

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
OCTOBER 24, 2011**

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

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

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, Public Works Director Carter Miska, P.E., Judge John Murrile, and Police Chief Tim Guin.

Visitors present were: David Schroeder, Executive Director of Wharton Economic Development Corporation, Carlos Cotton P.E., with Jones and Carter, Keith Magee with Wharton Journal Spectator, I.O. Coleman, Jr., Paul Sherland, and Rachel Rust.

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

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

The fourth item discussed on the agenda was a proclamation designating the week of November 7 – 11, 2011 as Municipal Judges and Court Clerk Week in the City of Wharton. Mayor Domingo Montalvo, Jr., presented Municipal Court Judge John Murrile with a proclamation designating the week of November 7 – 11, 2011 as Municipal Judges and Court Clerk Week in the City of Wharton.

The fifth item discussed on the agenda was the Wharton Moment. Councilmember Terry David Lynch praised Captain Stuart Taylor who had served two tours, each a year long, in Afghanistan and Iraq. Councilmember Lynch stated that Captain Taylor was a fine young man who would be returning to teach for the Wharton Independent School District. Mayor Domingo Montalvo, Jr. stated that he has presented Captian Taylor a proclamation during the Sivell's pep rally held in Captain Taylor's honor, welcoming him home.

The sixth item on the agenda was to review and consider the City of Wharton Financial Report for the month of September 2011. Finance Director Joan Anandel presented the financial report for the month of September 2011. Mrs. Anandel stated that the total ad valorem taxes collected were

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\$1,892,381 and the sales tax for the month of September 2011 was \$110,116. She further stated that the TexPool balance for September was \$169,970.42 with an average monthly yield of 0.09%. She said the Prosperity Bank balance for September 2011 was \$6,522,645.83 with an average monthly yield of 0.15%. Mrs. Andel further stated that other investments included \$2,663.09 at TexasGulf Federal Credit Union in the debt fund, and \$255,902.63 at Capital One Marketing. After some discussion, Councilmember Don Mueller moved to approve the City of Wharton Financial Report for the month of September 2011. Councilmember Russell Machann seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider authorizing the drafting of an ordinance establishing new boundaries for the City's single-member Council Districts. City Manager Andres Garza, Jr. stated that City Council could consider authorizing Bojorquez Law Firm to draft an ordinance establishing new boundaries for the City's four single-member council districts. City Manager Garza further stated that the required public hearing was held during the regular Wharton City Council meeting on September 26, 2011 to hear input from citizens regarding the proposed redistricting plan and at that time, only positive comments were provided. City Manager Garza stated that the proposed ordinance would be presented to the City Council for adoption during the next regular City Council meeting to be held November 14, 2011. After some discussion, Councilmember Jeff Gubbels moved to authorize the drafting of the ordinance approving the final plan establishing new boundaries for the City's single-member Council Districts. Councilmember Al Bryant seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider a request by Mr. Mikael Robertson representing Ms. Maria Elena Sanchez for an over 50% variance to construct a covered porch to be located at 408 Moutray, Washington Homes, Block 3, Lots 15, 16. Assistant to City Manager Jackie Jansky presented a copy of the memorandum dated October 19, 2011 from Building Official Ronnie Bollom providing a copy of the application for an over 50% variance request submitted by Mr. Mikael Robertson representing Ms. Maria Elena Sanchez to construct a covered porch to be located at 408 Moutray, Washington Homes, Block 3, Lots 15, 16. Assistant to City Manager Jackie Jansky said the request was to construct the covered porch 9' from the front property line and the front yard setback requirement was 25'. She stated that and the existing house had been constructed 17' from the front property line. Mrs. Jansky stated the variance would not create any aesthetic problems. After some discussion, Councilmember Terry David Lynch moved to approve the request by Mr. Mikael Robertson representing Ms. Maria Elena Sanchez for an over 50% variance to construct a covered porch to be located at 408 Moutray, Washington Homes, Block 3, Lots 15, 16. Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider the Wharton Economic Development Corporation 2010 – 2011 Annual Report. City Manager Andres Garza, Jr. presented a copy of the letter dated October 19, 2011 from Mr. David L. Schroeder, Executive Director of the Wharton Economic Development Corporation (WEDC) requesting to present the WEDC Annual Report for 2010 – 2011 to the Wharton City Council. Mr. David L. Schroeder, Executive Director of the Wharton Economic Development Corporation (WEDC) stated during the fiscal year of October 1, 2010 to September 30, 2011 WEDC contributed \$15,000 to the Wharton Chamber of Commerce for tourism support and advertising. Mr. Schroeder further stated WEDC has spent \$13,703 on attending trades or conferences. Mr. Schroeder listed several

accomplishments WEDC had made throughout the year, which included the job fair held yearly in February. After some discussion, Councilmember Jeff Gubbels moved to approve the Wharton Economic Development Corporation 2010 – 2011 Annual Report. Councilmember Karen Schulz seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider the City Council authorization of the City Manager to negotiate an amendment to the Local Transportation Project Advance Funding Agreement for A Category 11 Project, the Extension of FM 1301 from SH 60 to US 59 regarding the environmental assessment. City Manager Andres Garza, Jr. stated that the City Council Public Works Committee met on Monday, October 24, 2011 and recommended authorizing the City Manager to negotiate an amendment to the Local Transportation Project Advance Funding Agreement for A Category 11 Project, the Extension of FM 1301 from SH 60 to US 59 regarding the environmental assessment. City Manager Garza presented a copy of his memorandum dated October 21, 2011 to the City Council providing the City Staff's recommendation that was reviewed by the Public Works Committee. After some discussion, Councilmember Jeff Gubbels moved to approve both recommendations to authorize the City Manager to negotiate with the Texas Department of Transportation on an amendment to the Local Transportation Project Advance Funding Agreement for A Category 11 Project, the Extension of FM 1301 from SH 60 to US 59 regarding the environmental assessment, for the City to approach Wharton County Commissioners Court to help fund the additional cost on the overall project fees for the assessment services. Councilmember Terry David Lynch 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 approving the Houston-Galveston Area Council (H-GAC) Wharton Police Department Public Safety Answering Point (PSAP) Interlocal Agreement with the City of Wharton and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of the email dated October 11, 2011 from Police Chief Tim Guin to him providing a copy of the new interlocal agreement between the Houston-Galveston Area Council (H-GAC) for the Wharton Police Department Public Safety Answering Point (PSAP). City Manager Garza stated Chief Guin in his email stated that it was time to execute the Interlocal Agreement for PSAP Services for FY 2012 – FY 2013 and added the Legislature did not appropriate funds to H-GAC for equipment replacement for both FY 2012 and FY 2013. City Manager Garza informed the Council that this meant that there would not be funding for recorders, recorder upgrades and/or generators, etc. He said the only change in the contract was the contract period and exclusion of equipment information. After some discussion, Councilmember Terry David Lynch moved to approve, City of Wharton Resolution No. 2011-78, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2011-78**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE HOUSTON-GALVESTON AREA COUNCIL (HGAC) WHARTON POLICE DEPARTMENT PUBLIC SAFETY ANSWERING POINT (PSAP) INTERLOCAL AGREEMENT WITH THE CITY OF WHARTON, TEXAS, AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.**

**WHEREAS,** The Wharton City Council wishes to enter into an interlocal agreement with the Houston-Galveston Area Council (H-GAC) for the Wharton Police Department Safety Answering Point (PSAP); and

**WHEREAS,** The City of Wharton and H-GAC wishes to be bound by the conditions outlined in the interlocal agreement; and

**WHEREAS,** The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute the agreement.

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

**SECTION I.** The Wharton City Council hereby approves an interlocal agreement with the Houston-Galveston Area Council (H-GAC) for the Wharton Police Department Safety Answering Point (PSAP).

**SECTION II.** The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute the interlocal agreement.

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

**PASSED AND APPROVED** this the 24<sup>th</sup> day of October 2011.

**CITY OF WHARTON**

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**DOMINGO MONTALVO, JR.**  
**Mayor**

**ATTEST:**

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**PAULA FAVORS**

**City Secretary**

Councilmember Russell Machann seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider the Wharton Police Department police vehicles and other equipment:

A. Purchase of three (3) police vehicles through the Houston-Galveston Cooperative Purchasing Program.

- B. Resolution: A resolution approving a lease purchase agreement between the City of Wharton and Houston Community Bank for the purchase of three (3) police vehicles and other equipment.

City Manager Andres Garza, Jr. presented a copy of the list of vehicles and other equipment to be purchased through a lease/purchase agreement and a commitment from Houston Community Bank for the lease purchase arrangement. Police Chief Tim Guin stated that the City did not purchase replacement vehicles last year and would need to purchase three units to get back on schedule. After some discussion, Councilmember Russell Machann moved to approve both afore mentioned items A. and B. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The thirteenth item on the agenda was to review and consider authorizing the Mayor of the City of Wharton to submit a letter to the State of Texas Comptroller regarding the preservation of Eminent Domain Authority for the City of Wharton, Texas in accordance with Senate Bill 18. City Manager Andres Garza, Jr. presented a copy of the letter dated September 13, 2011 from City Attorney Paul Webb to him providing him with a copy of Senate Bill 18 (Eminent Domain) recently enacted by the Texas Legislature. City Manager Garza stated that in accordance with Subchapter C. Expiration of Certain Eminent Domain Authority, Sec. 2206.101, Report of Certain Eminent Domain Authority, Expiration of Authority, Item (b), Entities were authorized to exercise the power of eminent domain; however, the entity must submit to the comptroller a letter stating that the entity was authorized by the State to exercise the power of eminent domain and identify each provision of law that granted the entity that authority. He said that stated that the authority of an entity to exercise the power of eminent domain would expire on September 1, 2013, unless the entity submitted a letter in accordance with Item (b). City Manager Garza further stated that the Finance Committee met at 5:30 p.m. October 24<sup>th</sup> and recommended the City Council consider approving the submission of the required certified letter to the Texas Comptrollers Office in accordance with the provisions set forth in Senate Bill 18. After some discussion, Councilmember Jeff Gubbels moved to authorize the Mayor of the City of Wharton to submit a letter to the State of Texas Comptroller regarding the preservation of Eminent Domain Authority for the City of Wharton, Texas in accordance with Senate Bill 18. Councilmember Karen Schulz seconded the motion. All voted in favor.

The fourteenth item on the agenda was a public hearing regarding the taxation of goods in transit that were otherwise exempt from taxation by Tex. Tax Code §11.253 in accordance with Senate Bill 1. City Manager Andres Garza, Jr. presented a copy of the letter dated October 14, 2011 from Ms. Nicole Borchard-Villarreal, Attorney At Law for Linebarger Goggan Blair & Sampson, LLP providing background information regarding taxation exemptions on goods-in-transit per Texas Tax Code §11.253 (enacted by House Bill 621) and new requirements as per Senate Bill 1 (enacted by the 82<sup>nd</sup> Texas Legislature) that required taxing units to take affirmative action relating to the approval of the taxation of goods-in-transit that were otherwise exempt from taxation per Texas Tax Code §11.253. City Manager Garza also presented a draft ordinance that could be considered by the City Council with the recommendation of the Finance Committee, and a copy of the Texas Municipal League Legislative Update, Issue dated September 2, 2011, Number 26, which Page 2 offered a summary of the bill and a copy of the email dated September 21, 2011 from Wharton County Appraisal District Chief Appraiser Tylen Gamble regarding the required action that must be taken after October 1, 2011. City

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Manager Garza stated that if the City Council wished to maintain the tax on goods-in-transit, then a public hearing must be held and an ordinance would need to be adopted by the City Council. Ms. Gamble, in her email, indicates that for the 2011 tax year, the CAD did not have any such warehouse for goods that would have qualified.

Mayor Domingo Montalvo, Jr. opened the public hearing at 7:40 p.m.  
Mayor Domingo Montalvo, Jr. closed the public hearing at 7:41 p.m.

No comments were made. No action was taken.

The fifteenth item on the agenda was to review and consider an Ordinance relating to approval of taxation of Goods-In-Transit that were otherwise exempt from Taxation by Tex. Tax Code §11.253. City Manager Andres Garza, Jr. stated that the required public hearing was held in accordance with the provisions of State Law and the City Council was able consider approving an ordinance relating to approval of taxation of Goods-In-Transit that were otherwise exempt from Taxation by Tex. Tax Code §11.253. After some discussion, Councilmember Jeff Gubbels moved to approve, City of Wharton Ordinance No. 2011-18, which read as follows:

**CITY OF WHARTON  
ORDINANCE NO. 2011-18**

**AN ORDINANCE RELATING TO APPROVAL OF TAXATION OF GOODS-IN-TRANSIT THAT ARE OTHERWISE EXEMPT FROM TAXATION BY TEX. TAX CODE §11.253.**

**WHEREAS**, the 82<sup>nd</sup> Texas Legislature during its Special Session enacted Senate Bill 1 which amended Tex. Tax Code §11.253, under which personal property consisting of goods-in-transit, as newly defined, are exempt from taxation; and

**WHEREAS**, a new subsection (j-1) was added to §11.253 by Senate Bill 1, and which provides for a local option under which a taxing unit may tax such goods-in-transit otherwise exempt, if the governing body of such taxing unit after a public hearing takes official action to tax such personal property; and

**WHEREAS**, on the 24<sup>th</sup> day of October, 2011, the governing body of the City of Wharton held a public hearing at which members of the public were permitted to speak for or against the taxation of certain goods-in-transit personal property; and

**WHEREAS**, following the public hearing, the governing body of the City of Wharton has determined that such goods-in-transit personal property, as exempted from Tex. Tax Code §11.253, should be subject to taxation by the City of Wharton for tax year 2012 and all subsequent years.

**NOW, THEREFORE**, be it ordained by the City Council of the City of Wharton that:

**Section 1.** all of the above recitals are incorporated and made a part of this ordinance.

**Section 2.** all such goods-in-transit personal property as defined by the amendments to Tex. Tax Code §11.253 under Senate Bill 1, shall be, and are hereby declared to be, taxable by the City of Wharton for tax year 2012 and for every year thereafter, all as provided for and in accordance with Texas Tax Code §11.253.

PASSED, APPROVED, AND ADOPTED this 24<sup>th</sup> day of October 2011.

**CITY OF WHARTON**

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**DOMINGO MONTALVO, JR.**  
**Mayor**

**ATTEST:**

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**PAULA FAVORS**

**City Secretary**

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

The sixteenth 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.

City Manager Andres Garza, Jr., stated that vacancies did exist on the afore-mentioned Boards, Commissions and Committees. City Manager Garza further stated that there were two vacancies on the Wharton Economic Development Corporation (WEDC) Board of Directors. He said applications were submitted by the following persons:

Bill Ansley  
Debra Cenko  
Scott Chambers  
Lewis E. Fortenberry, Jr.  
Marshall C. Francis  
Michael E. Wootton

City Manager Garza also stated that the WEDC Selection Committee recommended in its October 11th meeting that they City Council consider appointing Mr. Marshall Francis and Mr. Scott Chambers to the WEDC Board of Directors for a term ending September 30, 2013. After some discussion, Councilmember Jeff Gubbels moved to appoint:

Wharton Economic Development Board	<u>Term Expiring</u>
A. Scott Chambers	September 30, 2013
B. Marshall C. Francis	September 30, 2013

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

The seventeenth item on the agenda was to review and consider the status report on City of Wharton Projects. City Manager Andres Garza, Jr. presented a copy of his memorandum dated October 24, 2011 providing a status report on the ongoing City of Wharton Projects to the City Council 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 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/>.

The City Staff continues to work with the USACE and Halff Associates in obtaining the required ROE agreements and engineering data. The agreement for the Third and Restated Agreement between the City of Wharton and the Lower Colorado River Authority (LCRA) has been submitted to LCRA for execution. The amendment will incorporate Segment 1(a) into the project, which is the extension of the levee along FM 102.

### **DRAINAGE:**

#### 1. Santa Fe Outfall Channel.

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

#### 2. Highway 60 & Old Lane City Road Drainage Improvements

The construction plans have been approved by the TxDOT Yoakum District Office. City Staff has acquired the needed drainage right of way from Edwin Kostka. In addition to the drainage right of way an aerial easement will also be required. City Staff, Jones & Carter Inc., and Centerpoint Energy are working to finalize the aerial easement so that the poles can be moved. The Public Works Director has provided a set of construction plans to and met with AT&T and Texas Mid Gulf Cable as well. Staff is currently in the process of resolving all utility conflicts. Construction will begin once the utility issues have been cleared.

### **WATER/SEWER IMPROVEMENTS:**

#### 1. Water Storage Tank Maintenance Program.

The City of Wharton has awarded the rehab and painting contract to M.K. Painting, Inc. in the amount of \$284,000.00. The City would like to begin work in October and finish around January/February 2012 since during these months the water usage would be at its lowest. A pre-construction meeting is scheduled for October 27, 2011 at 10:00 am. The contractor will begin work after the preconstruction meeting. The first tank to be rehabilitated will be the Alabama Ground Storage Tank. The Vahalla Ground Storage Tank will follow. Construction should be complete by February.

## 2. Pressure Switches at City Water Plants

This project is complete; however, the Public Works Staff continues to monitor the system to insure that it is working properly. During the extreme heat conditions the pressure switches have been performing below standard. Barbee Electric recently installed heaters in the pressure switch boxes to create a controlled environment during the winter months and help reduce problems with the switches. City Staff is working with Jones and Carter, Inc. to correct the problem.

## 3. Energy Efficiency Audit

City Staff, Siemens Industry, and Jones & Carter, Inc. met on October 6, 2011 to review the Utility Assessment Report developed by Siemens Industry. Siemens is currently looking into financing options to construct many of the recommendations made in the report, specifically Wastewater Treatment Plant No. 1.

## 4. Wastewater Treatment Plant No. 1 Rehabilitation Proposal

City Staff, Siemens Industry, and Jones & Carter, Inc. met on October 6, 2011 to review the Permit Compliance Evaluation conducted by Jones & Carter, Inc. City Staff asked Jones & Carter to work with Siemens Industry to ensure the Energy Audit and the Compliance Report complement each other.

Siemens Industry is working closely with Jones & Carter to assist in the development of a sound proposal.

## 5. On-going Water and Sewer Maintenance Program

Due to extreme drought conditions, the Water and Sewer Department has been working seven days a week. The force of the ground shrinking has caused an unusual amount of water leaks and sanitary sewer issues. Currently the City is averaging about five water leaks a day and around twice the problems normally associated with the sanitary sewer collection system.

## **STREET IMPROVEMENTS**

1. FM 102 Relocation and/or FM 1301
  - A. Progress Report on Project.

IDC Inc. and City Staff met with the Public Works Committee on October 6, 2011 to discuss the to discuss the project alignment and the possibility of additional funding. The City has submitted a proposal to the TxDOT Transportation Commission for funding of the City's plan as approved by the City Council. The City is awaiting a response. Also, the City will be submitting a funding request to the US DOT TIGER III Discretionary Grant Program.

- B. Update on status of Advance Funding Agreement (AFA) between the City of Wharton and the Texas Department of Transportation (TxDOT).

The City of Wharton has received the executed AFA from the State. The City Staff, in its meeting with TxDOT Yoakum District Representatives, discussed the possibility of the City undertaking the environmental assessment phase and TxDOT contributing the same amount of funds to the construction phase. The City Staff is exploring that possibility since it would give the City a better control of this portion of this project.

## 2. 2011 Street Improvement Program

Public Works Staff is currently identifying and preparing cost estimates for possible street improvements in 2011-2012.

## 3. Wharton Sidewalk Accessibility and Historic Streetscape Project

City Staff, BEFCO Engineering, TxDOT, and Community Development Management Co., Inc. met on October 7, 2011 to discuss local government procedures required by TxDOT and discuss environmental assessment requirements.

## 4. On-going Street and Drainage Maintenance Program

The extreme drought is keeping the Street and Drainage crew very busy. The force of the ground shifting is causing numerous failures in the City's streets and storm sewers. Many of the failures must be fixed immediately since they pose a threat to the public's safety.

## **OTHER PROJECTS**

### 1. Fire Station Expansion Project

The Public Works Department and the Facilities Maintenance Department have completed the project.

## **WHARTON REGIONAL AIRPORT**

### 1. Capital Improvement Drainage Project.

O'Malley Engineers have submitted the preliminary plans to the City of Wharton for the project. City Staff met with O'Malley Engineers on September 14, 2011 to discuss and

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comment on the plans. O'Malley is currently making the necessary changes. This project should be bid closer toward the end of the year.

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

- A. Beautification Commission meeting held on October 12, 2011.
- B. Wharton Economic Development Corporation meeting held October 17, 2011.

City Manager Andres Garza, Jr. presented a copy of the report to the City Council. After some discussion, no action was taken.

The nineteenth item discussed on the agenda was to review and consider the City's Reports:

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

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

The twentieth item on the agenda was adjournment. After some discussion, Councilmember Don Mueller made the motion to adjourn. Councilmember Al Bryant seconded the motion. All voted in favor.

The meeting adjourned at 7:43 p.m.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**Domingo Montalvo, Jr.**  
**Mayor**

**ATTEST:**

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**Paula Favors**  
**City Secretary**