

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
FEBRUARY 13, 2017**

Mayor Tim Barker 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 Vincent Huerta led the opening devotion and Mayor Barker led the pledge of allegiance.

Councilmember's present were: Mayor Tim Barker and Councilmembers Al Bryant, Terry Freese, Vincent Huerta, Don Mueller and Russell Machann.

Councilmember absent was: Steven Schneider.

Staff members present were: City Manager Andres Garza, Jr, Finance Director Joan Andel, City Secretary Paula Favors, Assistant to the City Manager Brandi Jimenez, City Attorney Paul Webb, Public Works Director Wade Wendt, Community Development Coordinator Gwyneth Teves, Building Official Ronnie Bollom, Assistant to the Building Official Claudia Velasquez, EMS Director John Kowalik and Police Chief Terry Lynch.

Visitors present were: Wharton Economic Development Director Chad Odom, III, I.O. Coleman, Jr., Pastor Janice Blair, Mary A. Barnes, Thelma Hayes, Blanche Allen, Larry Coleman, Carlos Cotton, P.E. with Jones and Carter, Inc., Debra Medina and Evelyn Carriere with the Wharton Journal Spectator.

The second item on the agenda was Roll Call and Excuses Absences. After some discussion, Councilmember Russell Machann moved to excuse Councilmember Steven Schneider. Councilmember Al Bryant seconded the motion. All voted in favor.

The third item on the agenda was Public Comments. Pastor Janice Blair presented a speech on how African Americans have their blood, sweat and tears woven into the fabric of the United States of America.

The fourth item on the agenda was the Wharton Moment. Councilmember Terry Freese congratulated both the Wharton High School Varsity Boy's and Girls' Basketball teams on advancing to the playoffs. Councilmember Freese stated that Wharton High School Softball, Baseball, Golf and Track were starting for the athletic season.

The fifth item on the agenda was to review and consider the reading of the minutes from the regular meeting held on January 9, 2017 and January 23, 2017. After some discussion, Councilmember Russell Machann moved to approve the reading of the minutes from the

regular meeting held on January 9, 2017 and January 23, 2017. Councilmember Al Bryant seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider a resolution of the Wharton City Council establishing and appointing a Blue Ribbon Hospital Committee to investigate actions that may be undertaken to bring hospital medical services to the City of Wharton. City Manager Andres Garza, Jr. stated that at the City Council's January 23, 2017 regular meeting the Council voted to pursue action to bring hospital medical services to the City of Wharton due to the closure of the existing hospital. City Manager Garza said at the meeting he recommended the establishment of a Blue Ribbon Hospital Committee composed of local citizens to look into what action could be taken to accomplish this goal. After some discussion, Councilmember Russell Machann moved to approve City of Wharton Resolution NO. 2017-12, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2017 -12**

A RESOLUTION OF THE WHARTON CITY COUNCIL ESTABLISHING AND APPOINTING A BLUE RIBBON HOSPITAL COMMITTEE TO INVESTIGATE ACTIONS THAT MAY BE UNDERTAKEN TO BRING HOSPITAL MEDICAL SERVICES TO THE CITY OF WHARTON.

WHEREAS, The City of Wharton's Hospital has closed; and,

WHEREAS, The Wharton City Council sees a need for hospital medical services in the City of Wharton; and,

WHEREAS, The Wharton City Council feels that an appointed Citizen Committee would be the best avenue to investigate the possibility of bringing said type of medical services to the City; and,

WHEREAS, The Wharton City Council wishes to establish and appoint a Blue Ribbon Hospital Committee to explore what action is needed to bring hospital medical services to the City of Wharton; and,

WHEREAS, The Wharton City Council wishes for the Blue Ribbon Committee to represent the wishes of the Citizens of the City of Wharton.

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

Section I. That the Wharton City Council hereby establishes a Blue Ribbon Hospital Committee to explore actions that can be taken to bring hospital medical services to the City of Wharton.

Section II. That the City Council hereby appoints a seven (7) member committee to undertake this charge.

Section III. The Wharton City Council hereby appoints the following individuals as follows:

1. Ms. Debbi Dimmick
2. Dr. David Samuelson
3. Mr. Don Carlson
4. Ms. Billie Jones
5. Dr. Caraway
6. Ms. Stella Durley
7. Mr. Kent Hill
8. Mr. Mike Wootton

Section IV. Once appointed the committee will proceed on its own behalf to provide the best alternative for the good of the City of Wharton Citizens.

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

Passed, Approved, and Adopted this 13th day of February 2017.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

Attest: _____
PAULA FAVORS
City Secretary

Councilmember Al Bryant seconded the motion.

The seventh item on agenda was to review and consider a request by Mr. Larry James Coleman, 319 N. Outlar, Pettitt, Block 51, Lot 2 for a side yard setback variance of 3'-0" from the required 5'-0" setback and a 5'-0"-front setback variance required 25'-0" setback for the placement of a 20'x 21' metal carport. City Manager Andres Garza, Jr. presented a request from Mr. Larry James Coleman, 319 N. Outlar, Pettitt, Block 51, Lot 2 for a side yard setback variance of 3'-0" from the required 5'-0" setback and a 5'-0"-front setback variance required 25'-0" setback for the placement of a 20'x 21' metal carport. Building Official Ronnie Bollom stated that Mr. Coleman had removed an old carport and was wanting to replace it with a metal carport. Mr. Bollom said that both sides of the carport would have gutters installed. He said the Planning Commission did not review the application due to it being an

over 50% variance. After some discussion, Councilmember Al Bryant moved to approve the request by Mr. Larry James Coleman, 319 N. Outlar, Pettit, Block 51, Lot 2 for a side yard setback variance of 3'-0" from the required 5'-0" setback and a 5'-0"-front setback variance required 25'-0" setback for the placement of a 20'x 21' metal carport. Councilmember Terry Freese seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider a request from the Wharton County Recovery Team and First United Methodist Church on behalf of Timothy & Sandra Sanders for the temporary placement of a FEMA trailer at 1802 Azalea Street and the waiver of permit fees. City Manager Andres Garza, Jr. presented a request from the Wharton County Recovery Team and First United Methodist Church to waive permit fees for the temporary placement of a FEMA trailer at 1802 Azalea Street for the remainder of 2017. City Manager Garza stated the trailer would be placed on the property of Mr. and Mrs. Timothy Sanders and serve as temporary housing while the Wharton County Recovery Team and First United Methodist Church assist with the rehabilitation and other repairs at the Sanders residence, which was uninhabitable due to damage from the 2016 Flood Events. Wharton County Recovery Secretary Evelyn Carriere stated that the home was nearing completion and the FEMA trailer would not be needed. After some discussion, no action was taken.

The ninth item on the agenda was to review and consider a resolution of the Wharton City Council approving and adopting the City of Wharton Police Department Policy on the use of body worn cameras. City Manager Andres Garza, Jr. presented Chief Lynch's memorandum to him concerning the Wharton Police Department Draft Policy regarding the departmental use of body worn cameras. City Manager Garza stated that the Wharton Police Department was committed to enhancing the citizen interactions and providing additional investigatory evidence by wearing the body cameras. Police Chief Lynch stated that the Policy was to promote transparency and accountability in a fair and impartial manner for officers and citizens, while protecting civil liberties and privacy interest. Chief Lynch said City Attorney Paul Webb had reviewed the policy and was recommending the City Council consider approving it. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Resolution No. 2017-13, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2017 -13**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AND
ADOPTING THE CITY OF WHARTON POLICE DEPARTMENT POLICY ON THE
USE BODY WORN CAMERAS.**

WHEREAS, The Wharton Police Department is committed to enhancing citizen interactions and providing investigator evidence; and,

WHEREAS, Body Worn Cameras can reduce violent confrontations and complaints against officers and help maintain public trust; and,

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WHEREAS, The Body Worn Camera Policy is to promote transparency and accountability in a fair and impartial manner for officers and citizens, while protecting civil liberties and privacy interests; and,

WHEREAS, The City of Wharton City Council wishes to establish the Body Worn Camera Policy; and,

WHEREAS, The City of Wharton wishes to enforce the Body Worn Camera Policy.

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

Section I. That the Wharton City Council hereby approves the Body Worn Camera Policy for the Wharton Police Department.

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

Passed, Approved, and Adopted this 13th day of February 2017.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

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

The tenth item on the agenda was to review and consider the Texas HOME Investment Partnerships Program of the Texas Department of Housing and Community Affairs:

- A. **Resolution:** A resolution of the Wharton City Council authorizing the request to apply for a HOME Program Reservation agreement (HRA, PWD, DR) under the Texas Department of Housing and Community Affairs and authorizing the Mayor of the City of Wharton to execute all documents related to said submission.
- B. Request by The City Staff for soliciting proposals for an Administrator for the HOME Program.

City Manager Andres Garza, Jr. stated that the Texas Department of Housing and Community Affairs (TDHCA) has announced to the public that funding is available to benefit lower income residents of Texas communities through the Texas HOME Investment Partnerships Program. Community Development Coordinator Gwyn Teves stated the HOME Programs

had identified significant housing needs in the City of Wharton, particularly for the rehabilitation and reconstruction of owner occupied houses. City Manager Garza stated that on Monday, January 30, 2017 the City Council Housing Committee met to discuss the Texas HOME Investment Partnerships Program and the Committee discussed several options for assistance and the best option was shown to be the HOME-DR and HOME Program through the Texas HOME Investment Partnerships Programs of the Texas Department of Housing and Community Affairs. He said the Committee's recommendation was to submit an application for a HOME Reservation and solicit proposals for an administrator for the HOME Program. After some discussion, Councilmember Al Bryant moved to approve item B. and the City of Wharton Resolution NO. 2017-14, which reads as follows:

**CITY OF WHARTON
RESOLUTION NO. 2017-14**

A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING THE REQUEST TO APPLY FOR A HOME PROGRAM RESERVATION AGREEMENT (HRA, PWD, DR) UNDER THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID SUBMISSION.

WHEREAS, The Texas Department of Housing and Community Affairs (TDHCA) has notified the public of a funding availability to benefit lower income residents of Texas communities through the Texas HOME Investment Partnerships Program; and

WHEREAS, The Texas HOME Program has identified significant housing needs in the City, particularly for the rehabilitation and reconstruction of owner occupied housing; and

WHEREAS, The City wishes to assist our lower income homeowners while simultaneously enhancing the health, economic, and aesthetic quality of the community;

WHEREAS, The City of Wharton City Council wishes to submit applications to the Texas Department of Housing and Community Affairs HOME and HOME-DR programs for home owner assistance; and,

WHEREAS, The Wharton City Council wishes to authorize Tim Barker, the Mayor of the City of Wharton to execute all documents relating to said loan application.

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

SECTION I. The Wharton City Council hereby approves for The City of Wharton to apply for a HOME Program Reservation Agreement (HRA, PWD, DR);

SECTION II. Match, if applicable, will be provided in accordance to 10 TAC of up to 8% of Project Hard Costs, whichever is less, per household assisted through the Texas HOME Program in the form of waived fees, cash, leverage, and other forms of eligible match;

SECTION III. The City designates the Mayor, Tim Barker, as the person authorized to sign all forms related to the preparation of, and to execute any and all HOME agreements including loan documents and grant agreements;

SECTION IV. The City will use general funds up to the amount of \$40,000 as a cash reserve to pay program costs before reimbursements are received from the State of Texas HOME Program;

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

PASSED, APPROVED, and ADOPTED this 13th day of February 2017.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

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 a resolution of the Wharton City Council approving the third amendment to the professional engineering services agreement with BEFCO Engineering, Inc. for the services on the Alabama Street Sewer Line Improvement Project and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of the Third Draft Amended Professional Engineering Services Contract with BEFCO Engineering, Inc. City Manager Garza stated that the amendment would include the TDA Contract Language that was required by TXCDBG Grant Program. City Attorney Paul Webb stated that he had reviewed the Amended Contract and had no objections. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Resolution No. 2017-15, which read as follows:

CITY OF WHARTON
RESOLUTION NO. 2017 - 15

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A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE THIRD AMENDMENT TO THE AGREEMENT WITH BEFCO ENGINEERING, INC. AND THE CITY OF WHARTON FOR ENGINEERING SERVICES ON ALABAMA STREET SEWER LINE IMPROVEMENT PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, On February 13, 2017 the Wharton City Council amended the professional engineering services agreement with BEFCO Engineering, Inc. for the engineering services on Alabama Street Sewer Line Improvement Project to include the TDA contract language required by the TxCDBG Grant Program.

WHEREAS, the City of Wharton and BEFCO Engineering, Inc. wishes 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 said contract amendment.

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 to execute the amended agreement with BEFCO Engineering, Inc. and the City of Wharton for engineering services on Alabama Street Sewer Line Improvement Project to include the TDA contract language required by the TxCDBG Grant Program.

Section II. The City of Wharton and BEFCO Engineering, Inc. are hereby bound by the conditions as set forth in the contract amendment.

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

PASSED, APPROVED, and ADOPTED this 13th day of February 2017.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

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 rescinding the City of Wharton Resolution No. 2014-52 and approving new rates for Emergency Medical Services. City Manager Andres Garza, Jr. presented EMS Director John Kowalik's memorandum to him regarding establishing new charges and rates for emergency medical services. City Manager Garza stated that the City EMS Staff met and reviewed the current EMS rates being charged for the service and presented them to the City Council Finance Committee on Monday, February 13, 2017. City Manager Garza said the City Council Finance Committee were recommending the City Council consider approving the new charges and rates for emergency medical services. After some discussion, Councilmember Don Mueller moved to approve City of Wharton Resolution No. 2017-16, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2017 -16**

A RESOLUTION OF THE WHARTON CITY COUNCIL RESCINDING THE CITY OF WHARTON RESOLUTION NO. 2014-52 AND APPROVING NEW RATES FOR EMERGENCY MEDICAL SERVICES.

WHEREAS, The City Council of the City of Wharton established rates in accordance with Resolution No. 2014-52 ; and,

WHEREAS, The City wishes to establish new charges and rates for emergency medical services; and,

WHEREAS, The City Council of the City of Wharton wishes to authorize the Emergency Medical Services Director to enforce said charges and the applicable fees.

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

Section I. The City Council of the City of Wharton hereby adopts the charges and fees for emergency medical services as described below:

A. SERVICE LEVEL	RATE
No Transport 1 (Lift Assist)	\$100.00
No Transport 2 (Use of Supplies/Treatment)	\$225.00
No Transport 3 (Air Medical Transport)	\$550.00
Basic Life Support – Non-Emergency	\$450.00

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Basic Life Support – Emergency	\$500.00
Advanced Life Support 1 – Non Emergency	\$525.00
Advanced Life Support 1 – Emergency	\$550.00
Advanced Life Support 2	\$650.00
Advanced Life Support – Special Care	\$750.00
Treatment Only No Transport	\$550.00

B. MILEAGE \$13.50 per mile.

C. Additional supplies and equipment usage fees.

D. RECORDS REQUEST FEE

Personal Request	No Charge
Family Member Request	\$35.00
Attorney of Law Office Request	\$35.00

Section II. The City Council of the City of Wharton hereby authorizes the Emergency Medical Services Director and his duly authorized representative to enforce charges and the applicable fees.

Section III. That Resolution No. 2014-52 shall become null and void on February 28, 2017.

Section IV. That this resolution shall become effective on March 1, 2017.

Passed, Approved, and Adopted this 13th day of February 13, 2017.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

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

The thirteenth item on the agenda was to review and consider a request by Chief Anthony Abbott to address the Council regarding Emergency Services District No. 1. City Manager Andres Garza, Jr. stated that the Volunteer Fire Chief Anthony Abbott had requested to address the City Council concerning Wharton County Emergency District No. 1 action taken by their Board. City Manager Garza stated that Chief Abbott had requested to place the item on a future agenda for discussion. After some discussion, no action was taken.

The fourteenth item on the agenda was to review and consider an Ordinance amending the City of Wharton Code of Ordinances, Chapter 66 Signs and Advertising, Articles I-IV; 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 Separability and setting an effective date. City Manager Andres Garza, Jr. stated that the Planning Commission met on Monday, February 6, 2017 and were recommending to the City Council amendments and additions to the City of Wharton Code of Ordinances, Chapter 66, Signs and Advertising, Article I-IV. Community Development Coordinator Gwyn Teves the updates to the Ordinance included regulation of electronic signs and that City Attorney Paul Webb had reviewed the changes and was recommending City Council consider approving it. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Ordinance No. 2017-03, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2017-03**

AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 66 SIGNS AND ADVERTISING, ARTICLES I-IV; 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.

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

WHEREAS, it is the desire of the City of Wharton Code of Ordinances to read as follows:

ARTICLE I. - IN GENERAL

Sec. 66-1. - Purpose.

- (a) The purpose of this chapter is to establish clear and unambiguous regulations pertaining to signs in the City of Wharton and to promote thereby an attractive community, foster traffic safety, preserve and protect the quality of life and real estate values forming the city's tax base, and enhance the effective communication and exchange of ideas and commercial information. The City Council of the City of Wharton hereby finds the following legislative facts:
- (b) The proliferation of signs creates commercial confusion and makes it difficult for travelers and motorists to locate the goods and services they seek.

- (c) The increasing height of signs within the city is an endless battle for higher and more visible signs, and a reasonable limitation on the height of signs is necessary to prevent potential visual pollution, windstorm damage, injury or death.
- (d) Excessive height in signs creates visual clutter and the establishment of a reasonable maximum height for signs will allow effective communication, pedestrian and vehicular safety, and prevent altitude competition.
- (e) Reasonable provisions pertaining to size, scale, location, design, lighting, permanency, and maintenance are necessary to avoid visual clutter, preserve and improve the appearance and character of the community, to avoid traffic line-of-sight problems caused by signs or structures in close proximity to streets, which compete with traffic signs and signals for the attention of motorists, and to prevent deterioration, disregard, and abandonment of signs or structures.
- (f) The council recognizes that signs are necessary for visual communication for public convenience, and that businesses and other activities have the right to identify themselves by using signs which are incidental to the use on the premises where the signs are located. The city council herein seeks to provide a reasonable balance between the right of a person to identify his or her business or activity, and the public interest of protecting against visual discord confusion and resulting safety hazards to pedestrians and motoring public that result from the unrestricted proliferation, location and construction of signs. This chapter will insure that signs are compatible with adjacent land uses and with a positive total visual environment in the community.
- (g) The city council finds that the rights of residents of this city to fully exercise their rights of free speech by the use of signs containing noncommercial messages are subject to minimum regulation regarding structural safety and setbacks for purposes of traffic and pedestrian protection. The council seeks herein to provide for the reasonably prompt removal and disposal of such signs after they have served their purpose and yet to avoid any significant interference with First Amendment freedoms.
- (h) The council finds that instances may occur in the application of this chapter where strict enforcement would deprive a person of the reasonable use of a sign, or the reasonable utilization of a sign in connection with other related property rights, and herein provides for such persons to have the right to seek variances from the requirements of this chapter for good cause. The council finds that it is imperative that any city representative, agent or official who is responsible for enforcing the ordinance from which this article derives, do so as it is written, in the interest of equality and fair and impartial application to all persons, and that the use of the variance procedure shall remain the sole administrative means to obtain any exception to the terms hereof.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-2. - Definitions.

Apartment/condominium/mobile home park identification sign: An attached sign or a freestanding sign with permanent foundation or moorings, designed for identification of a multifamily residential project or a mobile home park project.

Area identification sign: A freestanding or wall sign with permanent foundation or moorings, designed for identification of subdivisions of ten to 50 acres, or identification of a distinct area within a subdivision.

Attached sign: A sign attached to or applied on and totally supported by a part of a building.

Banner: A graphic composed primarily of cloth, paper, fabric or other similar means, not including decorative streamers with no lettering thereon.

Building: A structure that has a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals or property.

Building official: The City of Wharton Building Official as prescribed by chapter 18 Buildings and Construction, article II, Building Official, sections 18-36—18-40 of the City of Wharton Code of Ordinances.

Changeable electronic variable message signs (CEVMS): Means a sign which permits lights to be turned on or off intermittently or which is operated in a way whereby light is turned on or off intermittently, including any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, including a light emitting diode (LED) or digital sign, and which varies in color or intensity. A CEVMS sign does not include a sign located within the right-of-way which functions as a traffic control device and which is described and identified in the Manual on Uniform Traffic Control Devices (MUCTD), approved by the federal highway administrator as the national standard.

Church directional sign: An off-premises sign that furnishes directions to a church.

Commercial sign: A sign which directs attention to a business, commodity, service, entertainment, or attraction sold, offered or existing.

Construction sign: An attached or freestanding sign erected upon a lot or parcel of land for the purpose of advertising the furnishing of labor, materials, or the practice of crafts for a subdivision or building project.

Corporate signs/flags: A piece of fabric of distinctive design meant to draw attention to the main entrance of an apartment complex, hotel, church, nursing home, home for the aged, business or school.

Development sign: A sign announcing a proposed subdivision or a proposed building project.

Directional traffic control sign: A sign utilized as a traffic control device in off-street parking or access areas.

Finance sign: An attached or freestanding sign erected upon a lot or parcel of land for the purpose of advertising by a bank or other lending institution, the furnishing of interim or permanent financing for a subdivision or proposed building project.

Freestanding commercial sign: A sign supported by one or more columns, poles or bars extended from the ground or from an object on the ground, or that is erected on the ground; the term includes all signs which are not substantially supported by a building or part thereof,

or which are substantially supported by a building or part thereof, when the sole significant purpose of the building or part thereof, is to support or constitute the sign.

Fuel price sign: A sign used to advertise the current price of fuel at locations where fuel is sold.

Garage/yard sale sign: A sign used to advertise the sale of personal property at a person's residence.

Home occupation sign: A sign used to identify the name and occupation of a person with a legal home commercial enterprise.

Low profile sign: A sign with a permanent foundation which is not attached to a building, but is a stand-alone sign and which does not exceed 60 square feet in area and four feet in height.

Noncommercial sign: A sign containing a work of art or message which is political, religious or pertaining to a point of view, expression, opinion or idea that contains no reference to the endorsement, advertising of or promotion of patronage, of a business, commodity, service, entertainment, or attraction that is sold, offered or existing.

Off-premises commercial sign: A sign which directs attention to a business, commodity, service, entertainment, or attraction sold, offered, or existing elsewhere than upon the premises where such sign is displayed.

On-premises commercial sign: A sign which directs attention to a business, commodity, service, entertainment, or attraction sold, offered or existing upon the premises where such sign is displayed. This definition does not include noncommercial signs.

Pennants/festoons: A piece(s) of fabric or other pliable material used for decoration (contains no copy or logo) or for identification (contains copy and/or logo).

Political sign: Any sign which promotes a candidate for any public office or which advocates a position on any social issue as its primary purpose. Political signs shall be considered in the category of noncommercial signs except where there are regulations pertaining to their removal after an election.

Portable sign: An on-premises sign which is not permanently affixed or attached to real property by poles, stakes or other members which are placed into the ground or upon some other type of permanent foundation; including trailer signs, any sign with wheels or skids, and any sign which is constructed so as to sit upon the surface of the ground, without subsurface attachment or extension.

Premises: An area of land planned and designed as a single comprehensive project, considered from the time the plan is first submitted to the planning department either at plat stage or site plan stage.

Real estate sign: An attached or freestanding sign erected upon a lot or parcel of land for the purpose of advertising same for sale or lease.

Roof sign: An outdoor advertising display sign erected, constructed, or maintained on the roof of a building or which is wholly dependent upon a building for support, and which

projects above the point of a building with a flat roof six feet above the eave line of a building with a shed, gambrel, gable or hip roof, or the deck line of a building with a mansard roof.

Sign: Means any written or graphic representation, decoration, form, emblem, trademark, flag, banner, or other feature or device of similar character which is used for the communication of commercial information, or communication of ideas or subjects of political significance, and which:

- (1) Is a structure or any part thereof, including the roof or wall of a building, or a freestanding wall or fence.
- (2) Is written, printed, projected, painted, constructed or otherwise placed or displayed upon or designed into a building, board, plate canopy, awning, or vehicle, or upon any material, object or device whatsoever.
- (3) By reason of its form, color, wording, symbol design, illumination or motion attracts or is designed to attract attention to the subject thereof, or is used as a means of identification, advertisement or announcement.
- (4) A sign shall be considered to be a single display surface, a double-faced display surface, or display device-containing elements clearly organized, related and composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements or where there is reasonable doubt about the relationship of elements, each element shall be considered to be a single sign; provided, however, that the display of actual physical merchandise through glass windows in any store where such merchandise may be sold in the ordinary course of business shall not constitute a sign or signs.

Spinners: Any sign display or attention-seeking device (that is not a flag) which spins or flutters when contacted by air currents or is propelled by a mechanical fan.

Subdivision identification sign: A freestanding or wall sign with permanent concrete foundation or moorings, designed for permanent identification of a subdivision of greater than 50 acres.

Voting period: The period beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00; Ord. No. 2008-07, 6-9-08; Ord. No. 2012-01, 1-9-12)

Sec. 66-3. - Applicability.

- (a) Any reference to the masculine gender including but not limited to him and his in this chapter also includes the feminine gender.
- (b) This chapter shall apply to all signs within the corporate limits of the city.
- (c) This chapter supersedes any conflicting ordinance unless this chapter expressly provides otherwise.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-4. - Prohibited acts.

Within the corporate limits of the city, it shall be unlawful for any person to do any of the following acts:

- (1) Post, paint or otherwise exhibit any type of sign or sign support on any property not owned or controlled by him, without the written permission of the person owning or controlling the property.
- (2) Tear down, remove or otherwise interfere with any type of sign or sign support erected by another, unless the sign or sign support was placed or maintained on the property of the person removing the sign or sign support without written permission.
- (3) Erect, maintain or paint any type of sign upon a tree, rock or other natural feature.
- (4) Erect any type of off-premises sign or sign support without having obtained from the city a permit therefore, except as specifically exempted by this chapter.
- (5) Remove, without the building official's authorization, any official tag that was placed on a sign in accordance with this chapter.
- (6) Erect or allow any type of off-premises sign or sign support to remain upon any property if the off-premises sign or sign support is in violation of this chapter.
- (7) Place or cause to be placed anywhere in the city any type of sign, poster, placard, handbill or other advertising material on any motor vehicle or in any location in such a manner that the sign or advertising material may reasonably be expected to move to the ground by the blowing of the wind or any other act of nature. For purposes of this section, it shall be presumed that any sign, poster, placard, handbill or other advertising material placed under the windshield wipers of any motor vehicle shall reasonably be expected to move to the ground.
- (8) Erect, place or maintain any type of sign, poster, placard, handbill or other advertising material in any public right-of-way or on any public utility poles.
- (9) Erect or cause to be erected or maintained any sign using any combination of forms, words, colors or lights that imitate standard public traffic regulatory, emergency signs or signals.
- (10) Erect or cause to be erected or maintained any sign that creates a traffic or safety hazard by virtue of significant distraction, reflection, unusual or excessive lighting or blockage of line-of-sight.
- (11) Erect or cause to be erected or maintained any sign that contains vulgar, lewd or pornographic figures, pictures, paintings, drawings, words, characters or symbols.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-5. - Permits.

- (a) Erection permits: A permit shall be required for the following types of signs:
- (1) All types of off-premises signs, whether commercial or noncommercial.

- a. The building official, upon filing of an application for a permit to erect a sign, shall examine applicant's sign plans and specifications and other data and the premises upon which the applicant proposes to erect the sign. If it shall appear that the proposed sign is in compliance with this chapter and all other laws and ordinances of the city, the building official shall then issue the erection permit. If the work authorized under a sign erection permit has not been completed within six months after the date of issuance, the permit shall become null and void and the applicant shall be required to remove any portion of the sign that has been erected.
- b. The fee for such erection permits shall be established by resolution of the city council and may be changed from time to time.

(b) No permit shall be required for the following signs:

- (1) Real estate signs, finance signs and construction signs.
- (2) Directional traffic control signs.
- (3) Home occupation signs.
- (4) Political signs.
- (5) Home numbering signs.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-6. - Permit number.

Every sign registered, shall display its permit number in a conspicuous place on the sign so that the permit number is visible from the ground to the building official and is readable without artificial visual aids while standing at a distance of 30 feet.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-7. - Maintenance.

The owner of a sign shall maintain the sign and any leased or owned real estate immediately surrounding the sign in a clean, sanitary and inoffensive condition and free and clear of all obnoxious substances, rubbish and weeds.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-8. - Construction standards.

All signs erected or maintained in accordance with this chapter shall be erected and maintained in compliance with all applicable state laws and with the city building code, electrical code and other applicable ordinances of the city. If a conflict exists between this chapter and any other laws, the most restrictive standard applies.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-9. - Lighting.

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- (a) All lighting of signs shall be so shielded as not to produce intensive or excessive light or glare to the traveling public and adjacent property.
- (b) No sign shall be placed so as to obstruct the public lighting of any street, alley or public property.
- (c) No sign shall be located in such a manner as to obscure or interfere with the effectiveness of official traffic signs, signals or devices or in such a manner as to obstruct or interfere with the view by a pedestrian or a driver of a motor vehicle or any other type vehicle or approaching, merging or intersecting traffic.
- (d) Signs that are lighted and that are visible from any public street must be so designed and so maintained that the lights are effectively shielded to prevent beam rays of light from being directed at any portion of the traveled ways and the lights shall not be of such intensity or brilliance to cause glare or to impair the vision of a pedestrian or the driver of a motor vehicle or any other type of vehicle.
- (e) No sign may be so illuminated that it interferes with the effectiveness of identifying, or obscures an official traffic sign, signal or device.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-10. - Subdivision and area identification signs.

- (a) Area identification signs shall be permitted upon private property in an area to identify subdivisions of ten to 50 acres in size and subject to the requirements set forth in Table II. Area identification signs may also be used within a subdivision consisting of more than 50 acres to identify distinct areas within that subdivision, subject to the requirements in Table II.
- (b) Subdivision signs shall be permitted upon private property in an area to identify subdivisions of greater than 50 acres, subject to the requirements set forth in Table II.
- (c) Both area identification and subdivision signs must be located on the premises as identified by a preliminary or master preliminary plat of the subdivision. Subdivision signs will be permitted only at major intersections on the preliminary plat of the subdivision (intersection of two collector type or larger type streets). At each intersection either one or two subdivision signs may be permitted so long as the total area of the signs does not exceed 150 square feet. Banners or flags may be utilized as subdivision identification signs but the overall height of such banners and flags shall not exceed 40 feet.
- (d) Indirect lighting for area identification and subdivision signs is permissible but no unusually distracting optical effects, moving parts or alternating, sequential erratic or flashing lights shall be permitted for either type of sign. Landscaping when permissible shall be installed around each area identification or subdivision sign. Adequate arrangements for permanent maintenance of all signs and any landscaping in conjunction with area identification and subdivision signs shall be made by the subdivision developer, which may be through an owners association, or related organization if one exists or is created for this purpose.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-11. - Apartment/condominium/mobile home park identification sign.

An apartment/condominium/mobile home park identification sign may be either an attached sign or a freestanding sign. It shall be placed upon the private property of a particular multifamily project or mobile home park subject to the requirements set forth in Table II. The apartment/condominium/mobile home park identification sign shall list the name and facilities available and may have leasing or sales information incorporated as a part of the sign. Indirect lighting for apartment/condominium/mobile home park identification signs is permissible, but no unusually distracting optical effects, moving parts, or alternating, sequential, erratic or flashing lights or devices shall be permitted. Any mobile home parks existing at the time of this chapter that are nonconforming may only utilize an identification sign meeting the provisions of this chapter and Table II.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-12. - Development signs.

- (a) A development sign may be placed only on private property subject to the requirements in Table II.
- (b) A development sign for a building project shall be removed if the project has not received a building permit at the end of 12 months from the date the sign erected. The building official may renew the sign permit for one additional 12-month period upon application. Once a building permit for the project is received, the sign may stay in place until 75 percent of the project is leased or a permanent sign is installed, whichever comes first.
- (c) A development sign for a proposed subdivision shall be removed if a preliminary or final plat has not been approved by the end of 12 months from the date the sign erected. The building official may renew the sign permit for one additional 12-month period upon application. Once a plat has been approved, the sign permit is valid as long as a preliminary plat is in effect, or in the absence of a valid preliminary plat, for 24 months from the date of approval of a final plat.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-13. - Directional traffic control signs.

Directional traffic control signs may be utilized as traffic control devices in off-street parking areas subject to the requirements set forth in Table II. A logo or copy may be permitted to be placed on a directional traffic control sign but must be less than 50 percent of the area of the sign. No directional traffic control sign shall be permitted within or upon the right-of-way of any public street unless the sign's construction, design, and location have been approved by the chief of police.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-14. - Portable signs.

An applicant may seek a permit from the building official for the use of a portable sign. A permit granted for a portable sign will allow the applicant to use the sign for one consecutive 60-day period from the date the permit is issued. An applicant granted a permit under this section may not seek another permit for the use of any portable sign at that location for a 12-month period, which begins the date the permit expires. The fee for such a permit shall be established by resolution of the city council and may be changed from time to time. Any portable sign located on a commercial premises must direct attention to a business, commodity, service, entertainment or attraction, sold offered or existing on those premises. Any portable sign allowed pursuant to a permit will be subject to the following requirements:

- (1) All portable signs shall display an affixed tag which identifies the name, address and phone number of the sign owner and of the person in control of the sign, if different from the owner.
- (2) Portable signs shall be a minimum of 25 feet from any residential property line.
- (3) The maximum facial display area of all the sides combined of a portable sign shall be no larger than 32 square feet.
- (4) At least 25 feet of space shall separate all portable signs on the same side of the street regardless of property ownership.
- (5) Portable signs shall have a front property and side setback from the property line of not less than ten feet.
- (6) The maximum height of any portable sign from ground to top of sign shall be not greater than six feet.
- (7) All portable signs shall be staked or otherwise secured in such a manner that they may not be reasonable expected to be blown over or moved by wind gusts not associated with officially declared tropical storms, hurricanes or tornadoes. Extra grounding precautions or removal must be taken by portable sign owners in the event of an approaching tropical storm, hurricane or tornado.
- (8) All portable signs shall be kept in good repair.
- (9) Any other requirements as prescribed by the building code.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00; Ord. No. 2012-01, 1-9-12)

Sec. 66-15. - Real estate signs.

- (a) One real estate sign not exceeding 16 square feet in total area (exclusive of stakes and posts) may be erected at any time while the property is offered for sale or lease to the public. Properties with a minimum of 150 feet of frontage shall be allowed one real estate sign not exceeding 32 square feet in total area. Properties with a minimum of two acres and frontage on two public streets shall be allowed one real estate sign on each frontage street with the area of the sign to be determined by the amount of frontage as stated above. Such signs must be removed by the owner or person in control of the premises when either the property has been sold or leased.
- (b) Real estate signs may be either attached or freestanding and only those visible from a public street are limited in number (see exempt signs section 66-30). Real estate signs

shall be maintained by the persons in control of the premises so as to remain erect and in good repair. Such signs shall be removed by the property owner or other person in control of the premises if they are damaged, broken or incapable of remaining erect.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-16. - Finance/construction signs.

- (a) One finance sign and three construction signs (for a total of four signs), not exceeding 16 square feet in total area each (exclusive of stakes and posts) may be erected once a building permit has been issued on a property. Properties with a minimum of ten acres and 1,000 feet of frontage shall be allowed one finance sign and three construction signs not exceeding 32 square feet in total area each.
- (b) Finance and construction signs may be either attached or freestanding and only those visible from a public street are limited in number (see exempt signs section 66-30).
- (c) All such signs shall be maintained by the owner or persons in control of the premises so as to remain erect and in good repair. Such signs shall be removed by the property owner or other person in control of the premises if they are damaged, broken or incapable of remaining erect.
- (d) Such signs must be removed by the owner or person in control of the premises when either the property has sold or been leased and/or when performance under the construction contract or subcontract (in the case of construction signs) has been completed. Financing and construction signs shall be removed prior to issuance of a certificate of occupancy by the city.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-17. - Noncommercial signs—Political signs.

- (a) This chapter does not regulate the size, content or location of noncommercial signs, political signs except as follows:
 - (1) No commercial message shall be shown on any noncommercial sign.
 - (2) No noncommercial sign:
 - a. May be located within a public road right-of-way of the State of Texas; or
 - b. May be located off the premises of the property owner who is displaying the sign; or
 - c. May exceed 32 square feet in area and six feet in height measured from the ground to the top of the sign. Noncommercial/political signs exceeding an area of six square feet shall not be allowed in residential neighborhoods; or
 - d. May be located within a city right-of-way or on city property; or
 - e. May be posted at the polling site other than during the voting period during polling hours and in the designated location outside the 100 foot statutory electioneering limit of the polling entrance; or

- f. May be placed on the polling site with any posts or wire greater than 9 (nine) gauge so as to eliminate any damage to existing underground wires, irrigation or property.
- (b) This provision is necessary to avoid visual clutter, proliferation, resulting rubbish and dangerous distraction to pedestrians and drivers caused by close proximity of such signs to automobile traffic, to avoid damage to automobiles which may leave the paved surface intentionally or by accident, and to avoid the necessity for pedestrians to step into the roadway to bypass such signs or to seek line-of-sight verification of traffic. No regulatory alternative exists to accomplish this police power obligation.
- (c) In the event that any noncommercial/political sign is located in a prohibited area or exceeds the maximum height or size limitations, it shall be removed by the city.
- (d) All political signs shall be removed within ten days after the election to which they are applicable. Any private restrictive covenants in real property deeds should be consulted by landowners to determine if their private property may otherwise be regulated regarding posting signage.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00; Ord. No. 2012-01, 1-9-12)

Sec. 66-18 - Home occupation signs.

A home occupation sign may contain only the name and occupation or commercial enterprise of the resident. It shall be attached directly to the face of the occupant's residence. It shall not exceed two square feet in area, shall not be illuminated in any way, and shall not project more than 24 inches beyond the building or porch. No permit is required. No display of merchandise or other forms of commercial communication shall be allowed in a residential area, unless same are in existence prior to the adoption of this chapter in connection with use which is presently a lawful nonconforming use within the area. Such nonconforming signs may be maintained until the nonconforming uses of the building cease, subject to the requirements for maintenance herein. Discontinuance of the display of such a sign for more than three consecutive months shall prevent future display, even if the nonconforming use of the premises is continuous. Any private restrictive covenants in real property deeds should be consulted by landowner to determine if their private property may be otherwise regulated regarding positive signage.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-19. - Roof signs.

Roof signs shall be regulated as freestanding signs.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-20. - Freestanding commercial signs.

- (a) Freestanding commercial signs are allowed only on developed commercial property. One freestanding sign shall be allowed only when the premises has a minimum of two acres, subject to the requirements set forth in Table II. One low profile sign shall be allowed when the premises has less than two acres subject to the requirements set forth in Table

II. Height, area and setback from the property line requirements for all other freestanding signs are not found in Tables I and II. See section 66-22 concerning banners and flags.

- (b) A premises with less than 75 feet of public street frontage shall be allowed to use one low profile sign.
- (c) A premises with more than 75 feet of public street frontage shall be allowed to use Table I standards for one freestanding sign rather than one low profile sign.
- (d) A premises with more than 150 feet of public street frontage shall be allowed to use Table I standards for one freestanding sign or any number of low profile signs as long as there is a minimum separation between signs of 150 feet.
- (e) Premises with less than 75 feet of public street frontage may be combined in order to utilize signage corresponding to the resulting frontage as described in the preceding two paragraphs.
- (f) The sign applicant may elect the frontage street where two streets intersect at the corner are classified the same in accordance with the city's subdivision ordinance. If the intersection occurs at two differently classified streets, then the wider street shall be considered the frontage street.
- (g) No more than one freestanding sign shall be allowed on any premises except when all of the following conditions are met:
 - (1) The site must be 25 acres or more in area.
 - (2) The site must have 1,000 feet or more of continuous unsubdivided public frontage on any major arterial street (as determined by the city's subdivision ordinance) toward which one freestanding sign is to be displayed.
- (h) Balloons or floating devices anchored to the ground or structure may be used for display or advertising for special events. Maximum height shall be not greater than 50 feet. One balloon or other floating devices shall be allowed for a period not to exceed a cumulative total of 30 days per calendar year per location. A no-fee permit is required. Party balloons are not included in this chapter.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00; Ord. No. 2012-01, 1-9-12)

Sec. 66-21. - Attached signs.

An attached commercial sign shall advertise only the name of, uses of, or goods or services available within the building to which the sign is attached. Such signs shall be parallel to the face of the building, shall not be cantilevered away from the structure, and shall not extend more than one foot from any exterior building face, mansard, awning or canopy (see roof sign definition). There shall be no painted roof signs.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-22 – Changeable Electronic Variable Message Signs (CEVMS)

Changeable electronic variable message sign (CEVMS) regulations:

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- (1) Images or messages shall be static in nature and shall not blink, flash or be animated in such a manner as to constitute a distraction to passing motorists.
- (2) No image or message may be displayed for less than six seconds.
- (3) The changeable message portion shall not display images, words or colors so as to be confused for traffic signals or bear such words as "stop," "slow," "caution," "warning," or other similar words.
- (4) The face or display of the sign shall be placed so as to be easily visible and not cause distraction to passing motorist or pedestrians.
- (5) Shall automatically adjust the intensity of its display according to natural ambient lighting conditions.
- (6) Shall not have an intensity after dark so as to be a nuisance to passing motorists or nearby residential areas.

Sec. 66-23. - Corporate flags.

One freestanding corporate flag per premises, not to exceed 40 feet in height or 100 square feet in area is allowed in multifamily, commercial and industrial premises.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-24. - Church directional signs.

Church directional signs not larger than six square feet in area in size are not prohibited and are not subject to setback, spacing and size requirements contained in this chapter; provided, however, these church directional signs shall be subject to all other provisions of this chapter, including obtaining a permit and a height requirement of 7'0", measured from the bottom of the sign to the base of the exposed sign pole, but shall not be subject to a permit fee.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-25 - Sports signs.

Signs displayed within sports stadiums, parks or fields are not prohibited and are not subject to permit, setback, spacing and size requirements of this chapter. However, these signs shall be subject to all other applicable provisions of this chapter.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-26. - Home/business address numbering.

Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property.

- (1) The primary location of the address numbers shall be located as near to the front entrance as possible.
- (2) Numbers shall contrast with their background and shall be Arabic numerals and/or alphabet letters if applicable.
- (3) Numbers and/or letters shall be four inches high with a minimum stroke width of one-half-inch.

In addition to the above building numbering, signs may also be erected for the purpose of identifying the address of residential homes. Such signs shall be no longer than 16 inches in length and eight inches in width and no more than 30 inches in height. Curb numbering can also be used in conjunction with the primary position numbers. These numbers shall have a contrasting background.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00; Ord. No. 2012-01, 1-9-12)

Sec. 66-27. - Garage/yard sale signs.

Garage/yard sale signs are not prohibited. However, there shall only be a maximum of three signs allowed. One sign shall be located on the property of the sale. Two additional signs can be placed on other private property locations with permission of the property owner. Signs shall not be allowed in city rights-of-way or on utility poles, street sign poles or traffic sign poles. The sign area shall not exceed six square feet and must provide address of sale. Signs may be placed the evening before the sale and must be removed no later than 8:00 p.m. on the final day of the sale. [See § 66-111 for any fine and penalty for violations.]

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00; Ord. No. 2012-01, 1-9-12; Ord. No. 2013-25, 10-14-13)

Sec. 66-28. - Off-premises signs; commercial and noncommercial.

Any commercial or noncommercial off-premises sign erected in accordance with this chapter shall meet the following requirements:

- (1) Be a minimum of 80 feet from any residential property line.
- (2) Have a total area not greater than 150 square feet.
- (3) Five hundred feet of space shall separate all off-premises signs on the same side of a public street.
- (4) Have a front setback from the property line of not less than 50 feet.
- (5) Shall be no greater than 25 feet in height from the ground.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-29. - City-sponsored signs.

(a) The city may erect a sign on city-owned property where there is a determination and approval of the city council which finds that the display of the sign:

- (1) Promotes a positive image of the city for the attraction of business or tourism; and
- (2) Depicts an accomplishment of an individual or group; and
- (3) Creates a positive community spirit.

(b) Upon such order, the city can authorize, upon approved construction plans, the following:

- (1) A sign on a city water tower; or

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- (2) An entrance sign to be located on city-owned property such that it is visible from the major thoroughfare as designated in the current major thoroughfare plan; or
 - (3) A sign to be located on city rights-of-way.
- (c) Said sign shall be displayed for a period ordered by the city council or as may be decided by it from time to time.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-30. - Prohibited signs.

(a) The following signs shall be prohibited within the corporate limits of the city:

- (1) Signs painted on roof tops.
- (2) Except as permitted in section 66-22, corporate banners, flags, pennants, festoons or spinners are prohibited. However, if a business holds a grand opening or special event flags, pennants, festoons or spinners may be displayed for a cumulative total of 30 days per calendar year per location. A no-fee permit is required. The flags of any country, state, city, church, or school are not prohibited.
- (3) Signs and displays with flashing, blinking or traveling lights, or erratic or other moving parts, either internal or external to the premises, and oriented and visible to vehicular traffic, provided that time and temperature signs are permissible if the maximum area and setback requirements of this chapter are met and if the commercial information or content of such sign is restricted to no more than eight square feet.
- (4) Any signs which are intended to or designed to resemble traffic signals and bear such words as "stop," "slow," "caution," "warning," or other words, and which are erected for purposes other than actual traffic control or warning to the public.
- (5) Any sign which emits sound, odor or visible matter.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00; Ord. No. 2008-07, 6-9-08; Ord. No. 2012-01, 1-9-12)

Sec. 66-31. - Exempt signs.

The following signs are exempt from the requirements of this chapter:

- (1) Signs that are not easily read from beyond the boundaries of the lot or parcel on which they are located or from any public thoroughfare or traveled right-of-way. Such signs are not exempt from the safety regulations contained herein and in city building and electrical codes.
- (2) Official notices posted by government officials in the performance of their duties and government signs controlling traffic, regulating public conduct, identifying streets, or warning of danger or which perform some other governmental function. (Bulletin boards or identification signs accessory to government buildings or other buildings are subject to the provisions of this chapter.)

- (3) Temporary signs erected by private property owners for the purpose of warning of a dangerous defect or condition, or other hazard to the public.
- (4) Noncommercial signs on private property or works of art that in no way identify or advertise a product or business, or by their location and placement impede traffic safety.
- (5) Temporary decorations or displays, if they are clearly incidental to and are customarily and commonly associated with any national, local, ethnic, sporting or religious event or celebration.
- (6) Temporary or permanent signs erected by public utilities or construction related companies to warn of the location of pipelines, electrical conduits, or other dangers or conditions in public rights-of-way.
- (7) Signs that are displayed on motor vehicles that are being operated or stored in the normal course of a business, such as signs indicating the name or the type of business that are located on automobiles, moving vans, delivery trucks, trailers and other commercial vehicles; but only if the primary purpose of such vehicles is not for the display of the signs thereon, and only if such vehicles are parked or stored in areas appropriate to their use as commercial or delivery vehicles, such as service areas or locations close to the business building(s) away from public traffic areas.
- (8) Signs carried by a person and not set on or affixed to the ground.
- (9) Off-premises outdoor advertising display signs/banners by sponsors of charitable events. These signs may be displayed for two weeks prior and during the event with written approval of the city manager.
- (10) Flags used as political symbols including only the United States, Texas, city and church flags.
- (11) Flags used solely for decoration and not containing any copy or logo and located only in multifamily, commercial and industrial districts or premises developments. In multifamily developments, commercial and industrial premises, flags will be restricted to 25 square feet in area, 30 feet in height, and the number shall be restricted to no more than 12 flags per building plot.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00; Ord. No. 2012-01, 1-9-12)

Sec. 66-32. - Fuel price signs.

Service stations will be allowed one freestanding sign per site, the area of which shall not exceed 16 square feet per side of the sign and will not be included in the allowable area of any freestanding sign. This sign cannot be located within a public right-of-way.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-33. - Structural requirements.

For the erection of any sign, a building permit shall be required in addition to the erection permit required under this chapter, in accordance with the provisions of the city building code.

If a conflict exists between this chapter and the building code, the most restrictive standard applies.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-34. - Abandoned, damaged or unsafe signs.

- (a) All abandoned signs and their supports shall be removed within 60 days from the date of abandonment by either user or owner. All damaged signs shall be repaired or removed within sixty 60 days. The building official shall have authority to grant a 30-day time extension where he determines there is a reasonable necessity for same.
- (b) A nonconforming sign that is damaged and not repaired within 60 days shall be deemed abandoned. A sign is considered damaged if the cost of repairing the sign would be more than 60 percent of the cost of erecting a new sign of the same type at the same location. The sign owner will before the repair of an existing sign or the erection of a new sign begins present to the building official cost estimates associated with the repairs or erection.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-35. - Removal of signs.

- (a) The city may, at its option, require the removal, relocation or reconstruction of any sign within its corporate limits in accordance with this chapter.
- (b) If application of a city regulation would require reconstruction for a sign in a manner that would make the sign ineffective for its intended purpose, such as by substantially impairing the sign's visibility, application of the regulation shall be deemed to require removal of the sign for purposes of this chapter.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-36. - Miscellaneous regulations.

- (a) No sign shall be placed in or across a city drainage, street or utility easement or a city right-of-way. Any damage to or relocation of signs illegally located in public easements shall be the responsibility of the owner of the sign. Any resulting damages to the traveling public shall be borne by the sign owner. The city, when possible, shall give the sign owner prior notice of the location and use of the public easement or right-of-way which will affect the sign. This is also applicable to all exempt signs.
- (b) Signs may be internally or externally lighted as long as the light is so designed as to be shielded away from adjoining residential premises and does not impair visibility on adjoining public rights-of-way.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

ARTICLE II. - REMOVAL, RELOCATION AND RECONSTRUCTION

Sec. 66-37. - Illegal nonconforming signs.

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- (a) If the building official determines that a sign or a sign support is not in conformity with this chapter, the owner shall promptly, upon written notice from the building official, remove or repair the sign to bring it into conformity with this chapter.
- (b) If the owner of any nonconforming sign or sign support refuses or neglects to remove or repair it upon being notified to do so, the building official shall notify the owner or agent of the property on which the nonconforming sign or sign support is located to remove it.
- (c) If the owner or agent of the property on which the nonconforming sign or sign support is located refuses or neglects to act within 24 hours after the service of such written notice, the building official or his designated assistant may enter on the premises and remove or cause to be removed the nonconforming sign or sign support. The cost of the removal of such sign or sign support shall be taxed against the owner of record of the real property from which it is removed, and such costs shall constitute a lien against the real property.
- (d) The city shall hold any item impounded by authority of this section for a period of 30 days, after which the city may dispose of any such item in accordance with public surplus property laws and procedure. During this 30-day period, the owner of any such item, after showing proof of ownership, may reclaim the item at the place of storage by paying to the city the actual cost of removal and impounding.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-38. - Legal nonconforming signs—Notice of nonconformity.

- (a) The building official shall survey the city for signs that do not conform to this chapter. Upon determination that a sign is nonconforming, the building official shall use reasonable efforts to notify, either personally or in writing, the user or owner of the property on which the sign is located of the following:
 - (1) The sign's nonconformity; and
 - (2) Whether the sign is eligible for characterization either as legal, nonconforming, or unlawful.
- (b) If the building official cannot locate the sign owner, user or owner of the property, the building official may affix the characterization notice in a conspicuous place on the sign or to the business premises with which the sign is associated.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-39. - Eligibility for characterization as legal nonconforming.

Any sign located within the corporate limits of the city on September 8, 2000 or located in an area annexed to the city after September 8, 2000 that does not conform with this article is eligible for characterization as a legal nonconforming sign if the sign was in compliance with applicable law on September 8, 2000.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-40. - Loss of designation.

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- (a) A legal nonconforming sign shall immediately lose its legal nonconforming designation if:
 - (1) The sign is altered in any way in structure other than repairing normal wear and tear and providing routine maintenance.
 - (2) The sign structure is relocated or replaced.
- (b) On the happening of any one of the events described in subsection (a) of this section, the sign shall immediately lose its status as a legal nonconforming sign and shall become an unlawful nonconforming sign.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-41. - Amortization and abatement of non-conforming signs.

The following types of signs shall become non-conforming upon passage of this chapter, and shall be brought into compliance or removed within six months of the effective date of this chapter: Prohibited signs as defined in section 66-29.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-42. - Applicability; compensation to owner.

- (a) The city may, at its option, require the removal, relocation or reconstruction of any sign within its corporate limits in accordance with this chapter.
- (b) The owner of a sign that is required to be relocated, reconstructed or removed is entitled to receive compensation from the city for costs associated with the relocation, reconstruction or removal.
- (c) If application of a city regulation would require reconstruction for a sign in a manner that would make the sign ineffective for its intended purpose, such as by substantially impairing the sign's visibility, application of the regulation shall be treated as the requiring the removal of the sign for purposes of this chapter.
- (d) In lieu of paying compensation, the city may, at its option, exempt from required removal, relocation or reconstruction any sign lawfully in place on the effective date of this chapter.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-43. - Sign control board.

- (a) If the city requires the removal, relocation or reconstruction of a sign within its corporate limits, the mayor shall appoint a municipal board on sign control. This board must be composed of the following:
 - (1) Two real estate appraisers, each of whom must be a member in good standing of a nationally recognized professional appraiser society or trade organization that has an established code of ethics, educational program and professional certification program;

- (2) One person engaged in the sign business in the city;
 - (3) One employee of the state department of transportation who is familiar with real estate valuations in eminent domain proceedings; and
 - (4) One architect or landscape architect licensed by this state.
 - (5) Two City of Wharton residents.
- (b) A member of the municipal board on sign control shall be appointed for a term of two years.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-44. - Determination of amount of compensation.

The municipal board on sign control shall determine the amount and manner of payment of the compensation to which the owner of a sign that is required to be relocated, reconstructed or removed is entitled. The determination shall be made after the owner of the sign is given the opportunity for a hearing before the board about the issues involved in the matter.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-45. - Compensation for a relocated sign.

The compensable costs for a sign that is required to be relocated include the expenses of dismantling the sign, transporting it to another site and reerecting it. The municipal board on sign control shall determine the compensable costs according to the standards applicable in a proceeding under V.T.C.A., Property Code Chapter 21. In addition, the city shall issue to the owner of the sign an appropriate permit or other authority to operate a substitute sign of the same type at an alternative site of substantially equivalent value. Whether an alternative site is of substantially equivalent value is determined by standards generally accepted in the outdoor advertising industry, including visibility, traffic count and demographic factors. The city may compensate the owner for any increased operating costs, including increased rent, at the new location. The owner is responsible for designating an alternative site where the erection of the sign would be in compliance with this chapter.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-46. - Compensation for reconstructed sign.

The compensable costs for a sign that is required to be reconstructed include expenses of labor and materials and any loss in the value of the sign due to the reconstruction in excess of 15 percent of that value. The municipal board on sign control shall determine the compensable costs according to standards applicable in a proceeding under V.T.C.A., Property Code Chapter 21.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-47. - Compensation for removal of off-premises sign.

- (a) For an off-premises sign that is required to be removed, the compensable costs is an amount computed by determining the average annual gross revenue received by the owner from the sign during the two years preceding September 1, 1985 or the two years preceding the month in which the removal of the sign occurs, whichever is less, and by multiplying that amount by three. If the sign has not been in existence for all of either of the two-year periods, the average annual gross revenue for that period, for the purpose of this computation, is an amount computed by dividing 12 by the number of months that the sign has been in existence and multiplying that result by the total amount of the gross revenue received for the period that the sign has been in existence; however, if the sign did not generate revenue for at least one month preceding September 1, 1985, this computation of compensable costs is to be made using only the average annual gross revenue received during the two years preceding the month in which the removal date of the sign occurs, and by multiplying that amount by three. In determining the amounts under this subsection, a sign is treated as if it were in existence for the entire month if it was in existence for more than 15 days of the month and is treated as if it were not in existence for any part of the month if it was in existence for 15 or fewer days of the month.
- (b) The owner of the real property on which the sign was located is entitled to be compensated for any decrease in the value of the real property. The compensable cost is to be determined by the municipal board on sign control according to standards applicable in a proceeding under V.T.C.A., Property Code Chapter 21.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-48. - Compensation for removal of on-premises sign.

For an on-premises sign that is required to be removed, the compensable cost is an amount computed by determining a reasonable balance between the original cost of the sign, less depreciation, and the current replacement cost of the sign, less an adjustment for the present age and condition of the sign.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-49. - Method of compensation.

- (a) To pay the compensable costs required under this article, the city may use only a method or a combination of the methods prescribed by this section.
- (b) If a sign is required to be relocated or reconstructed, the City, acting in accordance with the Property Redevelopment and Tax Abatement Act (V.T.C.A., Tax Code Chapter 312), may abate municipal property taxes that otherwise would be owed by the owner of the sign. The abated taxes may be on any real or personal property owned by the owner of the sign, except residential property. The right to the abatement of taxes is assignable by the holder, and the assignee may use the right to abatement regarding taxes on any nonresidential property in the same taxing jurisdiction. In a municipality where tax abatement is used to pay compensable costs, the costs include reasonable interest, and the abatement period may not exceed five years.

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- (c) The city may allocate to a special fund in the municipal treasury, to be known as the sign abatement and community beautification fund, all or any part of the municipal property taxes paid on signs, on the real property on which the signs are located or on other real or personal property owned by the owner of the sign. The city may make payments from that fund to reimburse compensable costs to owners of signs required to be relocated, reconstructed or removed.
- (d) The city may provide for the issuance of sign abatement revenue bonds and use the proceeds to make payments to reimburse costs to the owners of the signs within the corporate limits of the city that are required to be relocated, reconstructed or removed.
- (e) The city may pay compensable costs in cash.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-50. - Tax appraisal of property with nonconforming sign.

For each nonconforming sign, the municipal board on sign control shall file with the appropriate property tax appraisal office the board's compensable costs value appraisal of the sign. The appraisal office shall consider the board's appraisal when the office, for property tax purposes, determines the appraised value of the real property to which the sign is attached.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-51. - Exceptions.

- (a) This article does not apply to a sign that was erected in violation of local ordinances, laws or regulations applicable at the time of its erection.
- (b) This article does not apply to a sign that, having been permitted to remain in place as a nonconforming use, is required to be removed because the sign or a substantial part of it is blown down or otherwise destroyed or dismantled for any purpose other than maintenance operations or for changing the letters, symbols or other matter on the sign.
- (c) For purposes of subsection (b) of this section, a sign or substantial part of it is considered to have been destroyed only if the cost of repairing the sign is more than 60 percent of the cost of erecting a new sign of the same type at the same location.
- (d) This article does not limit or restrict the compensation provisions of the highway beautification provisions contained in the Litter Abatement Act.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-52 - Appeal.

- (a) Any person aggrieved by a decision of the municipal board on sign control may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed within 20 days after the date the board renders the decision.
- (b) On the filing of the petition, the court may issue a writ of certiorari directed to the board to review the decision of the board and shall prescribe in the writ the time within which a

return must be made, which must be longer than ten days, and which the court may extend.

- (c) The board is not required to return the original papers upon which it acted, but it shall be sufficient to return certified or sworn copies of the papers. The return must concisely set forth all other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.
- (d) The court may reverse or affirm, wholly or partly, or modify the decision brought up for review.
- (e) Costs may not be allowed against the board unless it appears to the court that the board acted with gross negligence, in bad faith or with malice in making the decision appealed from.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Secs. 66-53—66-75. - Reserved.

ARTICLE III. - VARIANCES

Sec. 66-76. - Variances.

- (a) Variations of this chapter will be considered by the planning commission when in its judgment special or particular factors and conditions warrant such variation and they do not affect the general application or spirit of this chapter. An application for a variance shall be obtained through the code enforcement department and submitted to the planning commission at the next regularly scheduled meeting for consideration. Advice and cooperation is to be offered and will always be fully given by the members of the city staff and planning commission. For the granting of a variance, a favorable vote of no less than a majority of members of a quorum of the planning commission shall be necessary.
- (b) Before any initial decision of the planning commission regarding a variance shall become final, such initial decision shall be subject to review by the city council, if within ten days from the date of the planning commission's initial decision, any member of council requests review of such initial decision at the next regularly scheduled council meeting. If the initial decision of the planning commission is not reviewed by the council at its next regularly scheduled council meeting it is deemed a final decision. The council may approve or deny the initial decision of the planning commission.
- (c) If an the application is denied by the planning commission, an applicant may appeal the final decision to the city council within ten days from the date of the final decision, if the city council also denies the application, the applicant may appeal the final decision to the appropriate local court.
- (d) If an application is denied, an applicant may not seek another substantially similar variance for a period of 12 months from the date the original variance was denied by the planning commission or city council.
- (e) The applicant pays a variance fee as established by the City Council of the City of Wharton under separate resolution.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00; Ord. No. 2012-01, 1-9-12)

Secs. 66-77—66-110. - Reserved.

ARTICLE III. - PENALTIES; EFFECTIVE DATE

Sec. 66-111. - Penalties.

Any person violating any of the terms or provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to punishment as provided in section 1-5, City of Wharton Code of Ordinance General Provisions for each offense. If the terms or provisions of this chapter are violated by any corporation or firm, the officers and agents actively in charge of the business of such corporation or firm and the person actually performing the work for such corporation or firm shall be subject to the penalties provided in this section.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Sec. 66-112. - Effective date.

This chapter shall become effective on September 8, 2000 at 12:01 a.m.

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

TABLE I
Allowable Areas For Freestanding Signs

Frontage (Feet)	Maximum Area (Square Feet)
0—50	25
51—100	50
101—150	75
151—200	100
201—250	125
251—300	150
301—350	175
351—400	200
401—450	225
451—500	250
501—550	275
551—600+	300

Notes:

Frontage: The number of feet fronting on a public street to which a sign is oriented.

Area: The area in square feet of a single-face sign, or one sign of a double-face sign, or half the sides of a multi-face sign.

The area of a freestanding sign is the area enclosed by the minimum imaginary rectangle of vertical and horizontal lines which fully contain all extremities, exclusive of supports, or a horizontal view of the sign.

The maximum area of any freestanding sign may not exceed either that allowed by the chart above.

On corner lots, the frontage street shall be the greater street as classified on the thoroughfare plan. Where two streets are the same, the applicant may choose the frontage street.

Allowable Heights For Freestanding Signs (Distance From Property Line In Feet)		
At Least	Less Than	Height
10		50

Notes:

1. *Height:* Height of the sign measured from the elevation of the ground to the top of the sign.
2. On corner lots only, the frontage street can be used to determine height and area.
3. Commercial and Industrial tracts with a minimum of 100 feet of frontage on Highway 59 may have a sign up to a maximum of 50 feet in height. The sign shall not be closer than 200 feet to any residential property.

TABLE II
 SUMMARY OF SIGN REGULATIONS

Sign Classification	Maximum Area	Maximum Height	Setback	Number Allowed	Permit Required
Subdivision	150 sq. ft.	15'	10' from property line	sec. 66-10	yes
Area I.D.	16 sq. ft.	4'	10' from Property Line	sec. 66-10	yes

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Apt./condo/mobile home	100 sq. ft.	10'		1/Project	yes
Development (project)	35 sq. ft. on 50' ROW 60 sq. ft. on 50' ROW 150 sq. ft. on 70' ROW 250 sq. ft. on >70' ROW	15'	10' from property line	1	yes
Development (Subdivision)	35 sq. ft. on 50' ROW 60 sq. ft. on 50' ROW 150 sq. ft. on 70' ROW 250 sq. ft. on '70' ROW	15'	10' from property line	1	yes
Traffic control	3 sq. ft.	4'	4' from curb	1/curbcut	no
Real estate	<150' frontage—16 sq. ft. >150' frontage—32 sq. ft.	8'	10' from property line		no
Finance/construction	<150' frontage—16 sq. ft. >150' frontage—32 sq. ft.	8'	10' from property line	2 construction 1 finance	no
Political	See Table I		10' from property line if area >2 sq. ft.	N/A	no
Roof	Shall be treated as commercial freestanding sign				
Freestanding	100 sq. ft.	10'	10' from property line	1/premise if >1 acre	yes
Freestanding	see Table I			sec. 66-20	yes
Low profile	60 sq. ft.	4'	10' from property line	1	yes

Attached	section 66-21	yes
Exempt	section 66-30	
Prohibited	section 66-29	

(Ord. No. 2000-15, § 2(Exh. A), 8-28-00)

Fine and Penalty for Violations

Sec. 18-145. Penalties. Any person violating any of the terms or provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than \$100.00 or more than the maximum provided in section 1-5 for each offense. If the terms or provisions of this article are violated by any corporation or firm, the officers and agents actively in charge of the business of such corporation or firm and the person actually performing the work for such corporation or firm shall be subject to the penalties provided in this section.

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.

Effective Date

This Ordinance shall become effective on the 24th day of February 2017.

Passage and Approval

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on the 13th day of February 2017.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS

City Secretary

APPROVED AS TO FORM:

PAUL WEBB

City Attorney

Councilmember Terry Freese seconded the motion. All voted in favor.

The fifteenth item on the agenda was to review and consider the submission of Comments to Texas Department of Transportation for the Proposed Plan for I-69 Layout and Improvement Projects. City Manager Andres Garza, Jr. stated the TxDOT Notice on the Public Hearing which was held on Thursday, February 9, 2017 was proposing the upgrades to US 59 to Interstate Highway Standards from FM 2919 to FM 710 in Wharton County. City Manager Garza presented the letter submitted by the City on June 2, 2014 to TxDOT regarding the City's comments after their public meeting held in 2014. City Manager Garza said the City Council Public Works Committee met on February 2, 2017 to review the current proposed layout by TxDOT and the City's request and were recommending the City Council consider approving it. Mr. Carlos Cotton, P.E. with Jones and Carter, Inc. gave a presentation of the proposed plan and the recommended changes. After some discussion, Councilmember Al Bryant moved to approve the submission of Comments to Texas Department of Transportation for the Proposed Plan for I-69 Layout and Improvement Projects. Councilmember Vincent Huerta seconded the motion. All voted in favor.

The sixteenth item on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 18, Buildings and Construction, Article IV Substandard Buildings an Structure, Section 18-96 through Section 18-105; adding Section 18-106 through Section 18-111; 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. Building Official Ronnie Bollom stated the Building Standards Ordinance needed to be updated and the proposed changes were very detailed. City Manager Andres Garza, Jr. stated the City of Wharton Building Standards Commission met on February 2, 2017 and was recommending to the City Council amendments and additions to the City of Wharton Code of Ordinance for Article IV, Section 18, regarding sub-standard building and structures. After some discussion, Councilmember Russell Machann moved to approve City of Wharton Ordinance No. 2016-05, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2017-05**

AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 18, BUILDINGS AND CONSTRUCTION, ARTICLE IV. SUBSTANDARD BUILDINGS AND STRUCTURES, SECTION 18-96 THROUGH SECTION 18-105; ADDING SECTION 18-106 THROUGH SECTION 18-111; 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.

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

WHEREAS, it is the desire of the City of Wharton of Ordinances to read as follows:

ARTICLE IV. SUBSTANDARD BUILDING AND STRUCTURES

Sec. 18-96. – Definitions.

The words and phrases contained herein shall have the following meanings ascribed to them unless the context states otherwise:

Abatement. Any action the city may take on public or private property and any adjacent property as may be necessary to remove or alleviate a nuisance, including, but not limited to, demolition, removal, repair, boarding and securing or replacement of property.

Administrative enforcement order. An order issued by the building and standards commission, after a hearing, requiring a responsible person to correct a violation, abate a public nuisance, pay civil penalties and administrative costs or take any other action as authorized or required by this code and applicable state codes. Such term may also include an order authorizing the city to abate a public nuisance or assess a code enforcement lien.

Building. Includes, but is not limited to, any building, fence, awning, canopy, sign, shed, garage, house, tent, trailer or other structure whatsoever.

Building standards commission. A board appointed by the city council to conduct administrative hearings under this article as authorized in Local Government Code chapter 54.

Code enforcement official. Any person authorized to enforce violations of this article or applicable state codes.

Substandard building. Any building that does not comply with the minimum standards.

Minimum standards. The minimum standards for continued use and occupancy of a building as set forth in section 18-98 herein.

Owner of record. Any person, agent, firm, corporation or governmental agency shown to be the owner or owners of a building in:

- (1) The real property, assumed name, or appraisal district records of the county;
- (2) The tax and utility records of the city; or
- (3) The records of the secretary of state.

Public nuisance.

- (1) Whatever is dangerous to human life or health; whatever renders the ground, water, air or food hazardous to human life, or health, or that is offensive to the senses; or that is or threatens to become detrimental to the public health; or
- (2) Any building that creates a hazard to health, safety, comfort or welfare.

Sec. 18-97. – Abatement

- (a) It shall be unlawful for any owner, occupant, or other person in control of a building to allow that building to be in a condition that does not conform to the minimum standards, as defined herein.
- (b) Any building that does not conform to the minimum standards is hereby declared to be a public nuisance and shall be abated by vacation, relocation of occupants, repair, demolition, or removal, as necessary, upon the issuance of an order to abate issued in accordance with the procedures specified in this article.

Sec. 18-98. – Minimum standards.

A building is considered not to meet the minimum standards of the city for continued use and occupancy of a building, regardless of its date of construction, under any of the following conditions:

- (1) Any building that is dilapidated, substandard, or unfit for human habitation and a hazard to public health, safety and welfare, including, but not limited to:
 - (A) Any building with roof, ceiling, floors, walls, sills, windows, or foundation or any combination thereof rotted or decayed, and falling apart; or that is uninhabitable due to obsolescence and deterioration caused by neglect, vandalism, fire damage, old age, or the elements;

(B) Any building intended for human occupancy that is in danger of falling and injuring persons or property;

(C) Any building that is a fire menace because it is in a dilapidated condition, as described in subsections (1)(A) and (B) above or that is likely to become a fire menace or be set on fire;

(D) Any building that is in unsanitary condition and is likely to create disease because of the presence of insects, rodents or vermin;

(E) Any building that is damp and in unsanitary condition and is likely to create disease and sickness because of being in the condition in subsection (1)(A), (B), (C) or (D) above, or for other reasons;

(F) Any building intended for human occupancy that does not contain a minimum floor area of at least one hundred fifty (150) square feet of floor space for one occupant and one hundred (100) square feet of floor space for each additional occupant;

(G) Any building that has holes, cracks or other defects in it, or does not have railings for stairs, steps, balconies, porches, and elsewhere, thereby constituting a danger to persons or property;

(H) Any building intended for human occupancy that is not weathertight and watertight, or that does not have a moisture-resistant finish or material for the flooring or subflooring of each bathroom, shower room and toilet room;

(I) Any building occupied by humans that does not have in operating condition a connection to discharge sewage from the structure or land into a public sewer system (where such is available), a toilet connected to a water source and to a public sewer system (where such is available), connection to potable water at adequate pressure, and a kitchen sink, bathtub or shower, and lavatory connected to a cold and hot water source;

(J) Any building occupied by humans that does not have in operating condition heating equipment capable of maintaining a minimum inside temperature of 68 degrees Fahrenheit between November 1 and April 15 of each year in each room;

(K) Any building intended for human occupancy that does not have exterior windows and doors that are easily opened to provide air ventilation and are covered with screens for keeping out insects and each opening of the structure, or air-conditioning equipment capable of maintaining a maximum inside temperature of 85 degrees Fahrenheit or twenty degrees lower than the

outside temperature, whichever is warmer, between April 16 and October 31 of each year; or

(L) Any building intended for human occupancy that does not have operating supply lines for electrical service, if electric service is available within three hundred feet of the building, or that does not have operating electrical circuits and outlets sufficient to safely carry a load imposed by normal use of appliances and fixtures.

(2) Any building that is not occupied by its owners, lessees or other invitees and is not secure from unauthorized entry so that it could be entered or used by uninvited persons or children regardless of its structural condition.

(3) Any building that is boarded up, fenced or secured if:

(A) The building constitutes a danger to the public even though secured from entry; or

(B) The means used to secure the building are inadequate to prevent unauthorized entry or use of the building.

Sec. 18-99. – Authority

(a) The city manager or any of the city's designated code enforcement officials, including staff members of the code enforcement department ("code enforcement officials") shall have the authority and powers necessary to gain compliance with the provisions of this article. Such powers include the power to issue notices of violation, inspect public and private property and use whatever judicial and administrative remedies are available under this article or applicable state laws. The city manager or any designated code enforcement official are authorized to enter upon any property or premises to ascertain whether the provisions of this article or applicable state codes and statutes are being obeyed, and to make any examinations and surveys as may be necessary in the performance of their enforcement duties. Such duties may include the taking of photographs, samples or other physical evidence

(b) The owner, occupant, or other person in control of a building or structure shall be notified of any violation of this article. If said persons fail to respond to the notification, any code enforcement official shall have the authority to file a complaint with the City's Municipal Court system concerning the violation. Failure to appear on the date of the hearing shall result in the court issuing a warrant for the person's arrest relating to the violation described in the complaint.

(c) It shall be unlawful for any person to interfere with a code enforcement official in the performance of his or her duties and enforcement under this section.

(d) The city may secure a building that it determines does not meet the minimum standards and is unoccupied or occupied only by persons who do not have a right to possess the building.

(e) Before the 11th day after the date the building is secured, the city shall give notice to the owner of record by:

- (1) Personally serving the owner with written notice;
- (2) Depositing the notice in the United States mail addressed to the owner at the owner's last known post office address;
- (3) Publishing the notice at least twice within a ten-day period in a newspaper of general circulation in the city if personal service cannot be obtained and the owner's post office address is unknown; or
- (4) Posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown.

(f) The notice shall contain identification of the building and the property on which it is located, a description of the existing violation(s) of the minimum standards, and a statement that the municipality will secure or has secured the building.

(g) The notice shall also state that the owner may request a hearing about any matter related to the city's securing of the building, and that if such a hearing is requested, it shall be held pursuant to Texas Local Government Code section 214.0011(e) and heard by the building standards commission.

Sec. 18-100. – Inspection and notice of abatement.

(a) Inspection. The city manager shall designate the building official or a code enforcement official to inspect or cause to be inspected any building the official has probable cause to believe does not meet the minimum standards. All inspections, entries, examinations and surveys shall be done in a reasonable manner. If the code enforcement official is unable to obtain permission to search the building from the owner or a person in control of the premises, the code enforcement official shall obtain an administrative inspection warrant as provided for by Vernon's Ann. C.C.P. article 18.05.

(b) Determination. After completing the inspection, the inspecting official shall determine if the building is a dangerous building, as defined herein.

(c) Notice of abatement. After an initial determination that a building is a substandard building, the inspecting official shall notify the owner of record of the building, by certified mail, return receipt requested, of the nature of the violation(s) of the minimum standards. The inspecting official shall also notify the owner of record of the building that the building is dangerous and that the owner must vacate and/or repair, demolish, or remove the building for

the good of the public health, safety and welfare. A notice shall be posted on the dangerous building as follows:

“THIS BUILDING IS DANGEROUS ACCORDING TO THE MINIMUM STANDARDS SET FORTH IN THE OFFICIAL CODE OF THE CITY, CHAPTER 18, ARTICLE IV AND THE OWNER MUST REPAIR, DEMOLISH OR REMOVE IT. CONTACT _____ AT _____ FOR FURTHER INFORMATION.

DATE _____”

(d) Request for public hearing before building standards commission. If the owner does not reply or take action within fifteen (15) days from the date the notice was mailed, the inspecting official may request that a public hearing be held before the building standards commission, as defined in section 18-101, to determine whether the building complies with the minimum standards set forth in this article. The city shall then order a public hearing.

(1) If a public hearing is ordered, the city shall make a diligent effort to discover the identity and address of the owner(s) of record and any lienholders or mortgagees of the building and the underlying property.

(2) The city shall notify each owner, lienholder, or mortgagee by certified mail, return receipt requested, and notify any unknown owners by posting a copy of the notice on the front door of each improvement situated on the affected property or as close to the front door as practicable that a public hearing will be held in reference to the building and that the interested party may appear at the public hearing, be heard, and present evidence in reference to the condition of the building. The notice shall further advise the owner, lienholder, or mortgagee or unknown owner that he will have the burden of proof at such hearing and will be required to submit at the hearing proof of the scope of any work that may be required to make the building comply with this article and the amount of time it will take to reasonably perform the work.

(3) The city will publish notice of the public hearing in a newspaper of general circulation in the city. The city may also file a notice of the public hearing in the official public records of real property in the county. The notice must contain the name and address of the owner of the property (if it can be determined from a reasonable search of county records), a legal description of the affected property and a description of the proceeding, including the date, location and time of the public hearing.

Sec. 18-101. – Building standards commission.

(a) Created. In accordance with Local Government Code, Chapter 54, the city hereby creates a building standards commission consisting of one, seven-member panel to be appointed by the city council for a term of two years. Each member of the panel shall be a resident of the city or city ETJ and two of whom shall be from a minority group if available. In addition, the building official, fire inspector and health officer shall be ex-officio non-voting members of the building standards commission. The building standards commission shall conduct its activities and enforce this article in accordance with the provisions of the Local Government Code.

(b) Powers and duties. The building standards commission shall have the power and duty to:

(1) Require the reduction in occupancy load of an overcrowded structure or vacation of a structure that is hazardous to the health, safety and welfare of the occupants;

(2) Permit the repair of a substandard structure as an alternative to demolition of the structure; or

(3) Require the demolition of structures found to be substandard;

(4) Require the removal of personalty from a structure ordered vacated or demolished. Removal may be accomplished by use of city forces or a private transfer company if the owner of the personalty is not known, the whereabouts of the owner cannot be ascertained or the owner fails to remove the personalty. The building and standards commission may cause any personalty removed to be stored in the care and custody of a bonded warehouse facility. Cost of removal and storage is the responsibility of the owner of the personalty;

(5) Require that a vacant structure or vacant portion of a structure constituting a hazard be securely closed and made safe;

(6) Grant a variance when, in the opinion of the building and standards commission, a literal interpretation of the city's housing standards regulations would result in an imposition of an unnecessary or unreasonable hardship; and

(7) Interpret the provisions of this article in a way so as to carry out their intent and purpose and, from time to time, as it deems advisable, make suggestions and recommendations to the city council for improvement of the city's housing standards regulations.

(c) Applicability. This provision applies only to buildings that are considered not to meet the minimum standards defined in section 18-98, herein. This section does not affect the ability of a municipality to proceed under the jurisdiction of the municipal court.

Sec. 18-102. – Receiver.

The city may bring an action in district court against an owner of residential property that is not in substantial compliance with the minimum standards and request the appointment of a receiver for purposes of rehabilitating the property pursuant to Texas Local Government Code section 214.003.

Sec. 18-103. – Order to abate.

(a) If it is found at the public hearing that the building is in violation of the minimum standards, one of the following orders or any combination thereof may be issued by the building standards board:

- (1) An order to secure or vacate the building and relocate occupants; or
- (2) If it is determined that the order provided for in subsection (a)(1) above is not sufficient to protect the public health, safety or welfare, an order may be issued to repair, demolish or remove the building within a reasonable time.
- (3) The decision of the building standards commission to secure, vacate, repair, demolish or remove a building shall be forwarded as a recommendation to the city council to review and consider at the next regularly scheduled meeting.

(b) If the decision of the building standards commission is upheld by the city council the city shall promptly mail by certified mail, return receipt requested, a copy of any order issued pursuant to subsection (a) of this section to the owner of record of the building and to any lienholder or mortgagee along with a notice containing an identification of the building and the property on which it is located; a description of the violation(s) of the minimum standards; a statement that the municipality will secure, vacate, repair, remove or demolish the building if the ordered action is not taken by the owner within a reasonable time.

(c) The order shall allow the owner thirty (30) days to complete the ordered action, unless it is determined from the evidence presented at the public hearing that additional time is required. If more than thirty (30) days is allowed to repair, remove or demolish the building, specific time schedules shall be established for the commencement and performance of the work.

(d) The order shall also state that any lienholders or mortgagees of the building and/or the underlying property shall have an additional thirty (30) days to complete the ordered action if the owner fails to comply within the time allotted in subsection (c) above.

(e) The owner, lienholder or mortgagee may not be allowed more than ninety (90) days to complete any part of the work required, remove or demolish the building unless the requirements of Texas Local Government Code section 214.001(k) are met.

Sec. 18-104. – Filing and publication of order.

Within ten (10) days following the date that an order is issued, the building standards commission shall:

- (1) File a copy of the order in the office of the city secretary; and
- (2) Publish in a newspaper of general circulation in the city a notice containing the following:
 - (A) The street address or legal description of the property;
 - (B) The date the hearing was held;
 - (C) A brief statement indicating the results of the hearing and the contents of the order; and
 - (D) Instructions stating where a complete copy of the order may be obtained.

Sec. 18-105. – Appeal and judicial review.

Any owner, lienholder or mortgagee of record of a property jointly or severally aggrieved by any order issued under this article shall be entitled to judicial review in district court. A petition must be filed in district court by an owner, lienholder or mortgagee within thirty days after delivery of said order pursuant to Texas Local Government Code section 214.0012.

Sec. 18-106. – Violation and penalty.

(a) Criminal violations. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this code. A violation of any of the provisions or failure to comply with any of the mandatory requirements of this code shall constitute a class C misdemeanor punishable by the maximum fine allowed by law and authorized by state statutes or other provisions of this code. Each such person may be charged with a separate offense for each and every day, or portion thereof, during which any violation of any provision of this code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

(b) Civil violations. In addition to any other remedy provided by this code, any provision of this code or applicable state law may be enforced by injunction issued by a court of competent jurisdiction upon a suit brought by the city. As part of a civil action filed to enforce provisions of this code, a court may assess a maximum civil penalty as allowed by law per violation of this code or state law for each day during which any person commits, continues, allows or maintains a violation of any provision of this code or state law.

(c) Recovery of civil penalties. The city manager may collect all civil penalties and related administrative costs by the use of all appropriate legal means, including referral to the city

attorney, the recordation of a code enforcement lien pursuant to the procedures set forth in this chapter and state law, and the filing of a court action to recover such penalties and costs.

Sec. 18-107. – Defenses.

(a) The following defenses apply only to the assessment of a penalty as provided in section 18-106. They do not alter any other requirements in this chapter or prevent any other enforcement remedies or procedures available to the city.

(b) It is a defense to section 18-98 (1) (J) and (K) of this article that:

(1) Failure to maintain heating and air-conditioning equipment in compliance with those subsections was the direct result of an act of nature or other cause beyond the reasonable control of the owner and the owner is making diligent efforts to repair the heating and air-conditioning equipment in compliance with those subsections; or

(2) A written contract [was] in effect requiring the tenant to provide and maintain heating and air-conditioning equipment, and the owner has provided utility connections for such equipment in compliance with the building regulations in this chapter.

Sec. 18-108. – Expense of lien.

(a) If an owner or other interested party does not vacate, secure, repair, remove, demolish, or relocate occupants of a building within the time allotted in an order issued pursuant to this article, the city may take the ordered action at its expense at the direction of the city manager. If the city repairs the building, such repairs shall only be to the extent required to meet minimum standards and only if the building is a residential building with ten (10) or fewer dwelling units.

(b) As an alternative to subsection (a) a civil penalty may be assessed against the property owner for failure to repair, remove or demolish the building. A notice of penalty shall be mailed by certified mail, return receipt requested, to the property owner advising the amount and duration of the penalty, the date on which it is due, and notice that failure to pay said penalty shall result in a lien being placed on the property.

(c) In addition to subsections (a) and (b) above, the city may assess and recover a civil penalty against a property owner at the time of the hearing for violations of this article, pursuant to Texas Local Government Code section 214.0015.

(d) Any expenses incurred by the city pursuant to subsection (a) of this section and any civil penalties incurred by the owner pursuant to subsections (b) and (c) of this section will be assessed against the property on which the building stands or stood. The city will have a privilege lien upon filing same in the official public records of the county clerk subordinate only to tax liens against the property unless it is a homestead as protected by the state

constitution. Then lien will be extinguished if the property owner or other interested party reimburses the city for all expenses and penalties.

Sec. 18-109. – Voluntary conveyance of property to city for demolition.

(a) Upon approval by the city council and a determination by the city council that a certain property has value to the city, the city may take possession of property on which there is located a building that the owner has been ordered to demolish; this requires conveyance of the property by warranty deed to the city and may require payment by the property owner for some portion of the demolition and disposal or the administrative costs associated with the conveyance and demolition. The terms of this type of agreement must be reduced to writing, to be signed by both parties, and approved and accepted by the city council prior to conveyance.

(b) The city is permitted to dispose of certain demolition waste in a landfill owned and operated by the city under Permit by Rule No. 9002 issued to the city by the Texas Commission on Environmental Quality under 30 Texas Administrative Code section 330.7(i). In accordance with state law, in order to dispose of the demolition waste in the permit-by-rule landfill, the city must acquire ownership of the property prior to disposing of the demolition waste in the landfill and must require the donor to provide clear evidence of the financial inability to demolish the structure and dispose of the waste. Any person wishing to convey property to the city under this section, must provide a sworn statement and financial documentation sufficient to establish the financial inability to demolish the structure and dispose of the waste. The terms of this type of agreement must be reduced to writing, to be signed by both parties, and approved and accepted by the city council prior to conveyance.

Sec. 18-110. – Removal of debris required.

- (a) Within thirty (30) days after any building or structure is demolished or removed from any lot or tract of land:
- (1) All debris must be removed from the property;
 - (2) All holes or depressions in the ground must be filled to grade level;
 - (3) All lumber, pipes and all other building materials must be removed from the property or stored in such a manner that they are not a hazard to safety and do not create a condition where rats are likely to live or mosquitoes likely to breed;
 - (4) All pipes and conduits must be removed from above grade and must be removed or sealed below grade;
 - (5) The foundation and all piers, pilings, steps, flatwork and other appurtenances shall be removed.
 - (6) An existing foundation and related appurtenances may be re-used if a valid building permit has been issued for construction reusing the existing foundation and related appurtenances, and the approved plans include a signed and sealed drawing, from a registered engineer, approving the re-use of the existing foundation and the elevation

of the existing foundation meets the requirements of the city's Flood Prevention Ordinance.

- (b) Each owner and each person having control over the property on which the building or structure stood prior to removal or demolition is individually responsible for completing such work or causing such work to be completed.
- (c) After all debris has been removed from the lot or tract of land, the owner or person having control over the property must provide fill dirt to eliminate any sunken areas due to the debris removal. The lot or tract of land must remain free of any sunken areas for a minimum of ninety (90) days after all debris is removed.

Sec. 18-111. – Report, inspection where work believed not completed.

It shall be the duty of all city employees to make a report in writing to the building official whenever such employee has reason to believe a building or structure has been demolished or removed from a lot of land and the work required by this article has not been completed. Upon receipt of such written report, the code enforcement department shall inspect the lot or tract, and if it is found that in fact the work required by this article has not been completed, the facts shall be reported to the building official.

Sec. 18-112. – Notice to complete work.

Whenever it shall come to the knowledge of the building official that a building or structure has been demolished or removed and that the work required by this article has not been completed, the building official shall cause written notice to be given by personal service or by certified mail, return receipt requested, to the owner of the property or to any person having control over the property, setting out the work required by this article which has not been completed. In such notice, the building official shall order the owner of the property or person having control over the property to complete or cause to be completed all work required by the article within thirty (30) days of service of such notice.

Sec. 18-113. – Means of securing buildings.

(a) Buildings shall be secured according to the requirements stated in the most current adopted edition of the International Property Maintenance Code. In addition, the panels shall be fitted so as not to extend past the outer edge of the window or door. All boards and panels shall be painted as a means of protection from the outdoor elements. The paint color shall match, as close as possible, the existing exterior color of the building that is being secured.

Sec. 18-114 – 18-135. – Reserved.

Fine and Penalty for Violations

City of Wharton
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Sec. 18-145. Penalties. Any person violating any of the terms or provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than \$100.00 nor more than the maximum provided in section 1-5 for each offense. If the terms or provisions of this article are violated by any corporation or firm, the officers and agents actively in charge of the business of such corporation or firm and the person actually performing the work for such corporation or firm shall be subject to the penalties provided in this section.

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.

Effective Date

This Ordinance shall become effective on the 24th day of February 2017.

Passage and Approval

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on the 13th day of February 2017.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

APPROVED AS TO FORM:

PAUL WEBB
City Attorney

Councilmember Terry Freese seconded the motion. All voted in favor.

The seventeenth item on the agenda was to review and consider an application for water services by Mr. Felipe Lopez -916 Southeast Avenue located outside the City limits. City Manager Andres Garza, Jr. presented an application submitted by Mr. Felipe Lopez requesting water services at 908 CR 188 located outside of the City limits. Finance Director Joan Anandel stated that Mr. Lopez was wanting water services for his home outside of the City limits and had taken all the required steps to do so. Councilmember Al Bryant moved to approve the application for water services by Mr. Felipe Lopez -908 CR 188 located outside the City limits. Councilmember Terry Freese seconded the motion. All voted in favor.

The eighteenth item on the agenda was to review and consider a resolution of the Wharton City council approving an application for a Corporate Credit Card with Prosperity Bank and authorizing the Mayor, City Manager and Finance Director as the only signators. City Manager Andres Garza, Jr. presented a memo from Finance Director Joan Anandel requesting that the City of Wharton apply for a Corporate Credit Card. City Manager Garza stated that there have been several instances where the City had needed a Corporate Credit Card for infrequent expenditures and the limit would be \$7,500.00 and the only individuals to sign or make changes on the card would be the Mayor, City Manager and Finance Director. He said the City Council Finance Committee meet on Monday, February 13, 2017 at 5:30 p.m. to discuss the request and were recommending City Council consider approving the application. Mrs. Anandel stated the card would be provided through Prosperity Bank and would not be released out of City Hall. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Resolution No. 2017-17, which read as follows:

CITY OF WHARTON
RESOLUTION NO. 2017-17

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN APPLICATION FOR A CORPORATE CREDIT CARD WITH PROSPERITY BANK AND AUTHORIZING THE MAYOR, CITY MANAGER AND FINANCE DIRECTOR AS THE ONLY SIGNATORS.

Resolved that the City Council of the City of Wharton, Texas hereby authorizes the following officers of the City of Wharton to the City's Corporate Credit Card with Prosperity Bank:

1. Andres Garza, Jr., City Manager

Signature

2. Joan Anandel, Finance Director

Signature

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3. Tim Barker, Mayor

Signature

That effective February 13, 2017, the above listed City officials are the authorized signatures to the City of Wharton's Corporate Credit Card.

That this resolution shall become effective February 13, 2017.

PASSED AND APPROVED by the City Council of the City of Wharton, Texas this 13th day of February 2017.

CITY OF WHARTON

By: _____
Tim Barker
Mayor

ATTEST:

Paula Favors
City Secretary

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

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

- A. Building Standards Commission.
- B. Plumbing and Mechanical Board.

After some discussion, no action was taken.

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

- A. Wharton Economic Development Corporation meeting held January 16, 2017.
- B. Mayor's Committee on People with Disabilities meeting held on January 18, 2017.
- C. City Council Finance Committee meeting held January 19, 2017.
- D. City Council Housing Committee meeting held January 30, 2017.
- E. City Council Public Works Committee meeting held February 2, 2017.
- F. Building Standards Commission meeting held February 2, 2017.

After some discussion, no action was taken.

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The twenty-first item on the agenda was to review and consider a resolution of the Wharton City Council establishing a Parks and Recreation Committee for the City of Wharton. City Manager Andres Garza, Jr. presented a draft resolution that would create the City Council Parks & Recreation Committee. City Manager Garza stated that the City of Wharton received a grant to create a comprehensive plan and in the development of the plan are sections for the parks and recreation areas of the City. City Manager Garza said that in order to complete that section of the comprehensive plan it was recommended to appoint a parks and recreation committee. After some discussion Councilmember Don Mueller moved to appoint Councilmember Russell Machann, Councilmember Steven Schneider and Councilmember Terry Freese to the Parks & Recreation Committee and to approve City of Wharton Resolution No. 2017-18, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2017 -18**

A RESOLUTION OF THE WHARTON CITY COUNCIL ESTABLISHING A CITY COUNCIL PARKS & RECREATION COMMITTEE FOR THE CITY OF WHARTON.

WHEREAS, the Wharton City Council wishes to establish a City Council Parks & Recreation Committee to discuss items related to city parks and recreation and provide recommendations to the entire City Council; and

WHEREAS, the City Council Parks & Recreation Committee would consist of three Councilmembers; and

WHEREAS, the City Council wishes to set a one (1) year term that would end on June 30th of each year.

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

Section I. That the Wharton City Council hereby establishes the City Council Parks & Recreation Committee.

Section II. That the City Council Parks & Recreation Committee would consist of three Councilmembers serving a one (1) year term ending on June 30th of each year.

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

Passed, Approved, and Adopted this 13th day of February 2017.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

Attest: _____
PAULA FAVORS
City Secretary

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

The twenty-second item on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 42, Occupational Licenses, Taxes and Regulations, Article IV, Division 1-Generally, Division 2-Registration and Division 3-Street Peddlers and Transient Vendors, Sections 42-151 to 42-205; Providing that a violation of the Ordinance or any party 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. stated that the Code Enforcement Department was requesting amendments/additions be made to the City of Wharton Code of Ordinances for Transient Vendors. City Manager Garza said the City Council Finance Committee meet on Monday, February 13, 2017 and were recommending the City Council consider approving the amendments/additions to the City of Wharton Code of Ordinances for Transient Vendors. Community Development Coordinator Gwyn Teves stated the changes would include hours of operations, moving background checks from the City Secretary Office to Code Enforcement Office and increasing the fee, to name a few. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Ordinance No. 2017-04, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2017-04**

AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 42, OCCUPATIONAL LICENSES, TAXES AND REGULATIONS, ARTICLE IV, DIVISION 1-GENERALLY, DIVISION 2-REGISTRATION AND DIVISION 3-STREET PEDDLERS AND TRANSIENT VENDORS, SECTIONS 42-151 TO 42-205; 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.

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

WHEREAS, it is the desire of the City of Wharton Code of Ordinances to read as follows:

Sec. 42-151. - Declaration of authority and purpose.

This entire article is and shall be deemed an exercise of the police power of the state and of the city, for the public safety, comfort, convenience and protection of the city and citizens of the city, and all of the provisions of this article shall be construed for the accomplishment of that purpose.

(Code 1978, § 11-50)

Sec. 42-152. - Definitions.

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

Commercial means engaged in commerce. Designed for profit and supported by advertisement.

Goods or merchandise means any personal property of any nature whatsoever, except printed material.

Home solicitation transaction means a transaction or the purchase of goods or services, payable in installments or cash, in which the home solicitor engages in a personal solicitation of a sale to a person at a residence. A home solicitation transaction shall not include a sale made pursuant to a preexisting retail charge agreement or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale or a sale of realty, in which transaction the purchaser is represented by a licensed attorney or in which the transaction is being negotiated by a licensed real estate broker.

Home solicitor means a person who goes from house to house or from place to place soliciting, selling or taking orders for or offering to sell or take orders for any goods, merchandise or services.

Itinerant merchant or vendor means a person, as well as their agents and employees, who sets up and operates a temporary business within the premises of another business or any other building, enclosure, vacant lot, vehicle or location in the city, soliciting, exhibiting, selling or taking orders for or offering to sell or take orders for any goods or services. The term shall not include or be construed to include anyone engaged in interstate commerce or anyone upon whom the provisions of this chapter would impose a direct and unlawful burden on interstate commerce. This term shall also not include those persons operating vehicles otherwise permitted by this Code, including taxicabs or tow truck services.

Residence means any separate living unit occupied for residential purposes by one (1) or more persons, contained within any type of building or structure.

Solicitor, peddler, itinerant merchant or itinerant vendor means any person engaged in any activity mentioned in section 42-176. *Soliciting, solicit or solicitation* means selling

or attempting to sell goods or services or to take or attempt to take orders for services or goods to be performed or furnished in the future.

Temporary shall mean any such business transacted or conducted in the city for which definite arrangements have not been made for the hire, rental or lease of premises for at least one (1) month in or upon which such business is to be operated or conducted.

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 42-153. - Going uninvited on property.

It shall be unlawful for any person to go in and upon the premises of any private residence, business or other property in the city, unless requested or invited to do so by the owner or occupant of the private residence, business or other property, for the purpose of soliciting, selling or taking orders for or offering to sell or take orders for any goods, wares, merchandise, services, photographs, newspapers, magazines or subscriptions to newspapers or magazines.

(Code 1978, § 11-57)

Sec. 42-154. - Hours of operation.

(a) It shall be unlawful for a person to go upon any residential or commercial premises and ring the doorbell or rap or knock upon the door or create any sound in a manner calculated to attract the attention of the occupant of the residence for the purpose of engaging in or attempting to engage in a solicitation transaction:

- 1) Before 10:00 a.m. or after 6:00 p.m. of any day, Monday through Saturday;
or
- 2) At any time on a Sunday, New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day or Christmas Day.

(b) Subsection (a) of this section shall not apply to a visit to the premises as a result of a request or an appointment made by the occupant.

Secs. 42-155—42-175. - Reserved.

DIVISION 2. - REGISTRATION

Sec. 42-176. - Required; card.

It shall be unlawful for any person to go from house to house or from place to place or by telephone in the city soliciting, selling or taking orders for or offering to sell or take orders for any goods, wares, merchandise, services, photographs, newspapers, magazines or subscriptions to newspapers or magazines without having first registered at the Code Enforcement Department at the city hall. It shall also be unlawful to sell or solicit in the city,

as stated in this section, without carrying a registration card issued by the Code Enforcement Department city secretary while engaged in such soliciting or selling. A canvasser, otherwise exempt from the provisions of this article, may request an identification badge from the City.

Sec. 42-177. - Application.

- (a) Any person desiring to go from house to house or from place to place in the city to sell or solicit orders for goods, wares, merchandise, services, photographs, newspapers, magazines or subscriptions to newspapers or magazines shall make written application to the Code Enforcement Department for a registration card, which application shall show:
1. The name, address and phone number of the applicant;
 2. The driver's license and social security number of applicant for a background check;
 3. The name and address of the person, if any, that he represents;
 4. The kinds of goods offered for sale and whether such applicant, upon any such sale or order, shall demand, accept or receive payment or deposit of money in advance of final delivery;
 5. The period of time and the projected hours of operation such applicant wishes to sell or solicit in the city;
 6. The license plate number, make, model and year of any and all vehicles to be used; and
 7. Proof of liability insurance (as required by state law) for any vehicle to be used by the applicant.
- (b) Any person applying for a registration card must submit to a background check of that person's criminal record by the City of Wharton.
- (c) Any person who has been convicted of a misdemeanor involving moral turpitude within the three-year period immediately preceding the date of that person's application for a registration card or a felony involving moral turpitude within the five-year period immediately preceding the date of that person's application for registration shall be ineligible to receive a registration card. In these circumstances, the Code Enforcement Department shall reject the application and shall not issue a registration card to that person.

Sec. 42-178. - Bond.

The application for registration as a peddler, solicitor or itinerant merchant shall be accompanied by a bond in the penal sum of no less than \$5,000, signed by the applicant as principal and signed, as surety, by some surety company authorized to do business in the state, conditioned for the final delivery of goods, wares, merchandise, services, photographs, magazines and newspapers in accordance with the terms of any order obtained prior to delivery and also conditioned to indemnify all purchasers or customers for all defects in material or workmanship that may exist in the article sold by the principal of the bond, at the time of delivery, and that may be discovered by such purchaser or customer within thirty (30)

days after delivery. The bond shall be for the use and benefit of all persons who may make any purchase or give any order to the principal on the bond or to an agent or employee of the principal. If the applicant is engaging in any such activity through one or more agents or employees, such persons shall be required to enter into only one bond, in the sum required in this section, which bond shall be made to cover the activities of all such agents or employees.

Sec. 42-179. - Fees; term.

The application for registration as a solicitor, peddler, itinerant merchant or itinerant vendor shall be accompanied by a non-refundable fee of fifty-five dollars (\$55.00), which registration will be valid for one year from the date of issuance. However, when any person engages in any such activity through more than one agent or employee, such person shall, in addition to such fee, pay a registration fee of \$20.00 for each additional agent or employee so engaged. The registration card shall be issued to the individual agent or employee and shall not be used by any other agent or employee. The fees provided for in this section shall be used for the purpose of defraying expenses incident to the registering of such vendors and merchants and the administration of this article.

Sec. 42-180. - Exemptions.

The registration required in this division shall not apply to:

1. Sales made to dealers by commercial travelers or sales agents in the usual course of business or to sales made under authority and by order of law; or
2. Sales or exhibits at fairs, conventions or events sponsored by one or more City civic organizations, school, church or the Chamber of Commerce; or
3. Charitable solicitations; or
4. Insurance or Alarm companies carrying a current Texas State License; or
5. Persons who permanently reside in or within ten miles of the city will be exempt from background checks and fees, however will be required to register with the Code Enforcement Department and carry a registration photo identification card.

Secs. 42-181—42-200. - Reserved.

DIVISION 3. - STREET PEDDLERS AND TRANSIENT VENDORS

Sec. 42-201. - Definitions.

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

Charitable purpose shall mean philanthropic, religious or other nonprofit objective, including the benefit of poor, needy, sick, refugee or handicapped persons; the benefit of any church or religious society, sect, group or order; the benefit of a patriotic or veterans' association or organization; the benefit of any fraternal, social or civil organization, or the benefit of any education institution. "Charitable purpose"

shall not be construed to include the direct benefit of any political group or political organization which is subject to financial disclosure under state or federal law.

Consumer shall mean an individual who acquires real or personal property, services, money or credit for personal, family or household purposes.

Merchant shall mean a party to a consumer transaction other than a consumer.

Non-profit organization shall mean any organization that does not seek to make a profit and that is not a public body. This definition includes, but is not limited to, entities such as the Multiple Sclerosis Association of America, The American Heart Association, The Muscular Dystrophy Association, The American Cancer Society, City of Wharton public safety departments, The Boy Scouts of America, The Girl Scouts of the United States of America, etc.

Person shall mean any individual, firm, company agency, partnership, corporation, association, trust, society, religious sect, organization, league or other legal entity and includes any trustee, receiver, assignee, agent or similar representative.

Religious organization shall mean any organization that is dedicated to the support of a church, religious society, or any other religious sect, group or order.

Solicitors shall mean any person or its agent, member or representative engages in action dictated in Sec. 42-176.

Street peddler shall mean a person who sells tangible commodities on the public streets, sidewalks, public right-of-ways or other places from more than one established location and who makes delivery at the time of the sale.

Transient vendor shall mean a person who sells commodities from private premises, such as a parking lot or vacant lot, using a cart, a motor vehicle, a trailer, a tent or other temporary shelter.

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 42-202. - Registration—Required; application; issuance of card.

- (a) It shall be unlawful for any street peddler, transient vendor or solicitor to make any sales or to conduct any business as a street peddler, transient vendor or solicitor in the city without having first registered at the office of the Code Enforcement Department at the city hall and without carrying a registration card, issued by the Code Enforcement Department, while engaged in such activities as a street peddler, transient vendor or

solicitor. The application to the Code Enforcement Department for a registration card shall show:

1. The name, address and phone number of the applicant;
 2. The driver's license and social security number of applicant for background check;
 3. The name and address of the owner of the property upon which the applicant will be engaged in such activities;
 4. The name and address and the state general sales tax permit number of the person, if any, that he represents;
 5. The kind of goods offered for sale;
 6. Whether such applicant upon any such sale or order shall demand, accept or receive payment or deposit of money in advance of final delivery;
 7. The period of time and the projected hours of operation such applicant wishes to sell or solicit in the city as a street peddler, transient vendor or solicitor;
 8. The license plate number, make, model and year of any and all vehicles to be used;
 9. Proof of liability insurance (as required by state law) for any vehicle to be used by applicant;
 10. Name of individual, firm, company or organization represented, if any, and the permanent address and local address thereof;
- (b) Any person applying for a registration card must furnish the Code Enforcement Department evidence of written permission from the owner of the property for the applicant to conduct such activities on the property.
- (c) Any person applying for a registration card must submit to a background check of that person's criminal record by the City of Wharton.
- (d) Any person who has been convicted of a misdemeanor involving moral turpitude within the three-year period immediately preceding the date of that person's application for a registration card or a felony involving moral turpitude within the five-year period immediately preceding the date of that person's application for registration shall be ineligible to receive a registration card. In these circumstances, the Code Enforcement Department shall reject the application and shall not issue a registration card to that person.

Sec. 42-203. - Same—Bond.

The application for registration as a street peddler, transient vendor or solicitor shall be accompanied by a bond in the penal sum of no less than \$5,000.00, signed by the applicant as principal and by a surety company authorized to do business in the state, conditioned on the final delivery of goods, wares, merchandise or services in accordance with the terms of any order obtained prior to delivery and also conditioned on indemnifying all purchasers or

customers for any defects in material or workmanship that may exist in the article sold by the applicant, at the time of delivery, and that may be discovered by such purchaser or customer within thirty (30) days after delivery. The bond shall be for the use and benefit of all persons who may make any purchase from or place any order with the applicant on the bond or to an agent or employee of the applicant.

Sec. 42-204. - Same—Fees; cards nontransferable.

- (a) The application for registration as a street peddler, transient vendor or solicitor shall be accompanied by a non-refundable fee of fifty-five dollars (\$55.00), which registration shall be valid for one year from the date of its issuance. The registration fee for selling agricultural product, which shall not include meat, poultry, fish, shrimp or any similar product shall be twenty-five dollars (\$25.00), and shall be valid for sixty (60) days from its issuance.
- (b) All registration cards shall be nontransferable.
- (c) The fees provided for in this section shall be used for the purpose of defraying expenses incident to the registering of the applicants.

Sec. 42-205. - Exceptions.

Notwithstanding any term contained in this division to the contrary, this division shall not apply to the following:

- (1) Merchants having permanent businesses located within the city who may wish to display or sell merchandise from sidewalks, parking lots or other vacant property adjoining their own premises; or
- (2) Sales or exhibits at fairs, conventions or events sponsored by one or more City civic organizations, school, church or the Chamber of Commerce: or
- (3) Charitable solicitations; or
- (4) Any persons who are residents of the city will be exempt from background checks and fees; however will be required to register with the Code Enforcement Department and carry a registration photo identification card.
- (5) Insurance or Alarm companies carrying a current Texas State License; or
- (6) A canvasser, otherwise exempt from the provisions of this article, may request an identification badge from the City.

Secs. 42-206—42-219. - Reserved.

Fine and Penalty for Violations

Sec. 18-145. Penalties. Any person violating any of the terms or provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than \$100.00 or more than the maximum provided in section 1-5 for each offense. If the terms or provisions of this article are violated by any corporation or firm, the officers and agents actively in charge of the business of such corporation or firm and the person actually performing the work for such corporation or firm shall be subject to the penalties provided in this section.

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.

Effective Date

This Ordinance shall become effective on the 24th day of February 2017.

Passage and Approval

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on the 13th day of February 2017.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

APPROVED AS TO FORM:

PAUL WEBB
City Attorney

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

The twenty-third item on the agenda was to review and consider a request by Pastor Dr. Janice Blair to address City Attorney Paul Webb regarding the following:

- A. In the Municipal Code does the City have a legal binding responsibility to keep residents safe; i.e., from harm's way, when it is in their power to do so?
- B. If so what has been the continual delay since 1998.
- C. Residents are repairing their home, and settling back in; as the City and community let us bring support to those in much need.

City of Wharton
Regular Council Meeting
February 13, 2017

African Americans contribution to the state of Texas.

My Motto: Is-“PUSH” Pray Until Something Happens. Praying and action always bring results.

City Manager Andres Garza, Jr. presented a request from Pastor Dr. Janice Blair. Pastor Blair requested City Attorney Paul Webb address her questions. City Attorney Paul Webb stated that in regards to item A. that no it was not a legal requirement for the City to keep citizens safe but he felt the City Council and the departments have a moral obligation to do so. City Attorney Webb said that in regards to item B. the City Council and City Manager Garza were trying to obtain funds from the state, county and the federal government by applying for every single grant possible. Pastor Blair stated that as an African American she has the right to stand up and fight for the citizens. After some discussion, no action was taken.

The twenty-fourth item on the agenda was to review and consider a request by Ms. Mary Barnes to address the Council regarding updates on flood resolution. City Manager Andres Garza, Jr. presented a request by Ms. Mary Barnes to address the Council. Ms. Barnes requested to know if the City was still pursuing the plan that Mr. Wes Birdwell, P.E. with Halff and Associates presented at the January 23, 2017 Regular City Council meeting. City Manager Garza stated that the City was still continuing to pursue the plan. Ms. Barnes asked if the HOME program was under State Representative Phil Stephenson. City Manager Garza said that it was under the State Representative as well as the State Senator. After some discussion, no action was taken.

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

The meeting adjourned at 8:14 p.m.

CITY OF WHARTON, TEXAS

By: _____
Tim Barker
Mayor

ATTEST:

Paula Favors
City Secretary