Historic Streetscape Project being conducted under the Texas Department of Transportation Advance Funding Agreement for a Transportation Enhancement (TE) Project; and

WHEREAS, the City of Wharton Consultant Selection Committee ranked the proposals in accordance with State of Texas Procurement Process for Professional Services and negotiated a contract with BEFCO Engineering, Inc.; and

WHEREAS, the Wharton City Council wishes to approve a professional engineering services agreement between the City of Wharton and BEFCO Engineering, Inc.; and

WHEREAS, the City of Wharton and BEFCO Engineering, Inc. wishes to be bound the conditions outlined in the contract; 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 a professional engineering services agreement between the City of Wharton and BEFCO Engineering, Inc. for the City of Wharton Sidewalk Accessibility and Historic Streetscape Project being conducted under the

City of Wharton
Regular City Council Meeting
September 12, 2011

Texas Department of Transportation Advance Funding Agreement for a Transportation Enhancement (TE) Project.

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

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

Passed, Approved and Adopted this 12th day of September 2011.

CITY OF WHARTON, TEXAS

By: _____
DON MUELLER
Mayor Pro-Tem

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Al Bryant seconded the motion. All voted in favor.

The fourteenth item on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 18, Building and Construction, Article V. Electrical Code; providing that a violation of the ordinance or any part of the Code as adopted hereby shall constitute a penalty upon conviction of a fine; providing for severability and establishing an effective date. City Manager Andres Garza, Jr. stated that the City of Wharton Electrical Board met on September 7, 2011 and voted to recommend the City Council approve to amend the City of Wharton Code of Ordinances, Chapter 18, Building and Construction, Article V. Electrical Code to adopt the 2011 Edition of the National Electrical Code with its latest revisions. City Manager Garza presented a copy of the memorandum dated September 7, 2011 from Mr. Philip Hamlin, Chairman, providing the recommendation and a draft copy of the ordinance amendment. After some discussion, Councilmember Terry David Lynch moved to approve City of Wharton Ordinance No. 2011-13, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2011-13**

AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 18, BUILDING AND CONSTRUCTION, ARTICLE V. ELECTRICAL CODE; PROVIDING THAT A VIOLATION OF THE ORDINANCE OR ANY PART OF THE CODE AS ADOPTED HEREBY SHALL CONSTITUTE A PENALTY UPON CONVICTION OF A FINE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING

AN EFFECTIVE DATE.

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

WHEREAS, it is the desire of the City of Wharton to adopt, in all respects, the National Electrical Code, 2011 Edition with its latest revisions.

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

Sec. 18-137. Codes and Rules adopted.

- (a) The Administrative Rules of the Texas Department of Licensing and Regulation 16 Texas Administrative Code, Chapter 73 are here by adopted, except insofar as they may conflict with provisions of this article.
- (b) Effective September 23, 2011 at 12:01 a.m., the City of Wharton adopts the National Electric Code, 2011 Edition with its latest revisions except insofar as it does not conflict with amendments to the City of Wharton Code of Ordinances section 18-254 through section 18-261.
- (c) Any person violating any provision of these rules and regulations shall be subject to the penalties as provided in section 1-5 of this Code of Ordinances.

Severability

If any court of competent jurisdiction rules that any section, subsection, sentence, clause, phrase, or portion of this ordinance is invalid or unconstitutional, any such portion shall be deemed to be a separate, distinct, and independent provision, and any such ruling shall not affect the validity of the remaining portions hereof.

Fine and Penalty for Violations

Except as otherwise provided in this chapter, any person found guilty of intentionally, knowingly or recklessly violating any provision of this article and upon conviction thereof in the municipal court shall be fined in accordance with the terms of Section 1-5 of the Code of Ordinances of the City of Wharton, Texas.

Effective Date

This Ordinance shall become effective on the 23rd day of September 2011 at 12:01 a.m.

Passage and Approval

City of Wharton
Regular City Council Meeting
September 12, 2011

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on the 12th day of September 2011.

CITY OF WHARTON, TEXAS

By: _____
DON MUELLER
Mayor Pro-Tem

ATTEST:

PAULA FAVORS
City Secretary

APPROVED AS TO FORM:

PAUL WEBB
City Attorney

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

The fifteenth item on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 2 Administration, Article VI. Community Center; Division 2 Rental Policies; Section 2-212 Alcoholic Beverages and Section 2-213 Security Officer; providing for severability and establishing an effective date. Finance Director Joan Anandel stated that the City Council Finance Committee met on September 6, 2011 and voted to recommend the City Council consider approving an ordinance amending the City of Wharton Code of Ordinances, Chapter 2 Administration, Article VI. Community Center; Division 2 Rental Policies; Section 2-212 Alcoholic Beverages and Section 2-213 Security Officer. Mrs. Anandel further stated that the amendments were being sought in an effort to reduce the cost of security officers to the customer and to promote use of the Wharton Civic Center. After some discussion, Councilmember Terry David Lynch moved to approve with the amendment to the City of Wharton Code of Ordinances Chapter 2 Administration Article VI. Community Center with the correction of attendees up to 300, two officers were required, City of Wharton Ordinance No. 2011-14, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2011-14**

AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 2 ADMINISTRATION, ARTICLE VI. COMMUNITY CENTER; DIVISION 2 RENTAL POLICIES; SECTION 2-212 ALCOHOLIC BEVERAGES AND SECTION 2-213

SECURITY; PROVIDING FOR SEPARABILITY AND SETTING AN EFFECTIVE DATE.

BE IT ORDAINED by the City Council of the City of Wharton, Texas that Chapter 2 Administration, Article VI, Community Center; Division 2 Rental Policies; Section 2-212 Alcoholic Beverages and Section 2-213 Security be amended to read as follows:

Sec. 2-212. Alcoholic beverages.

- (a) An applicant holding a function at the civic center where alcoholic beverages will be served or consumed is required to have security officers present during the function. The security officers will be scheduled through the Wharton Police Department, and applicants will be responsible for assuming the cost for security. Payment for security shall be paid at least three days prior to the event at the Wharton Police Department. Failure to comply shall be just cause for the cancellation of the reservation. Applicants will employ the security officers for the last four (4) hours of the event and until the building is completely vacant and secure. There will be no alcohol consumption after 12:00 midnight.
- (b) Applicants agree to comply with all applicable state and local liquor laws.
- (c) Applicant shall not allow any person to exit the civic center with an open container of alcoholic beverages.
- (d) Violation of this provision shall constitute the applicant receiving a misdemeanor and upon conviction shall be fined in any sum not less than \$100.00 nor more than the maximum provided for each offense.

Sec. 2-213. Security officers.

Applicants will employ the security officers for the last four (4) hours of the event and until the building is completely vacant and secure as set forth in Items A and B listed below. Security officers shall have the responsibility or duty of: 1) enforcing federal, state and municipal/City [ordinances](#); 2) keeping the public peace; 3) pro-actively [patrolling](#) looking for and investigating violations of the [law](#), and 4) responding to incidents. Security officers shall be certified peace officers from a public law enforcement agency located in Wharton County.

The City requires security officers for civic center functions as follows:

- (A) Private parties, dances, etc. (that are invitation only):
 - (1) No alcohol served.
 - (a) Group of 100 or less, no security officers will not be required.
 - (b) Group of 101 or more, no zero security officers will be required.
 - (2) Alcohol served, security officers are required as follows:
 - (a) Group up to 300, requires two security officers.
 - (b) Group of 301 to 400, requires three security officer.
 - (c) Group of 401 and up, requires minimum of five security officers.
- (B) Events open to the general public or tickets sold to the general public, (regardless if alcohol is served or not), are as follows:
 - (1) Attendees up to 300, requires two security officers.
 - (2) Attendees 301 to 400, requires three security officer.
 - (3) Attendees 401 and up, requires minimum of five security officers.

City of Wharton
Regular City Council Meeting
September 12, 2011

(C) Public hearings, public meetings, town hall meetings called by governmental and quasi-governmental entities or public officials, with no serving of alcohol, no security officers will be required. If alcohol is served, minimum of two security officers will be required.

(D) Church, educational seminars, church-sponsored activities and civic and service clubs are exempt and require no security officers if no alcohol is served. If alcohol is served, minimum of two security officers will be required.

If the renter fails to document in the application that alcohol will be served or materially misstates the number of people attending, civic center personnel will: (1) contact the appropriate number of security officers to work the event (renter is responsible for payment additional security officers during the event), (2) cancel the event if security officers are not available or (3) the renter will remove the alcohol from the event. In all circumstances in which alcohol is found during or after the event and was not noted on the application, or applicant materially misstates the number of people and additional security officers are called, the security deposit will be forfeited.

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 immediately after its passage.

Passage and Approval

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on the 12th day September 2011.

CITY OF WHARTON, TEXAS

By: _____
DON MUELLER
Mayor Pro-Tem

ATTEST:

PAULA FAVORS

APPROVED AS TO FORM:

PAUL WEBB
City Attorney

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

The sixteenth item on the agenda was an ordinance amending the City of Wharton Code of Ordinances, Chapter 30 Fire Prevention and Protection; providing that a violation of the ordinance or any part of the Code as adopted hereby shall constitute a penalty upon conviction of a fine; providing for severability and establishing an effective date. City Manager Andres Garza, Jr. stated that the City Council Public Safety Committee had met several times with the latest meeting being held on September 6, 2011. Mr. Garza further stated that the Public Safety Committee voted to recommend the City Council consider approving the a draft ordinance amending the City of Wharton Code of Ordinances, Chapter 30, Fire Prevention and Protection. Mr. Garza stated the ordinance would allow for a paid fire chief position along with the fire marshal position and funding for the fire chief position was provided for in the 2011-2012 fiscal year budget. Councilmember Terry David Lynch stated that comments were made to the media on behalf of the City Council that he believed did not reflect the actual view of the full City Council in regards to the creation of the paid fire chief position. After some discussion, Councilmember Terry David Lynch moved to table the amendment to the City of Wharton, Code Of Ordinance, Chapter 30, Fire Prevention and Protection that created the paid Fire Chief position indefinitely. Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The seventeenth item on the agenda was a resolution of the Wharton City Council establishing fees in accordance with the City of Wharton Code of Ordinances, Chapter 30 Fire Prevention and Protection, Section 30-6 Fire and Rescue Service Fees. No action was taken.

The eighteenth 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:** Appointment of Fire Chief.
The City Council did not convene into Executive Session.
No action was taken.

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

A. **Review & Consider:** Appointment of Fire Chief.
No action was taken.

The twentieth item on the agenda was to review and consider a resolution of the Wharton City Council approving an interlocal agreement with the Texas Municipal League-Intergovernmental Risk Pool (TML-IRP) for Property & Casualty and Workers' Compensation Coverage for the City of Wharton and authorizing the Mayor of the City of Wharton to execute all documents related to said agreement. City Manager Andres Garza, Jr. presented a draft copy of the resolution approving the interlocal agreement with the Texas Municipal League-Intergovernmental Risk Pool (TML-IRP) for Property & Casualty and Workers' Compensation Coverage for the City of Wharton. Mr. Garza also presented a copy of the memorandum dated September 2, 2011 from the Finance Committee Members providing the recommendation for the City Council to approve the agreement with TML-IRP. After some discussion, Councilmember Jeff Gubbels moved to approve City of Wharton Resolution No. 2011-68, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-68**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN INTERLOCAL AGREEMENT WITH THE TEXAS MUNICIPAL LEAGUE-INTERGOVERNMENTAL RISK POOL (TML-IRP) FOR PROPERTY & CASUALTY AND WORKERS' COMPENSATION COVERAGE FOR THE CITY OF WHARTON; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.

WHEREAS, the City of Wharton received the renewal rate for property and casualty and workers' compensation coverage; and

WHEREAS, the Wharton City Council wishes to enter into an interlocal agreement with the Texas Municipal League-Intergovernmental Risk Pool (TML-IRP) for property & casualty and workers' compensation coverage for the City of Wharton; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents related to said 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 approves an interlocal agreement with the Texas Municipal League-Intergovernmental Risk Pool (TML-IRP) for Property & Casualty Coverage and Worker's Compensation Coverage for the City of Wharton for fiscal year October 1, 2011 to September 30, 2012.
- Section II. That the Mayor of the City of Wharton is hereby authorized to sign any documents relating to the aforementioned contracts.
- Section III. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 12th day of September 2011.

CITY OF WHARTON, TEXAS

By: _____
DON MUELLER
Mayor Pro-Tem

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Karen Schulz seconded the motion. All voted in favor.

The twenty-first item on the agenda was to review and consider a resolution of the Wharton City Council approving the agreement between the City of Wharton and the Texas Department of Transportation, Aviation Division, for the Routine Airport Maintenance Program, TxDOT Project No. AM 2012WHRTN; TxDOT CSJ No.: M213WHRTN for the Airport Maintenance at the Wharton Regional Airport and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. stated that the Wharton Regional Airport Board met on Tuesday, September 6, 2011 and voted to recommend the City Council consider approving the agreement between the City of Wharton and the Texas Department of Transportation, Aviation Division, for the Routine Airport Maintenance Program, TxDOT Project No. AM 2012WHRTN; TxDOT CSJ No.: M213WHRTN for the Airport Maintenance at the Wharton Regional Airport. Mr. Garza further stated that the funding under this agreement would be used for the AWOS maintenance at the airport and that it was the standard agreement that had been executed in the past. After some discussion, Councilmember Jeff Gubbels moved to approve City of Wharton Resolution No. 2011-69, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-69**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AGREEMENT BETWEEN THE CITY OF WHARTON AND THE TEXAS DEPARTMENT OF TRANSPORTATION AVIATION DIVISION, FOR THE ROUTINE AIRPORT MAINTENANCE PROGRAM, TXDOT PROJECT NO. AM 2012WHRTN; TXDOT CSJ NO. M213WHRTON FOR THE AIRPORT MAINTENANCE AT THE WHARTON REGIONAL AIRPORT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID CONTRACT.

WHEREAS, The Wharton City Council wishes to conduct improvement to the Wharton Regional Airport under the 2012 Routine Airport Maintenance Program; and

WHEREAS, The Texas Department of Transportation Aviation Division and the City of Wharton wishes to enter into an agreement under the 2012 Routine Airport Maintenance Program for airport maintenance at the Wharton Regional Airport; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor the City of Wharton to execute all documents related to the 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 a contract with the Texas Department of Transportation Aviation Division for the 2012 Routine Airport Maintenance Program.

Section II. That the Texas Department of Transportation Aviation Division and the City of Wharton are hereby bound by the conditions as set forth in the agreement.

Section III. That the Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute all documents related to the contract.

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

Passed, Approved, and Adopted this the 12th day of September 2011.

CITY OF WHARTON

By: _____
DON MUELLER
Mayor Pro-Tem

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Al Bryant seconded the motion. All voted in favor.

The twenty-second item on the agenda was a resolution designating a City of Wharton representative and alternate to the Houston-Galveston Area Council 2012 General Assembly. City Manager Andres Garza, Jr. presented a copy of the letter dated August 23, 2011 from Mr. Jack Steele of the Houston-Galveston Area Council (H-GAC) requesting that a designated representative and alternate representative be appointed to the 2012 H-GAC General Assembly.

City of Wharton
Regular City Council Meeting
September 12, 2011

City Manager Garza stated the City Council must formally designate the representatives for the H-GAC 2012 General Assembly. After some discussion, Councilmember Russell Machann moved to approve City of Wharton Resolution No. 2011-70, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011 - 70**

A RESOLUTION DESIGNATING A CITY OF WHARTON REPRESENTATIVE AND ALTERNATE TO THE HOUSTON-GALVESTON AREA COUNCIL 2012 GENERAL ASSEMBLY.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS that Councilmember Jeff Gubbels be, and is hereby designated as its Representative to the General Assembly of the Houston-Galveston Area Council for the year 2012.

FURTHER, that the Official Alternate authorized to serve as the voting representative should the hereinabove named representative become ineligible, or should he/she resign, is Councilmember Don Mueller.

THAT, the Executive Director of the Houston-Galveston Area Council be notified of the designation of the hereinabove named representative and alternate.

Passed, Approved, and Adopted this 12th day of September 2011.

CITY OF WHARTON, TEXAS

By:

DON MUELLER
Mayor Pro-Tem

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Terry David Lynch seconded the motion. All voted in favor.

The twenty-third item on the agenda was to review and consider an appointment of a City of Wharton representative to the Central Appraisal District of Wharton County Board of Directors. After some discussion, Councilmember Terry David Lynch moved to appoint Councilmember Karen Schultz to the Central Appraisal District of Wharton County Board of Directors for the

City of Wharton
Regular City Council Meeting
September 12, 2011

January 1, 2012 – December 31, 2013 term. Councilmember Jeff Gubbels seconded the motion.
All voted in favor.

The twenty-fourth item on the agenda was to review and consider appointments to the City of Wharton City Council Boards, Commissions, and Committees:

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

After some discussion, no action was taken.

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

- A. City Council Public Safety Committee meeting held September 6, 2011.
- B. City Council Finance Committee meeting held September 6, 2011.
- C. Wharton Regional Airport Board meeting held September 6, 2011.
- D. City of Wharton Electrical Board meeting held September 7, 2011.
- E. City Council Consultant Selection Committee for the Sidewalk Accessibility and Historic Streetscape Project meeting held September 7, 2011.

After some discussion, no action was taken.

The twenty-sixth item on the agenda was adjournment. There being no further discussion, Councilmember Jeff Gubbels moved to adjourn. Councilmember Al Bryant seconded the motion. All voted in favor.

The meeting adjourned at 7:52 p.m.

CITY OF WHARTON, TEXAS

By: _____
Don Mueller
Mayor Pro-Tem

City of Wharton
Regular City Council Meeting
September 12, 2011

ATTEST:

Paula Favors
City Secretary