

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
JULY 22, 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. Mayor Montalvo led the opening devotion and 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.

Councilmembers absent were: None.

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

Visitors present were: David Schroeder, Executive Director of the Wharton Economic Development Corporation (WEDCO), Carlos Cotton, P.E. with Jones and Carter, Inc., Fernando Guzman with Primo Eco Group, Jim Brisco, Kip Rushkin, and Ben Sharp, Wharton Journal Spectator.

The second item on the agenda was Roll Call and Excused Absences. After some discussion, Councilmember Terry David Lynch moved to excuse Councilmember Karen Schulz. Councilmember Al Bryant 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. No comments were given

The fifth item on the agenda was the City of Wharton Financial Report for the month of June 2013. Finance Director Joan Anandel presented the financial report for the month of June 2013. Mrs. Anandel stated that the TexPool balance for June was \$151,281.19 with an average monthly yield of .06%. She said the Prosperity Bank balance for June 2013 was \$6,916,059.46 with an average monthly yield of .15%. After some discussion, Councilmember Don Mueller moved to approve the City of Wharton Financial Report for the month of June 2013. Councilmember Russell Machann seconded the motion. All voted in favor.

Councilmember Karen Schulz arrived at 7:07 p.m.

The sixth item on the agenda was to review and consider a request by Doris Teague for Drainage Issues on Kelving Way Court and Willowbend Road. City Manager Andres Garza, Jr. presented a letter he received from Ms. Doris Teague dated May 20, 2013 regarding the drainage issue between Kelving Way Court and Willowbend Road. City Manager Garza stated that the City

Council Public Works Committee met on June 12, 2013 and discussed the request by Ms. Teague and requested additional information from the City Staff. City Manager Garza said that on July 16, 2013 the Committee met again to review the information submitted by the City Staff and after their review, the City Council Public Works Committee voted to recommend to the City Council to authorize the City Staff to contact Ms. Teague and Jimmy and Karen Schulz to see if they would allow the construction of a small swale along their 16 feet utility easement that would drain the water to Hodges Lane. City Manager Garza said the Committee felt that was an effective way the water could be drained from the utility easement and if approval was granted then the City could assist to relieve the drainage problem. After some discussion, Councilmember Jeff Gubbels moved to indefinitely table the request by Doris Teague for Drainage Issues on Kelving Way Court and Willowbend Road. Councilmember Al Bryant seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider an ordinance authorizing the Mayor to execute an economic development agreement and a related personal property bill of sale, to transfer City surplus fill dirt to Mr. Fernando J. Guzman, President of Prime Eco Group, in support of expansion of existing warehouse at 2933 Hwy. 60 Wharton; A20036 Abst. 36; Tract 26A-1A, 27A-1A. City Manager Andres Garza, Jr. presented a letter dated July 11, 2013 the City received from Mr. Fernando J. Guzman, President, Prime Eco Group for approximately 500 cubic yards of City of Wharton fill dirt for the expansion of the existing warehouse located at 2933 Hwy. 60 Wharton; A20036 Abst. 36; Tract 26A-1A, 27A-1A. City Manager Garza stated that the City Council Public Works Committee met on July 15, 2013 and voted to recommend the City Council to consider approving Mr. Guzman's requests. After some discussion, Councilmember Russell Machann moved to approve City of Wharton providing and loading 500 cubic yards of surplus fill dirt and City of Wharton Ordinance No. 2013-17, which read as follows:

**CITY OF WHARTON  
ORDINANCE NO. 2013-17**

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN ECONOMIC DEVELOPMENT AGREEMENT AND A RELATED PERSONAL PROPERTY BILL OF SALE, TO TRANSFER CITY SURPLUS FILL DIRT TO MR. FERNANDO J. GUZMAN, PRESIDENT OF PRIME ECO GROUP, IN SUPPORT OF THE EXPANSION OF THE EXISTING WAREHOUSE AT 2933 HWY. 60 WHARTON; A20036 ABST. 36; TRACT 26A-1A, 27A-1A.**

**WHEREAS,** the City of Wharton works to foster private area developments that increase local sales and property tax bases and create employment opportunities; and

**WHEREAS,** Prime Eco Group of Wharton, Texas, has approached the City for forms of public assistance to expand a facility at 2933 Highway 60, and;

**WHEREAS,** the City has ownership of large quantities of excess spoil fill dirt from various recent drainage excavation projects, and Prime Eco Group needs the fill dirt to expand the current facility.

**NOW, THEREFORE, BE IT ORDAINED BY THE WHARTON CITY COUNCIL THAT:**

- Section 1.** The City hereby declares that, not-to-exceed, 500 cubic yards of fill dirt as surplus City personal property, now able to be sold to Prime Eco Group for Ten Dollars (\$10.00), and other valuable consideration, in support of the development of its new expansion project that is reasonably anticipated to generate and enhance the local sales and property tax bases and create area employment.
- Section 2.** The Mayor is hereby authorized to execute an Economic Development Agreement and related Personal Property Bill of Sale Agreement with Prime Eco Group substantially in the form of the agreements attached hereto for reference.
- Section 3.** The City Manager and legal counsel for the City are hereby authorized to coordinate Prime Eco Group to finalize, implement, and administer the additional subsidiary activities and documents related hereto to foster the creation of the anticipated private development that will enhance the area sales and property tax bases, while creating area employment opportunities, in furtherance of the public interest and for the benefit of area citizens.

**PASSED AND APPROVED THIS 22<sup>nd</sup> DAY OF JULY 2013.**

**CITY OF WHARTON**

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**Domingo Montalvo, Jr.**  
**Mayor**

**Attest:**

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

**Approved as to Form:**

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**Paul Webb**  
**City Attorney**

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

The eighth item on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 82 Traffic; Article II Operation of Vehicles; Sec. 82-62 Four Way Stop Intersections Designated; Providing for separability; 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 and setting an effective date. City Manager Andres Garza, Jr. stated that the City Staff received a request from Councilman Lynch regarding a citizens request for the City to install a stop sign on North Texas Avenue at its intersection with East Wayside. City Manager Garza presented a draft ordinance amending the City of Wharton Code of Ordinances, Chapter 82 Traffic, Article II Operation of Vehicles; Section 82-62 Four Way Stop Intersections Designated. City Manager Garza further presented a copy of the memorandum dated July 16, 2013 from Police Chief Tim Guin indicating that he had reviewed the request for the placement of the stop sign and completed a traffic survey and after the completion of the survey Chief Guin stated the intersection does not appear to meet any of the warrants in the Texas Manual on Uniform Traffic Control Devices for installation of traffic control devices, however, other criteria can be used to consider the placement of the requested stop sign. After some discussion, Councilmember Jeff Gubbels moved to approve City of Wharton Ordinance No. 2013-18, which read as follows:

**CITY OF WHARTON  
ORDINANCE NO. 2013-18**

**AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 82 TRAFFIC; ARTICLE II OPERATION OF VEHICLES; SEC. 82-62 FOUR WAY STOP INTERSECTIONS DESIGNATED; PROVIDING FOR SEPARABILITY; 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 AND SETTING AN EFFECTIVE DATE.**

**BE IT ORDAINED** by the City Council of the City of Wharton, Texas, that Chapter 82 Traffic, Article II Operation of Vehicles; Section 82-62 Four Way Stop Intersections Designated be amended by adding the following:

North Texas Avenue at its intersection with East Wayside.

**Penalty**

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,

**Severability**

If any court of competent jurisdiction rules that any section, subsection, sentence,

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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 at 12:01 a.m. on the 1<sup>st</sup> day of August 2013.

**PASSED AND APPROVED** by the City Council of the City of Wharton, Texas, on the 22<sup>nd</sup> day July 2013.

CITY OF WHARTON, TEXAS

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

**ATTEST:**

By: \_\_\_\_\_  
PAULA FAVORS  
City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
PAUL WEBB  
City Attorney

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 600 feet of any school or church building; 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 deferred the Ordinance from the last Council meeting held on July 8, 2013. City Manager Garza presented a memo from City Secretary Paula Favors summarizing the changes reflected in the Ordinance. City Attorney Paul Webb requested that the City Council table the item pending legal review. After some discussion, Councilmember Jeff Gubbels moved to table the item pending legal review. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The tenth 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 City Council deferred action on the application until the July 22, 2013 regular council meeting. City Manager Garza said that the application was complete and although the application was filed under the existing ordinance, the proposed ordinance being considered by the City Council would require all existing permittee's to comply with the new requirements. After some discussion, Councilmember Al Bryant moved to approve the Taxicab Permit Application submitted by Better Solutions, Inc. The motion failed for the lack of a second.

The eleventh item on the agenda was to review and consider 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. City Secretary Paula Favors presented a draft ordinance updating the City of Wharton Code of Ordinances, Chapter 78, Taxicabs. Mrs. Favors stated that the City Council deferred the Ordinance from the last Council meeting held on July 8, 2013. After some discussion, Councilmember Jeff Gubbels moved to approve City of Wharton Ordinance No. 2013-19, which read as follows:

**CITY OF WHARTON  
ORDINANCE NO. 2013-19**

**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.**

**BE IT ORDAINED** by the City Council of the City of Wharton, Texas, that the City of Wharton Code of Ordinances, Chapter 78, Taxicabs, be amended as follows:

Sec. 78-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicant* means any individual, firm or corporation in the process of attaining either a license to operate or a city taxi driver permit.

*Driver* means an individual who drives or operates a taxicab.

*Holder* means a person who is granted an annual operating permit to operate a taxicab service under the provisions of this chapter.

*Manifest* means a daily record prepared by a taxicab driver of all trips made by the driver, showing time and place of origin, destination, number of passengers and the amount of fare of each trip.

*Operating permit* means the permission granted by the city to operate a taxicab service inside the city for a period of one year, renewable under the provisions of this chapter.

*Rate card* means a card for display in each taxicab which contains the rates of fare in force.

*Taxicab* means any vehicle carrying passengers for hire, except buses operated by bus lines over a designated route in or through the city. Privately owned school buses for transporting school children to and from school are included within this definition.

*Taxicab business* means the use of one or more taxicabs within the city by the owner thereof, for the purpose of carrying passengers for hire, either by driving the taxicab himself or having the taxicab driven by some other person, and does not include limousine services. This definition shall not apply to any licensed chauffeur hired as a driver by any person holding a permit to conduct a taxicab business in the city.

Sec. 78-2. - Vehicle ownership.

It shall be unlawful for any person conducting a taxicab business to use or operate or cause to be used or operated, as a taxicab, any vehicle not owned by him.

Sec. 78-3. - Designation of taxi.

- (a) Each taxicab shall have painted in fast colors, contrasting with the color of the vehicle, on both sides the trade name of the organization under whose operating permit such taxicab is being operated, the taxicab unit number and the business telephone number of the holder of the operating permit.

- (1) Such letters and numbers shall be not less than three inches high with one-half inch stroke, painted on each taxicab so that the same will be readily apparent.
- (b) No design shall be approved that, in the opinion of the city, conflicts with or imitates that of any vehicle already operating under an operating permit granted under this article.

Sec. 78-4. - Vehicle inspection.

- (a) Before being allowed to operate upon the streets of the city, each taxicab shall be inspected and approved annually by the chief of police or his representative.
- (b) No taxicab shall be driven or operated upon the streets of the city unless the same is in safe condition and free from mechanical defects, and it must further meet the following requirements:
  - (1) Have a current valid state inspection sticker and be in compliance with the safety requirements of the Texas Motor Vehicle Code as amended; and
  - (2) Have a seat belt for each passenger; and
  - (3) Have an operating heater and air conditioner; and
  - (4) Have a fire extinguisher that is in good operating order; and
  - (5) Have a taxi-top light.
- (c) The vehicle identification number and license number of each taxicab must match the numbers listed for that taxicab on the permit application.
- (d) Insignia of taxicab must be the same as that indicated on the permit application.

Sec. 78-5. - Taximeter required.

- (a) A person may not drive or allow another person to drive a taxicab unless the taxicab is equipped with an operational taximeter that displays an accuracy seal, certifying its accuracy in accordance with procedures determined by the chief of police.
- (b) For purposes of determining a fare for taxicab service, a person may not use a device other than a taximeter for measuring distance or time.
- (c)



Except as provided by subsection 78-6, a person may not drive or allow another person to drive a taxicab unless an accurate taximeter is used to determine the fare to be charged.

(d)

When using a taximeter to compute a fare, a driver shall place the taximeter in the revenue-earning position when a passenger enters a taxicab, or at the pre-arranged time, if any, after the customer is informed of the taxicab's presence.

(e)

When using a taximeter to compute a fare, a driver shall call the attention of passengers to the amount registered on the taximeter before resetting the taximeter. The taximeter may not be reset to the "vacant" position until after the fare is paid.

**Sec. 78-6. - Rates of fare; rate card required.**

(a)

This section establishes maximum fares that the owner or operator of a taxicab can charge.

(b)

For four or fewer passengers, the owner or operator of a taxicab may charge a pickup fee of not to exceed \$5.00. For five or more passengers, the owner or operator of a taxicab may charge \$1.00 for each additional passenger.

(c)

For trips wholly within the City of Wharton, the fare shall be a maximum of \$2.00 per mile, regardless of the number of passengers. The taximeter shall be calibrated to charge no more than \$0.50 per one-fourth of a mile.

(d)

For trips that originate in the City of Wharton, but terminating outside the City of Wharton, the fare shall be a maximum of \$2.00 per mile, regardless of the number of passengers. The taximeter shall be calibrated to charge no more than \$0.50 per quarter mile.

(e)

A taximeter is not necessary to determine the maximum fare for a trip under a contract with a governmental agency, a nonprofit organization, or as otherwise reasonably necessary to provide a public service.

(f)

The maximum fare for wait time will be \$15.00 for each hour the driver must wait for a passenger. The taximeter shall be calibrated to charge a maximum of \$0.25 per minute of wait time.

(g)

A cab driver may charge a cleaning fee if a passenger soils a taxicab to the extent that the taxicab must be pulled from service for cleaning. The cleaning fee shall not exceed \$250.00.

(h)

Every taxicab operated under this article shall have a rate card setting forth the rates of fare established by this section displayed in a place in view of all passengers. The rate card shall instruct customers to call the Wharton Police Department at (979) 532-3131 or any successor non-emergency telephone number if they have questions or concerns about the rates.

(i)

In January of each year, the chief of police shall review the rates of fare to determine whether the fares need to be reconsidered. The chief of police shall base such the determination on the consumer price index, the costs of gasoline, and other reasonable costs of operating a taxicab service. The chief of police shall report his findings each year to the city council.

Sec. 78-7. Solicitation of business.

It shall be unlawful for any driver of any taxicab or for any other person acting for the driver to seek or solicit patrons or passengers for any such taxicab by word or sign while driving any such taxicab over, through, or on any public street or public place of the city. Drivers may solicit business when the taxicab is legally parked.

Sec. 78-8. - Parking on streets.

It shall be unlawful for the holder of any permit to conduct a taxicab business or for the agent, servant or employee of such permittee to park or leave standing any taxicab on the streets of the city, except while loading and unloading passengers into and from such taxicab.

Sec. 78-9. - Unlawful acts.

A driver may not knowingly permit an unlawful act to be conducted in the taxicab.

Sec. 78-41. - Required.

It shall be unlawful for any person to conduct a taxicab business in the city without first obtaining a permit to do so from the city council.

Sec. 78-42 Driver's conduct.

- a) While on duty, a driver shall:
  - 1. Act in a professional and courteous manner; and
  - 2. Maintain a well-groomed appearance.
- b) While on duty, a driver may not:
  - 1. Consume an alcoholic beverage, controlled substance, or other substance that could adversely affect the driver's ability to drive a motor vehicle, and may not drive a vehicle while under the influence of an alcoholic beverage, controlled substance, or other substance that could adversely affect the driver's ability to drive a motor vehicle;
  - 2. Sell or otherwise provide an alcoholic beverage or a controlled substance to a passenger in a ground transportation service vehicle;
  - 3. Monitor the communication frequency of a ground transportation service other than the driver's own frequency or respond to a service call assigned to another driver; or
  - 4. Possess communication equipment, including scanners, capable of receiving the frequency of a service other than the driver's own.
- c) If a person is convicted of an offense prescribed in subsection (b)(2) section, the conviction results in the automatic revocation, without further notice, of all chauffeur's permits held by the person.

Sec. 78-43. - Application—Filing; contents; adding vehicles; keeping information current.

- (a) Any person desiring a permit to conduct a taxicab business shall file an application therefore with the city secretary.
- (b) The application shall state the following:
  - (1) The name and address of such business and of the applicant;
  - (2) Whether the applicant is an individual, firm or corporation and if a firm the name and address of each member thereof and if a corporation the name and address of each officer thereof; and
  - (3) The number of vehicles proposed to be operated under such permit.
- (c) The names of all drivers employed by the applicant or holder of a permit to conduct a taxicab business shall be filed with the city secretary by the permit holder.
- (d)

Each applicant shall file with the city secretary a written statement, under oath and signed by the applicant, showing the make, model, motor number and state license number of each taxicab to be operated by him.

(e)

The information required in this section shall be kept current during the life of the permit.

(f)

If at any time the holder of a permit shall desire to use vehicles under the permit in addition to those listed in the statement required by this section, he may do so only after he has made application to the city council for a permit to operate such additional vehicles and has had his application for such a permit granted. The permit holder shall furnish to the city secretary the same information regarding such additional vehicles as is required in this section regarding those covered by the original permit and shall pay to the city secretary the fee as provided for in section 78-47

Sec. 78-44. - Same—Action by council.

(a)

It shall be the duty of the city secretary, when an application for a permit under this article is filed with him, at the next regular meeting of the city council following the filing of such application, to call the attention of the council thereto.

(b)

Upon consideration of such application, the city council may grant or refuse such permit, as in its discretion may seem to be to the best interest of the citizenship of the city and the public in general.

(c)

The method of issuing such permits shall be determined by the public convenience and necessity for a taxicab. If the city council finds that the public convenience and necessity require the operation of a greater or lesser number of vehicles than that for which the permit is sought and that the applicant or owner is fit to conduct the business and that the other requirements of this article have been complied with, it shall notify the applicant of its findings. The council shall refuse to issue a permit to the applicant if it finds that the convenience or necessity does not require additional taxicabs or if it finds the applicant unfit to conduct a taxicab business.

Sec. 78-45. - Insurance.

(a)

The holder of a permit to conduct a taxicab business in the city shall at all times during the life of such permit keep each vehicle operated by him under his permit insured in a company authorized to do business in the state, by policies of liability

and property damage insurance in the amounts of \$100,000 for bodily injury to any one person; in the amount of \$300,000.00 for injuries to more than one person which are sustained in the same accident; and \$100,000.00 for property damage resulting from any one accident. The policy shall list the City of Wharton as an additional insured.

(b)

Such policies or certificates of insurance shall be approved by the city attorney and filed and left with the city secretary. The policies of insurance shall not be canceled or surrendered, except upon written notice to the city secretary. Each policy must contain a "Cancellation Provision or Coverage Change" endorsement that provides 30 days notice to the City before the policy is canceled or materially changed to reduce or restrict the coverage. The notice must be mailed to the City Secretary.

(c)

Failure of any permittee to procure and file the policies of insurance as required by this section shall immediately forfeit and make null and void such permit, and all rights thereunder shall at once cease.

Sec. 78-46. - Limitation on number issued.

The number of permits which will be issued under this article shall be based upon the population of the metropolitan area of the city, being determined on the ratio of one taxicab to each 1,000 inhabitants, based upon the estimate of the last current city directory.

Sec. 78-47. - Fees; term.

(a)

No operating permit required under this section shall be issued or continued in operation unless the holder thereof has paid an annual license fee of \$200.00 and a fifty dollar fee each year for each vehicle operated under an operating permit. The fees shall be paid to the city to compensate the city for its superintendence of the taxicab business operated under this section and for the use of the city streets, alleys and public ways. If such permit is granted for less than a full year, the permittee shall pay to the city an amount prorated according to the number of months for which the permit is issued for a 12-month period ending December 31.

Sec. 78-48. - Issuance; contents.

Every permit to conduct a taxicab business in the city shall be issued and signed by the city secretary and sealed with the seal of his office. Such a permit shall:

(1)

- (1) Be dated on the day of its issuance;
- (2) Bear a serial number;
- (3) Show the name and address of the permittee;
- (4) State that the permittee has been authorized by the city council to conduct a taxicab business in the city until the expiration of December 31 next following the date of issuance; and
- (5) State that the permit is subject to cancellation at any time by the city council.
- (6) Existing taxicab permits or applications for a taxicab permit at the time of the effective date of this article shall be brought to compliance within 60 days of the effective date of this ordinance.

Sec. 78-49. - Nonassignability.

No permit issued under this article shall be assignable.

Sec. 78-50. - Revocation.

Any permit issued under this article may be revoked by the city council at any time it appears to the council the permittee has violated this chapter or failed to comply with this chapter.

Sec. 78-81. - Required.

It shall be unlawful for any person to drive a taxicab within the city without first procuring a chauffeur's permit from the city council. It shall likewise be unlawful for any person holding a permit to conduct a taxicab business in the city to permit any person who has not first obtained a taxicab chauffeur's permit to drive any taxicab owned by him.

Sec. 78-82. - Application.

- (a)

Any person desiring a taxicab chauffeur's permit shall make application therefore to the city council upon blanks to be furnished by the city secretary, giving the following:

(1)

Name, age, present address, date of birth;

(2)

Address and place of employment during the past two years, with the reasons for leaving;

(3) Applicant's residence address and telephone number and states of residence during the three years preceding the date of the application.

(4) Applicant's Texas driver's license number and expiration date.

(5) The applicant must attach to the application a copy of the applicant's complete criminal history and driving record, issued and certified by the Texas Department of Public Safety or other relevant governmental entity as determined by the department. The criminal history and driving record must be issued and certified not earlier than the 30th day before the date the applicant submits an application for a chauffeur's permit.

(6) An applicant who has been a resident of Texas for less than three years preceding the date the application is submitted must also submit a criminal history and driving record certified by the appropriate governmental authority in the former state of residence. The criminal history and driving record from the appropriate governmental authority in the former state of residence must be issued and certified not earlier than the 30th day before the date the applicant submits an application for a chauffeur's permit.

(b)

Such applicant shall likewise attach to his application affidavits from two reputable citizens attesting to the good character of the applicant.

Sec. 78-83. - Fingerprints and photograph.

No taxicab chauffeur's permit shall be issued to any applicant until the police department has taken fingerprints and a photograph of such applicant.

Sec. 78-84. - Fee.

The fee for a permit issued under this article shall be an annual fee of \$200.

Sec. 78-85. - Issuance; term; transfer.

- (a) After the application for a taxicab chauffeur's permit has been approved by the city council, it shall be the duty of the city secretary to issue a taxicab chauffeur's permit to such applicant, which permit shall run for a period of one calendar year.
- (b) The permit, when issued, shall not be transferable.
- (c) It shall be unlawful for the holder of a permit to use the same permit if he changes employment from one operator or owner of taxicabs to another.
- (d) To renew a chauffeur's permit, a permittee must submit a written application not earlier than the 30th day before the expiration date of the permit and not later than the expiration date of the permit, accompanied by the renewal fee. Renewal application is made on a form prescribed by the City Secretary.

Sec. 78-86. - Display.

The driver of a taxicab shall have his chauffeur's permit, together with his photograph of a size prescribed by the chief of police, affixed and displayed in the driving compartment of the taxicab.

Sec. 78-87. - Suspension or revocation.

- (a) Any permit issued under this article may be suspended or revoked by the chief of police upon the violation of this chapter or if the permittee is an habitual traffic violator and receives as many as three traffic violation tickets in a 12-month period.
- (b) Any person whose permit is so suspended or revoked by the chief of police may appeal to the city council, and the council may either reverse or affirm the action of the chief of police.

### **Separability**

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.



City of Wharton  
Regular Council Meeting  
July 22, 2013

This Ordinance shall become effective on the 1<sup>st</sup> day of August 2013 at 12:01 a.m.

**PASSED AND APPROVED** by the City Council of the City of Wharton, Texas, on the 23rd day of July 2013.

CITY OF WHARTON, TEXAS

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**DOMINGO MONTALVO, JR.**  
Mayor

ATTEST:

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**PAULA FAVORS**  
City Secretary

**APPROVED AS TO FORM:**

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**PAUL WEBB**  
City Attorney

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

The twelfth item on the agenda was to review and consider a resolution of the Wharton City Council amending Resolution 2013-16 authorizing the submission of an application to the Criminal Justice Division (CJD) of the Governor's Office for funding of Grant 2611602: Teaching Kids SMART Moves and authorizing the Mayor of the City of Wharton to execute all documents relating to said grant. City Manager Andres Garza, Jr. stated that the City Council approved Resolution 2013-16 on February 25, 2013 at the regular City Council meeting. Finance Director Joan Andel presented an attached e-mail from the Criminal Justice Division requesting a more detailed resolution for approval of the grant. City Manager Garza stated that the City Staff was requesting the City Council consider approving the amended draft resolution which meets the requested requirements. After some discussion, Councilmember Terry David Lynch moved to approve City of Wharton Resolution No. 2013-39, which reads as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2013-39**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AMENDING RESOLUTION 2013-16 AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE CRIMINAL JUSTICE DIVISION (CJD) OF THE GOVERNOR'S OFFICE FOR FUNDING OF GRANT 2611602: TEACHING KIDS SMART MOVES AND**

**AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID GRANT.**

**WHEREAS,** The Wharton City Council wishes to authorize the submission of an application to the Criminal Justice Division (CJD) of the Governor's Office for funding of Grant 2611602: Teaching Kids SMART Moves; and

**WHEREAS,** the application would be for funding of Teaching Kids SMART Moves administered by an external contractor for the City of Wharton in the amount of \$40,824.00, and;

**WHEREAS,** in the event of loss or misuse of grant funds, the City of Wharton will return all funds to the Criminal Justice Division (CJD) of the Governor's Office;

**WHEREAS,** the Wharton City Council designates Domingo Montalvo, Jr., Mayor, as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

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

**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 submission of an application to the Criminal Justice Division (CJD) of the Governor's Office for funding of Grant 2611602: Teaching Kids SMART Moves;

**Section 2.** The Wharton City Council designates Domingo Montalvo, Jr., Mayor, as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

**Section 3.** In the event of loss or misuse of grant funds, the City of Wharton will return all funds to the Criminal Justice Division (CJD) of the Governor's Office.

**Section 4.** That this resolution shall become effective immediately upon its passage.

**Passed, Approved and Adopted** this 22<sup>nd</sup> day of July 2013.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_

**DOMINGO MONTALVO, JR.  
MAYOR**

**ATTEST:**

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

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

The thirteenth item on the agenda was to review and consider a resolution of the Wharton City Council authorizing the publication of a Notice of Intent to issue Certificates of Obligation. City Manager Andres Garza, Jr. presented a draft Resolution and Notice of Intent to issue Certificates of Obligation for the proposed Bond Issue to finance some of the projects that were discussed at the Budget Workshop held July 9, 2013 and the Public Works Committee Meeting held July 16, 2013. After some discussion, Councilmember Jeff Gubbels moved to approve a resolution up to five million dollars, City of Wharton Resolution No. 2013-40, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2013-40**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING THE PUBLICATION OF A NOTICE OF INTENT TO ISSUE CERTIFICATES OF OBLIGATION.**

**WHEREAS,** The Wharton City Council deems it advisable to issue certificates of obligation of the City in accordance with the notice hereinafter set forth;

**WHEREAS,** The Mayor, City Secretary, and other officers and agents of the City wish to be authorized and directed to do any and all things necessary or desirable to carry out the provisions of this resolution.

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

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

**Section 1.** The facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct.

**Section 2.** The City Secretary is hereby authorized and directed to cause to be published in the manner required by law and in substantially the form attached hereto, a notice of intention to issue certificates of obligation.

- Section 3.** The notice set forth in Section 2 above shall be published once a week for two (2) consecutive weeks in a newspaper which is of general circulation in the City, the date of the first publication to be at least thirty-one (31) days before the date tentatively set in said notice for the passage of the ordinance authorizing the issuance of such certificates of obligation.
- Section 4.** The Mayor, City Secretary, and other officers and agents of the City are hereby authorized and directed to do any and all things necessary or desirable to carry out the provisions of this resolution.
- Section 5.** This resolution shall become effective immediately upon its passage.
- Section 6.** The notice and agenda relating to this meeting and heretofore posted by the City Secretary, and the posting thereof, are hereby authorized, approved and ratified.

**Passed, Approved and Adopted** this 22<sup>nd</sup> day of July 2013.

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

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

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

The fourteenth item on the agenda was to review and consider City Manager's request for Travel Reimbursement. City Manager Andres Garza, Jr. presented a copy of his request for travel reimbursement for the period of April 1, 2013 through June 30, 2013 in the amount of \$951.71. After some discussion, Councilmember Karen Schulz moved to approve City Manager Andres Garza, Jr.'s request for travel reimbursement for the period of April 1, 2013 through June 30, 2013 in the amount of \$951.71. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The fifteenth item on the agenda was Executive Session: City Council may adjourn into an Executive Session in accordance with Sections 551.074, 551.087, and 551.071 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.

**B. Discussion:** To deliberate the offer of a financial or other incentives to Blu Bambu, LP which the City seeks to have locate within the City of Wharton or near the territory of the City of Wharton.

**C. Discussion:** Cause No. 44746; William King Satterwhite v. Larry Robert Guerrero, et al in the District Court of Wharton County, Texas; 329th Judicial District.

Mayor Domingo Montalvo, Jr. moved the meeting into closed session at 7:25 p.m.

The sixteenth item on the agenda was Return to open meeting: Action on items discussed in Executive Session:

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

**B. Review & Consider:** The offer of a financial or other incentives to Blu Bambu, LP which the City seeks to have locate within the City of Wharton or near the territory of the City of Wharton.

**C. Review & Consider:** Cause No. 44746; William King Satterwhite v. Larry Robert Guerrero, et al in the District Court of Wharton County, Texas; 329th Judicial District.

Mayor Domingo Montalvo, Jr. returned to open session at 8:10 p.m. After some discussion, Councilmember Jeff Gubbels moved to approve City Manager Andres Garza, Jr. and Mayor Domingo Montalvo, Jr. continuing discussions regarding financial incentives with Blu Bambu, LP. Mayor Montalvo stated that no action was taken on items A. and C.

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 July 18, 2013 providing an update on the City of Wharton current projects.

## **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.cityofwharton.com/information-a-notices/lcrb-feasibility-study>.

Halff Associates submitted the 95% set of construction plans and the City Staff is currently reviewing the document. The City Staff has indicated to Halff Associates that it is too early to

acquire the services of a professional land surveyor to prepare metes and bounds since we do not know for sure if the alignment will stay as shown on the current set of draft construction plans. Hughes St. utility relocation and identification of spoil areas. The City Staff and Halff Associates went through the plan set page by page to identify utility relocations that will be necessary during or prior to construction of the levee. The City will be responsible for all relocations of water, sewer and drainage infrastructure. The City will work together with Halff Associates to coordinate other utility relocations. These include utilities owned by others including CenterPoint Electric, CenterPoint Gas, MidCoast Cable, and Panther Pipeline. The City Staff worked with Jones & Carter and has completed the preliminary layout for the Hughes St. utility relocation. Halff along with the City Staff are working together to solve the issue of spoil disposal.

This design is for the first phase of levee construction along the Colorado River. The segment that is under design is from FM 102 to Business 59.

#### **DRAINAGE:**

##### 1. Santa Fe Outfall Channel.

The Public Works Department has finished excavation of the channel. During the month of June, no routine maintenance was required on the Channel. The channel is slowly increasing in grass cover which is allowing several eroded areas to heal themselves over time. Public Works will continue installing grade stabilization structures to eliminate erosion thereby reducing or eliminating the need to reshape the channel areas with active erosion. The Public Works Department has installed six grade stabilization structures or pipe drops along the channel so far. These structures are part of the original engineering design and not only control erosion but are helping to improve drainage in the city by serving as the outfall for water that has been redirected to the Santa Fe Channel. The City Staff met with property owners along the channel a few months ago to discuss work that needed to be performed by the City in accordance with the agreements. Work on some of the property owners land is now complete. The City Staff will continue to work on completing the agreements with the remaining property owners over the next several months weather permitting.

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

TxDOT and the Public Works Department has finished re-grading the ditch along the South side of Hwy 60. Crews also completed installation of the sloped paving at culvert inlets and outlets on the south side of Hwy 60. The Public Works Department has re-graded the ditch on the North side during June. The Public Works Department should complete the installation of the safety end structures over the next two to three weeks. The City Staff anticipate completion in the month of July, weather permitting.

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

##### 1. 2012 -2013 Water Storage Tank Maintenance Program

The hydropneumatic tank is required for continued service after the elevated storage tank is dismantled. The contractor has ordered the tank and should begin installing the system by July 22, 2013. The hydropneumatic tank installation should be completed within the next one to two months and work on the dismantling of the elevated tank should commence.

2. On-going Water and Sewer Maintenance Program

Water leaks and sewer failures were on average the month of June..

Grease build up has continued to be a problem in the sanitary sewer lines and manholes along Richmond Rd. This results in sewer back-ups and has kept crews busy. The Public Works Department is coordinating with Code Enforcement to begin a grease trap inspection program at restaurants throughout town. The City Staff hopes this will eliminate some of the unnecessary grease build up and sewer back-ups along Richmond Rd and other areas of the City.

## **STREET IMPROVEMENTS**

1. FM 1301 Extension and Overpass Project Progress Report

IDC Inc. continues to work with City Staff in an effort to develop preliminary engineering for the project. The City Staff continues to coordinate with TxDOT to ensure the project continues to move forward.

The City Staff and IDC Inc. coordinated via e-mail and telephone this month in a continuing effort to complete drainage associated with the project. On June 24, 2013 IDC, Inc. received the approved schematics, thus allowing the firm to move forward in design. There were some modifications that would be incorporated into the final design.

2. 2013 Street Improvement Program

The City Staff has identified streets needing repair in 2013 and completed cost estimates for these repairs. The estimates and recommendations from the City Staff have been made to the City Council in the Bond Program.

3. Wharton Sidewalk Accessibility and Historic Streetscape Project

On June 11, 2013 the City Staff held a pre-construction meeting with the contractor M & C Fonseca and TxDOT representatives. The lowest bidder was M & C Fonseca Construction Co. Inc. This project has commenced on West Milam Street. The City has begun notifying property owners of the improvements.

4. Willowbend/Kelving Way Court Drainage Project

The Public Works Department completed excavation of a shallow swale in the 32 feet easement between Willowbend Dr. and Kelving Way Ct. at the end of December. On June 12, 2013 the City Council Public Works Committee met with Ms. Doris Teague to address her request in her letter

dated May 20, 2013. The Committee requested the City Staff formulate an alternate plan then meet again before making a recommendation to the City Council.

5. Stavena Addition Drainage Project

The Public Works Department completed initial survey data collection efforts the week of June 17, 2013. The Public Works Department has initiated work to prepare construction plans for excavation of a new channel that will outfall into the Santa Fe Channel. This drainage work will provide flood relief to the Stavena Addition including areas along Stavena Rd, Nelga St. and Franklin St. This area serves as the headwaters of Jarvis Creek. This project when completed will provide relief to residents in the Stavena Addition and to land owners along Jarvis Creek outside the city limits in Wharton County Precinct 1. The City Staff will be meeting with Wharton County Commissioner Dettling to request continued assistance as soon as the construction plans are completed.

6. On-going Street and Drainage Maintenance Program

The Public Works Department has been working to clean residential drainage ditches that have been experiencing poor drainage. These efforts to improve drainage are paying off. Areas that use to flood are no longer flooding. The Public Works Department has been noticing a significant decrease in citizen complaints during larger rainfall events concerning poor drainage. The City Staff continued this drainage improvement effort through June. The Public Works Department has noticed a significant drop in drainage complaints and attributes the decrease to the improvements being made.

## **WHARTON REGIONAL AIRPORT**

1. Capital Improvement Drainage Project.

This project is complete.

## **OTHER PROJECTS**

1. Fire Hydrant Testing Program and ISO Rating

The Fire Department, with the assistance of the Public Works Department, has begun an annual hydrant testing program. The Fire Department has completed testing on all the City's hydrants. The majority of the hydrants were in good working condition. Those in need of maintenance have been repaired by the City's Public Works Staff. This program will help to improve the City's ISO insurance rating.

The City Staff met with a Verisk Insurance Solutions representative on March 21, 2013 to discuss the preliminary report on the new ISO insurance rating recently submitted to the City. The City Staff will be submitting recommendations to Verisk Insurance Solutions in hopes of lowering the ISO rating even more.

2. Wharton County / City of Wharton Web Map Project



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The City Staff continues to work with Halff Associates to complete the initial design for the Web based GIS mapping tool. This tool will help City Staff and City Officials make daily decisions by allowing them to view GIS data files via the Internet.

The City Staff has been working with the City of El Campo to discuss and develop alternative plans. In addition the City Staff is working with the CAD staff to discuss how to improve their Parcel map. The City Staff believes the Parcel Maps will be backbone of the overall GIS system.

After some discussion, no action was taken.

The eightieth item on the agenda was City Council Boards, Commissions, and Committees:

- A. Beautification Commission meeting held July 10, 2013.
- B. Wharton Economic Development Corporation Board meeting held July 15, 2013.
- C. Public Works Committee meeting held July 16, 2013.

After some discussion, no action was taken.

The nineteenth item on the agenda was City Manager's Reports:

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

The twentieth item on the agenda was adjournment. After some discussion, Councilmember Don Muller moved to adjourn. Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The meeting adjourned at 8:14 p.m.

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

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

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