

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
JULY 8, 2013**

Mayor Domingo Montalvo, Jr. declared a Regular Meeting duly open for the transaction of business at 7:00 P.M at City Hall 120 E. Caney Street Wharton, TX. Councilmember Terry David Lynch led the opening devotion and the pledge of allegiance.

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

Councilmember absent was: Councilmember Jeff Gubbels.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joan Anandel, City Secretary Paula Favors, Administrative Assistant Emily Bergstrom, and Police Chief Tim Guin.

Visitors present were: Carlos Cotton, P.E. of Jones & Carter, Inc., David Schroeder, Executive Director, Wharton Economic Development Corporation, Hazem Anwar Batineh, and Ben Sharp with Wharton Journal Spectator.

The second item on the agenda was Roll Call and Excuses Absences. Councilmember Don Mueller moved to excuse Councilmember Jeff Gubbels. Councilmember Terry David Lynch seconded the motion. All voted in favor.

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

The fourth item on the agenda was the Wharton Moment. Councilmember Terry David Lynch recognized Patrol Sergeant Jared Cullar, who had resigned from the City of Wharton Police Department, for the tremendous job that he did for the City while employed.

The fifth item on the agenda was a proclamation declaring July 10, 2013 as Ruby Hudspeth Day in the City of Wharton, Texas. Mayor Domingo Montalvo, Jr. stated that a proclamation would be presented on July 10, 2013 to Ruby Hudspeth Day, which read as follows:

**CITY OF WHARTON  
OFFICE OF THE MAYOR  
PROCLAMATION**

**WHEREAS,** Ms. Ruby Hudspeth, who was born on July 10, 1908 in London, Texas is proudly celebrating her 105th Birthday; and

**WHEREAS,** Ms. Ruby Hudspeth was raised near Longview, Texas. She married in 1925 at the age of 17. She moved to Wharton County in 1945 and has remained a resident; and

**WHEREAS,** Ms. Ruby Hudspeth has 10 children and now has many grandchildren, great-grandchildren and great-great grandchildren;

**WHEREAS,** Ms. Ruby Hudspeth is a member of the Peace Tabernacle Church, she enjoys sewing, crochet work and other arts and crafts.

**NOW, THEREFORE BE IT RESOLVED,** I, Domingo Montalvo, Jr., by the authority vested in me as Mayor of the City of Wharton, Texas, do hereby proclaim

*Wednesday, July 10, 2013 as  
"Ruby Hudspeth Day"*

and encourage the citizens of Wharton to congratulate Ms. Hudspeth on the occasion of her 105th birthday.

**IN WITNESS THEREOF,** I have set my hand and caused the seal of the City of Wharton to be affixed this 8th day of July, in the year of our Lord two thousand thirteen A.D.

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Domingo Montalvo, Jr.  
Mayor

The sixth item on the agenda was to review and consider reading of the minutes from the regular meeting held June 10, 2013 and the regular meeting held June 24, 2013. After some discussion, Councilmember Karen Schultz moved to approve the minutes from the regular meeting held June 10, 2013 and the regular meeting held June 24, 2013. Councilmember Al Bryant seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider a request by the Wharton Economic Development Corporation for City Council approval of the 2013-2014 proposed budget. City Manager Andres Garza, Jr. stated that during the regular June 24, 2013 City Council meeting the City Council was presented the Wharton Economic Development Corporation (WEDC) 2013-2014 proposed budget by Mr. David Schroeder. City Manager Garza said the City Council Finance Committee met on June 24, 2013 and recommended the proposed budget be approved by the City Council. After some discussion, Councilmember Don Mueller moved to approve the request by the Wharton Economic Development Corporation for City Council approval of the 2013-2014 proposed budget. Councilmember Al Bryant seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider a resolution of the Wharton City Council approving a performance agreement between the City of Wharton and Wharton Economic Development Corporation for improvements at City of Wharton Block 57, Lots 8-11. City Manager Andres Garza, Jr. presented a the letter received from Mr. David Schroeder of the Wharton Economic Development Corporation regarding the City's request for funding for the Habitat for Humanity Project located at City of Wharton Block 57, Lots 8-11. City Manager Garza stated that the approved amount was for \$41,497. After some discussion, Councilmember Russell Machann moved to approve City of Wharton Resolution No. 2013-38, which reads as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2013-38**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING THE CITY  
MANAGER OF THE CITY OF WHARTON TO EXECUTE A PERFORMANCE  
AGREEMENT WITH WHARTON ECONOMIC DEVELOPMENT CORPORATION.**

**WHEREAS,** the City of Wharton wishes to make improvements at City of Wharton Block 57, Lots 8-11 and requests reimbursement from the Wharton Economic Development Corporation.

**WHEREAS,** the Wharton City Council wishes to engage in a Performance Agreement with the Wharton Economic Development Corporation

**WHEREAS,** the City of Wharton and Wharton Economic Development Corporation wishes to be bound by the conditions set forth in said contract; and

**WHEREAS,** the Wharton City Council wishes to authorize the City Manager of the City of Wharton to execute the agreement; and

**WHEREAS,** the Wharton City Council wishes this resolution to become effective immediately upon its passage.

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

**Section 1.** The Wharton City Council hereby authorizes the City Manager of the City of Wharton to execute a Performance Agreement with Wharton Economic Development Corporation for reimbursement for improvements at City of Wharton Block 57, Lots 8-11.

**Section 2.** The City of Wharton and Wharton Economic Development Corporation are hereby bound by the conditions set forth in the agreement.

**Section 3.** That this resolution shall become effective immediately upon its passage.

**Passed, Approved and Adopted** this 8<sup>th</sup> day of July 2013.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**DOMINGO MONTALVO, JR.**  
**MAYOR**

**ATTEST:**

BY: \_\_\_\_\_  
**PAULA FAVORS**  
**CITY SECRETARY**

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

The ninth item on the agenda was to review and consider an ordinance enacting and requiring permits and fees; requiring the posting of permits; levying an occupational tax on “coin operated machines,” defining coin operated machines from such definition; requiring the display of the occupation tax receipts; prohibiting the placement of coin operated machines within two city blocks of specified buildings; regulating the time and manner or operating coin operated machines; and creating offenses 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 separability and setting an effective date. City Manager Andres Garza, Jr. presented a draft ordinance regulating coin operated machines in the City of Wharton. City Manager Garza stated that the City Council Public Safety Committee reviewed the ordinance at the meeting held July 1, 2013 and recommended the draft ordinance for approval by the City Council. After some discussion, Councilmember Don Mueller moved to table the item for two weeks. Councilmember Al Bryant seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider an ordinance to regulate sex offenders; and creating offenses 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 separability and setting an effective date. City Manager Andres Garza, Jr. presented a draft ordinance regulating sex offenders living in the City of Wharton. City Manager Garza stated that the City Council Public Safety Committee reviewed the ordinance at the meeting held July 1, 2013 and recommended the draft ordinance for approval by the City Council. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Ordinance No. 2013-16, which read as follows:

**CITY OF WHARTON**  
**ORDINANCE NO. 2013-16**

**AN ORDINANCE TO REGULATE SEX OFFENDERS; AND CREATING OFFENSES 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 SEPARABILITY AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Wharton determines and declares that sex offenders who have committed sexual offenses against children are a serious threat to public health, safety, and welfare of the citizens of the community; and

**WHEREAS**, the City Council further finds that such sex offenders require special supervision in order to protect and preserve the health, safety, and welfare of the citizens of the community; and

**WHEREAS**, the City Council determines that the recidivism rate for released sex offenders is alarmingly high, especially for those who commit their crimes against children; and

**WHEREAS**, the City Council determines that establishing a policy to restrict the property available for residence of sex offenders will provide better protection for children gathering in the City; and

**WHEREAS**, Article 42.12 (13B) of the Texas Code of Criminal Procedure provides a 1,000 foot safety zone for children, as a condition of probation for those convicted of certain sexual offenses; now, therefore,

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

**Section 1.** The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

### **Regulation of Sex Offender Residency**

#### **Definitions.**

For the purposes of this Article, the following terms, words, and the derivations thereof shall have the meanings given herein.

*Child Safety Zone.* Public parks, private and public schools, public libraries, amusement arcades, video arcades, indoor and outdoor amusement centers, amusement parks, public or commercial and semi-private swimming pools, child care facilities, child care institutions, public or private youth soccer or baseball fields, crisis centers or shelters, public or private youth centers, scouting facilities and Offices for Child Protective Services.

The meanings in this section have been assigned by Section 481.134, Health and Safety Code.

- 1) *Database.* The Texas Department of Public Safety's Sex Offender Database or the Sex Offender Registration files maintained by the Sex Offender Registration Officer of the Wharton Police Department.
- 2) *Loiter.* Standing, sitting idly, whether or not the person is in a vehicle or remaining in or around an area.

- 3) *Measurement.* Made in a straight line, without regard to intervening structures or objects, from the nearest portion of the Residence to the nearest property line of the Child Safety Zone.
- 4) *Minor.* A person younger than seventeen (17) years of age.
- 5) *Park or Playground.* Any land, including improvements to the land used as a general public as a recreational area. Recreational areas include, but are not limited to, conservation areas, jogging trails, hiking trails, bicycle trails, recreational centers, water parks, swimming pools, soccer fields or baseball fields.
- 6) *Permanent Residence.* A place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.
- 7) *Public Way.* Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, shopping centers, parking lots, transportation facilities, restaurants, shops and similar areas that are open to the use of the public.
- 8) *School.* A private or public pre-school, private or public elementary school or private or public secondary school.
- 9) *Sex Offender.* An individual who has been convicted of or placed on deferred adjudication for a sexual offense involving a person under seventeen (17) years of age for which the individual is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.
- 10) *Temporary Residence.* A place where a person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where a person routinely abides, resides, or lodges for a period of four (4) or more consecutive or non consecutive days in any month and which is not the person's permanent residence.

## **Section 2. Offenses.**

- 1) For each person required to register on the Texas Department of Public Safety's Sex Offender Database (the "Database") because of a violation involving a victim who was less than seventeen (17) years of age, it is unlawful for that person to establish a permanent residence or a temporary residence within 1,500 feet of any premise where children commonly gather, which, for purposes of this ordinance, shall be a Park or Playground; School; other such facility or location described in a Child Safety Zone; or other places where children regularly congregate; as such terms are defined in this Article.
- 2) A Sex Offender, shall not, on each October 30<sup>th</sup> and 31<sup>st</sup> (or any other date set by the City for trick-or-treaters) between the hours of 4:00 p.m. and 11:00 p.m., leave an

exterior porch light on or otherwise invite trick-or-treaters to solicit the sex offender's Permanent or Temporary Residence.

- 3) It is an offense for a Sex Offender to knowingly enter a *Child Safety Zone*.
- 4) It is an offense for a Sex Offender to knowingly loiter on a public way within 300 feet of a Child Safety Zone.

### **Section 3. Evidentiary matters; measurements.**

- 1) If a Sex Offender is found in a Child Safety Zone by a Police Officer, the Sex Offender is subject to punishment in accordance with this Ordinance.
- 2) It shall be prima facie evidence that this Article applies to a person if that person's record appears in/on the Database and such Database indicates that the victim was less than seventeen (17) years of age.
- 3) The distance of three hundred (300) feet from a child safety zone shall be measured on a straight line from the closest boundary of the Child Safety Zone.
- 4) The distance of one thousand fifteen hundred (1,500) feet from a place where children congregate shall be measured on a straight line from the closest boundary line of the Sex Offender's residence to the closest boundary line of the Park or Playground; School; other such facility or location described in a Child Safety Zone; or other places where children regularly congregate.
- 5) In the case of multiple residences on one property, measuring from the nearest property line of the residences to the nearest property line of the Park or Playground; School; other such facility or location described in a Child Safety Zone; or other places where children regularly congregate.
- 6) In cases of a dispute over measured distances, it shall be incumbent upon the person(s) challenging the measurement to prove otherwise.
- 7) A map depicting the prohibited areas shall be created by the City of Wharton and maintained by the City of Wharton Police Department. The City of Wharton shall review the map annually for changes. Said map will be available to the public at the City of Wharton Police Department or available on the City of Wharton website.

### **Section 4. Exceptions.**

- 1) The person required to register in/on the Database established the permanent residence or temporary residence prior to the date of the adoption of this Article, and residency has been consistently maintained and the person has complied with all of the Sex Offender Registration laws of the State of Texas;
- 2) The Park or Playground; School; other such facility or location described in a Child Safety Zone; or other places where children regularly congregate, as specified

herein, within one thousand fifteen hundred (1,500) feet of the permanent or temporary residence of the person required to register in/on the Database, was opened after the person established the permanent or temporary residence and complied with all Sex Offender Registration laws of the State of Texas;

- 3) The information in/on the Database is incorrect, and, if corrected, this Article would not apply to the person who was erroneously listed in/on the Database;
- 4) The person required to register in/on the Database is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution located within one thousand fifteen hundred (1,500) feet of real property comprising a Park or Playground; School; other such facility or location described in a Child Safety Zone; or other places where children regularly congregate;
- 5) The person required to register in/on the Database is under eighteen (18) years of age or a ward under a guardianship, who resides with a parent or guardian;
- 6) The person required to register in/on the Database has been exempted by a court order from registration as a Sex Offender under Chapter 62, Texas Code of Criminal Procedure;
- 7) The person required to register in/on the Database has had the offense for which the sex offender registration was required, reversed on appeal or pardoned; or
- 8) The person's duty to register in/on the Database has expired.
- 9) Nothing in this provision shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender.

**Section 5. Penalty.**

Any person who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000.00. Each day of violation shall constitute a separate offense.

**Section 6. Repeal.**

All ordinances or parts of ordinances inconsistent or in conflict herewith, are, to the extent of such inconsistency or conflict, hereby repealed.

**Section 7. Severability.**

In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged



invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Wharton, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts. To the extent this Ordinance is in conflict with state law, the state law is controlling.

**Section 8.      Effective Date.**

This Ordinance shall be in full force and effect immediately upon and after its final passage and publication as required by law.

**Effective Date**

This Ordinance shall become effective on the 19<sup>th</sup> day of July 2013 at 12:01 a.m.

**Passage and Approval**

**PASSED AND APPROVED** by the City Council of the City of Wharton, Texas, on the 8<sup>th</sup> day of July 2013.

CITY OF WHARTON, TEXAS

By: \_\_\_\_\_  
**DOMINGO MONTAVLO, JR.**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**PAUL WEBB**  
City Attorney

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

The eleventh item on the agenda was to review and consider a Taxicab Permit Application submitted by Better Solutions, Inc. City Manager Andres Garza, Jr. presented a copy of the memorandum dated July 3, 2013 to him from City Secretary Paula Favors providing a copy of the Taxicab Permit Application submitted by Better Solutions, Inc.. City Manager Garza stated that the memo stated that there was information missing from the application and Ms. Favors contacted Mr. Hazem Anwar Bataineh advising him of the necessary paperwork that needed to be received by the day of the City Council meeting. City Secretary Paula Favors stated that all information had been received from Mr. Bataineh since the memo was sent. After some discussion, Councilmember Terry David Lynch moved to table the item for two weeks. Councilmember Karen Schulz seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider City of Wharton Code of Ordinances, Chapter 78 – Taxicabs:

- A. **Ordinance:** An ordinance amending the City of Wharton Code of Ordinances, Chapter 78, Taxicabs; 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.
- B. A moratorium of all Taxicab Permit Applications until the current ordinance is updated.

City Manager Andres Garza, Jr. presented a draft ordinance updating the City of Wharton Code of Ordinances, Chapter 78, Taxicabs. City Manager Garza stated that the City Council Public Safety Committee reviewed the ordinance at the meeting held July 1, 2013 and recommended the draft ordinance for approval by the City Council. City Manager Garza said after the Public Safety Committee met the City Staff discovered more regulations that it suggested be considered to be added to the draft ordinance. City Manager Garza further stated that the City Staff was requesting a moratorium of all Taxicab Permit Applications until the current ordinance was updated to ensure a smooth process for the applicant as well as City Personnel. After some discussion, Councilmember Terry David Lynch moved to table the proposed ordinance amending the City of Wharton Code of Ordinances, Chapter 78, Taxicabs; and approve a moratorium of all Taxicab Permit Applications until the current ordinance was updated. Councilmember Karen Schulz seconded the motion. All voted in favor.

The thirteenth item on the agenda is Executive Session: City Council may adjourn into an Executive Session in accordance with Section 551.074 of the Local Government Code, Revised Civil Statutes of Texas. Final action, decision or vote, if any with regard to any matter considered in Executive Session shall be made in Open meeting:

- A. **Discussion:** City Manager's Performance Evaluation.

Mayor Domingo Montalvo, Jr. moved the meeting into closed session at 7:18 p.m.

The fourteenth item on the agenda was action on items discussed in Executive Session:

City of Wharton  
Regular City Council Meeting  
July 8, 2013

**A. Review & Consider:** City Manager's Performance Evaluation.

Mayor Domingo Montalvo, Jr. returned to open session at 7:54 p.m. Mayor Montalvo stated that no action was taken.

The fifteenth item on the agenda was Appointments to the City of Wharton Boards, Commissions and Committees:

- A. Holiday Light Decoration Chairman – One (1) Vacancy.
- B. Beautification Commission – Three (3) Vacancies.

City Manager Andres Garza, Jr. presented a letter received from Ms. Sandy Hochman with her request to be considered as a volunteer for the Beautification Commission. After some discussion, Councilmember Karen Schulz moved to appoint Ms. Sandy Hochman to the Beautification Commission ending June 30, 2015. Councilmember Russell Machann seconded the motion. All voted in favor.

The sixteenth item on the agenda was City of Wharton City Council Boards, Commissions, and Committees:

- A. City Council Public Safety Committee Meeting held Monday, July 1, 2013.
- B. Wharton Regional Airport Board Meeting held Tuesday, July 2, 2013.

After some discussion, no action was taken.

The seventeenth item on the agenda was adjournment. There being no further discussion, Councilmember Don Mueller moved to adjourn. Councilmember Russell Machann seconded the motion. All voted in favor.

The meeting adjourned at 7:56 p.m.

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

\_\_\_\_\_  
**Paula Favors**  
**City Secretary**