

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
AUGUST 10, 2015**

Mayor Pro-Tem Don Mueller 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 Pro-Tem Mueller led the opening devotion and the pledge of allegiance.

Councilmember's present were: Mayor Pro-Tem Don Mueller and Councilmembers Tim Barker, Al Bryant, Vincent Huerta, Russell Machann and Steven Schneider.

Councilmember absent was: Mayor Domingo Montalvo, Jr.

Staff members present were: City Manager Andres Garza, Jr, Finance Director Joan Andel, City Secretary Paula Favors, Assistant to the City Manager Brandi Jimenez, Police Chief Terry David Lynch, Fire Chief Anthony Abbott, Police Officers April Morales, Daniel Harbaugh, Luis Moreno, Alex Rivera, Martin Martinez, Jeffery Robles and Telecommunicator Melissa Huggins.

Visitors present were: Wharton Economic Development Director David Schroeder, I.O. Coleman, Jr., Ed King with Government Capital Corporation (GCC), Cliff Braddock with Pepco and Morgan Taylor with the Wharton Journal Spectator.

The second item on the agenda was Roll Call and Excuses Absences. After some discussion, Councilmember Al Bryant moved to excuse Mayor Domingo Montalvo, Jr. Councilmember Vincent Huerta seconded the motion. All voted in favor.

The third item on the agenda was Public Comments. Mr. Jim Cockrell stated that a building next to Hinze's Bar-B-Que on North Richmond was not occupied and not secure. Mr. Cockrell said he feared it could be vandalized and requested the City look into the issue.

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

The fifth item on the agenda was introductions of City Employees to Mayor and City Councilmembers. City Manager Andres Garza, Jr. stated Police Chief Terry David Lynch had several new employees to introduce to the Mayor and City Councilmember. Police Chief Lynch introduced his staff as follows: Police Officers Jeffery Robles, April Morales, Martin Martinez, Daniel Harbaugh, Luis Moreno, Jr., Brandon Godfrey, Alex Rivera and Telecommunicator Melissa Huggins.

The sixth item on the agenda was to review and consider the reading of the minutes from the regular meetings held July 13, 2015 and July 27, 2015 and the special meeting held July 14, 2015. After some discussion, Councilmember Al Bryant moved to approve the minutes from the regular meetings held July 13, 2015 and July 27, 2015 and the special meeting held July 14, 2015. Councilmember Tim Barker seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider a complaint from Ms. Latisha Humphres-Robles. City Manager Andres Garza, Jr. presented an email from Ms. Latisha Humphres-Robles in regards to drainage and flooding, roadwork and the trapping of animals and the information regarding these complaints. City Manager Garza stated that Ms. Humphres-Robles was asked to attend the meeting to discuss her complaint but she had not. No action was taken.

The eighth item on the agenda was to review and consider a resolution of the Wharton City Council authorizing the execution and delivery of a Public Property Finance Contract (Tax Credit Qualified Energy Conservation Bonds) with respect to the acquisition, purchase, financing and leasing of certain property for the public benefit; authorizing the execution and delivery of documents required in connection therewith; and authorizing all other action necessary to the consummation of the transactions contemplated by this resolution. City Manager Andres Garza, Jr. stated that on April 28, 2014, the Wharton City Council approved Resolution No. 2014-33 authorizing the Government Capital Corporation (GCC) to pursue a city application for funding for the energy efficiency program funding through the Qualified Energy Conservation Bond (QECB) Program. City Manager Garza said the City's application had been approved for the projects identified. City Manager Garza presented a list of the projects approved along with information from GCC on the City's next step. Mr. Ed King from GCC and Mr. Cliff Braddock from PEPCO stated that the savings from the project would pay for the cost which was guaranteed and bonded. After some discussion, Councilmember Russell Machann moved to approve City of Wharton Resolution No. 2015-61, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2015-61**

A RESOLUTION OF THE CITY OF WHARTON AUTHORIZING THE EXECUTION AND DELIVERY OF A PUBLIC PROPERTY FINANCE CONTRACT (TAX CREDIT QUALIFIED ENERGY CONSERVATION BONDS) WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN PROPERTY FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Wharton (the "*Issuer*"), a body politic and corporate and a public instrumentality duly created and validly existing under the laws of the State of Texas, is authorized by the laws of the State of Texas to purchase, acquire and

lease personal property for the benefit of the Issuer and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Issuer desires to purchase, acquire, finance and lease certain equipment (the "*Property*"), with a cost not to exceed \$1,600,000.00, constituting personal property necessary for the Issuer to perform essential governmental functions (the "*Project*"); and

WHEREAS, the Issuer proposes to enter into that certain Public Property Finance Contract (Tax Credit Qualified Energy Conservation Bond) (the "*Finance Contract*"), with Government Capital Corporation ("*Lender*"), the form of which has been presented to the governing body of the Issuer at this meeting; and

WHEREAS, the Issuer is authorized under the provisions of Public Property Finance Act, as amended, Chapter 271, Subchapter A, Texas Local Government Code (the "*Act*"), to execute and deliver the Finance Contract, which may be in the form of a tax-exempt or taxable obligation, or both, of the Issuer for purposes of providing funds to finance the Property; and

WHEREAS, Sections 54A and 54D of the Internal Revenue Code of 1986, as amended (the "*Code*"), provides authority for the issuance of Qualified Energy Conservation Bonds ("*Qualified Energy Conservation Bonds*") that are taxable obligations allowing for either a tax credit to Lender or a direct subsidy payment to the Issuer, and \$1,596,383.00 of Qualified Energy Conservation Bonds allocation has been awarded to the Issuer by the Texas Bond Review Board, and the Project is a qualified conservation purpose as further defined in Section 54D(f) of the Code; and

WHEREAS, the governing body of the Issuer deems it for the benefit of the Issuer and for the efficient and effective administration thereof to enter into the Finance Contract and the documentation related to the financing of the acquisition and leasing of the Property to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED as follows:

Section 1. Authorization. The Issuer is hereby authorized to execute and deliver the Finance Contract, with principal amount not to exceed \$1,600,000.00 and with an interest rate, net of the subsidy, not to exceed 4.70% per annum, and a tax credit rate of 3.185%.

Section 2. Tax Certifications. Contingent upon approval of legal counsel, the Mayor of the Issuer is hereby individually authorized and directed to sign any and all documents required to enter into the Finance Contract, including any required certificates to ensure the Finance Contract does not constitute an issue of arbitrage bonds for

purposes of Section 148 of the Code and, in the case of the Finance Contract, is executed and delivered as a Qualified Energy Conservation Bond for purposes of Sections 54A and 54D of the Code, any tax certificates documenting the following requirements:

The proceeds will be spent on qualified conservation purposes as more particularly described in Section 54D(f) of the Code; no more than two percent of the proceeds will be spent on costs of issuance; all proceeds, including interest earnings, will be spent within three years of the date of the Finance Contract; within six months of the date of the Finance Contract, the Issuer will enter into binding contracts to spend at least 10% of the available project proceeds; the Issuer has required that the contractors on the Project be paid in accordance with the Davis- Bacon Act; and the Issuer shall designate the Finance Contract as a Qualified Energy Conservation Bond and make such additional designations as may be required by Section 54A and 54D of the Code.

Section 3. *Approval of Documents.* The form, terms and provisions of the Finance Contract are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the Mayor of the Issuer or other officers of the governing body of the Issuer executing the same, the execution of such documents being conclusive evidence of such approval; and the Mayor of the Issuer is hereby individually authorized and directed to execute the Finance Contract and any related Exhibits attached thereto and to deliver the Finance Contract (including such Exhibits) to the respective parties thereto.

Section 4. *Other Actions Authorized.* The officers and employees of the Issuer shall take all action necessary or reasonably required by the parties to the Finance Contract to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates and any tax certificate and agreement, as contemplated in the Finance Contract) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Finance Contract.

Section 5. *No General Liability.* Nothing contained in this Resolution, the Finance Contract nor any other instrument shall be construed with respect to the Issuer as incurring a pecuniary liability or charge upon the full faith and credit of the Issuer or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Finance Contract or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Issuer or any charge upon its full faith and credit or against its taxing power, except to the extent that the rental payments payable under the Finance Contract are special limited obligations of the Issuer as provided in the Finance Contract.

Section 6. *Appointment of Authorized Issuer Representatives.* The Mayor of the Issuer is hereby designated to act as authorized representatives of the Issuer for purposes of

the Finance Contract until such time as the governing body of the Issuer shall designate any other or different authorized representative for purposes of the Finance Contract.

Section 7. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 8. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 9. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

CERTIFICATION

ADOPTED AND APPROVED by the governing body of the City of Wharton this 10th day of August, 2015.

City of Wharton, as Issuer

By:

Name: Don Mueller

Title: Mayor Pro-Tem

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

The ninth 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 had received a citizen's request for the City to install a stop sign on the 300 block of University Street and Carter Street intersection. 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 and a copy of the memorandum dated July 9, 2015 from Police Chief Terry Lynch indicating that he had reviewed the request for the placement of the stop sign and completed a traffic survey. Chief Lynch stated that after the completion of the survey his recommendation was to designate the intersection of University and Carter Streets as a 4-way stop. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Ordinance No. 2016-09, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2015-09**

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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:

University Street and Carter Street Intersection.

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, 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 1st day of September 2015.

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on the 10th day August 2015.

CITY OF WHARTON, TEXAS

By: _____
DON MUELLER
Mayor Pro-Tem

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ATTEST:

By: _____
PAULA FAVORS
City Secretary

APPROVED AS TO FORM:

By: _____
PAUL WEBB
City Attorney

Councilmember Tim Barker seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider a resolution of the Wharton City Council approving an Airport Project Participation Agreement with the Texas Department of Transportation for the Airport Hangar Project CSJ No. 15HGWHRTN and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of the Texas Department of Transportation Airport Project Participation Agreement for the Wharton Regional Airport Hangar Construction Project. City Manager Garza stated that bids were received on the construction phase of the project and the agreement would allow the City to move the project forward with funding for the project being provided by the Airport Fund and the 2015 Bond Fund. After some discussion, Councilmember Tim Barker moved to approve City of Wharton Resolution No. 2015-62, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2015-62**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN AIRPORT PROJECT PARTICIPATION AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE AIRPORT HANGAR PROJECT CSJ NO. 15HGWHRTN AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, On February 10, 2014 the Wharton City Council approved the construction of a hangar at the Wharton Regional Airport; and,

WHEREAS, The City of Wharton wishes to enter into a grant agreement with Texas Department of Transportation for the Wharton Regional Airport Hangar Project CSJ No. 15HGWHRTN; and,

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

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

Section I: The City of Wharton hereby approves a grant agreement with Texas Department of Transportation Aviation Division for the Wharton Regional Airport Hangar Project CSJ No. 15HGWHRTN.

Section II: The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute all documents related to said project.

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

PASSED, APPROVED AND ADOPTED this 10th day of August 2015.

CITY OF WHARTON, TEXAS

By: _____
DON MUELLER
Mayor Pro-Tem

Attest:

PAULA FAVORS
City Secretary

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

The eleventh item on the agenda was to review and consider the City of Wharton Park Improvement Project /Port of Wharton Site. City Manager Andres Garza, Jr. presented a memorandum from Mr. Bob Baker-Facilities Maintenance Director to him indicating the cost to replace the Port of Wharton at Riverfront Park. City Manager Garza stated that the park was constructed with a Texas Parks and Wildlife Grant over twenty years ago and the grant required the City to maintain the facility. He said the whole Port of Wharton needed to be replaced and the City Staff was recommending the approval for the work to be done by Mr. Keith Casey. After some discussion, Councilmember Russell Machann moved to approve the City of Wharton Park Improvement Project/Port of Wharton Site be replaced by Mr. Keith Casey. Councilmember Tim Barker 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 awarding a contract for the improvement of the Wharton Volunteer Fire Department garage doors at the Wharton Fire Station and authorizing the Mayor of the City of Wharton to

execute all documents relating to said contract. City Manager Andres Garza, Jr. presented a memo from Chief Antony Abbott regarding the improvements to the Wharton Fire Station for the replacement of 10 garage doors. City Manager Garza stated that funding for the project was available from the Fire Department Budget. After some discussion, Councilmember AL Bryant moved to approve City of Wharton Resolution No. 2015-63, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2015-63**

A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDING A CONTRACT FOR THE IMPROVEMENT OF THE WHARTON VOLUNTEER FIRE DEPARTMENT GARAGE DOORS AT THE WHARTON FIRE STATION AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.

WHEREAS, proposals were received for the City of Wharton Fire Department Garage Door Replacement Project; and,

WHEREAS, Dornak's, was deemed the best lowest qualified bidder in the amount of \$15,650.00; and,

WHEREAS, the Wharton City Council wishes to award a contract to Dornak's for the City of Wharton Fire Department Garage Door Replacement Project in the amount of \$15,650.00; and,

WHEREAS, the City of Wharton and Dornak's wish to be bound by the conditions as set forth in the agreement; and,

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

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

Section I. The Wharton City Council hereby authorizes the Mayor of the City of Wharton, Texas, to execute a contract for the City of Wharton Fire Department Garage Door Replacement Project to Dornak's in the amount of \$15,650.00.

Section II. The City of Wharton and Dornak's are hereby bound by the conditions as set forth in the agreement.

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

Passed, Approved, and Adopted this 10th day of August 2015.

CITY OF WHARTON, TEXAS

By: _____
DON MUELLER
Mayor Pro-Tem

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Vincent Huerta seconded the motion. All voted in favor.

The thirteenth item on the agenda was to review and consider the Central Appraisal District Proposed 2016 Budget and Estimated Allocations. City Manager Andres Garza, Jr. presented the Central Appraisal District's Proposed 2016 Budget and Estimated Allocations submitted by Ms. Tylene Gamble, Chief Appraiser of the Central Appraisal District (CAD). After some discussion, Councilmember Tim Barker moved to reject the Central Appraisal District Proposed 2016 Budget and Estimated Allocations. Councilmember Russell Machann seconded the motion. All voted in favor.

The fourteenth item on the agenda was to review and consider the Texas Municipal League Region 14 Fall Meeting-August 21 & 22, 2015. City Manager Andres Garza, Jr. presented information for the 2015 TML Region 14 Fall Meeting. City Manager Garza stated that the registration deadline was August 17, 2015 if any Councilmember wished to attend. After some discussion, Councilmember Al Bryant moved to approve those Councilmembers interested in attending the Texas Municipal League Region 14 Fall Meeting – August 21 & 22, 2015. Councilmember Russell Machann seconded the motion. All voted in favor.

The fifteenth item on the agenda was to review and consider the resignation of Mr. Jack Thornton from the City of Wharton Beautification Commission. City Manager Andres Garza, Jr. presented a letter from Jack Thornton stating that he would no longer serve on the City of Wharton Beautification Commission. After some discussion, Councilmember Al Bryant moved to accept the resignation of Mr. Jack Thornton from the City of Wharton Beautification Commission. Councilmember Tim Barker seconded the motion. All voted in favor.

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

1. Appointments:

A. Electrical Board

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- B. Holiday Light Decorating Chairman.
- C. Beautification Commission.
- D. Planning Commission.
- E. Building Standards Commission.

City Manager Andres Garza, Jr. presented a letter from Mr. Steven Roberts requesting to serve on the Beatification Committee. After some discussion, Councilmember Tim Barker moved to appoint the following:

Beautification Commission:	<u>Term Expiring</u>
Steven Roberts	June 30, 2017

Councilmember Vincent Huerta seconded the motion. All voted in favor.

The seventeenth item on the agenda was to review and consider City Council Boards, Committees and Commissions reports:

- A. Wharton Economic Development Corporation Personnel meeting held on July 8, 2015.
- B. Wharton Economic Development Corporation meeting held July 20, 2015.
- C. Wharton Regional Airport Board meeting held August 4, 2015.

After some discussion, no action was taken.

The eighteenth item on the agenda was adjournment. There being no further discussion, Councilmember Al Bryant moved to adjourn. Councilmember Vincent Huerta seconded the motion. All voted in favor.

The meeting adjourned at 7:38 p.m.

CITY OF WHARTON, TEXAS

By: _____
Domingo Montalvo, Jr.
Mayor

ATTEST:

Paula Favors
City Secretary