

**MINUTES
OF
CITY OF WHARTON
CITY COUNCIL REGULAR MEETING
AUGUST 12, 2019**

Mayor Pro-Tem Don Mueller declared a Regular Meeting duly open for the transaction of business at 7:05 P.M at City Hall 120 E. Caney Street Wharton, TX. Councilmember Russell Machann led the opening devotion and Mayor Pro-Tem Don Mueller led the pledge of allegiance.

Councilmember's present were: Mayor Pro-Tem Don Mueller and Councilmembers Terry Freese, Alice Heard-Roberts, Clifford Jackson, Russell Machann and Steve Schneider.

Councilmember absent was: Mayor Tim Barker.

Staff members present were: City Manager Andres Garza, Jr, City Attorney Paul Webb, City Secretary Paula Favors, TRMC, CPM, Assistant to the City Manager Brandi Jimenez, Community Development Director Gwyn Teves and Public Works Director John Plaia.

Visitors present were: Isaiah Coleman, Steven L. Roberts, James L. Perez, Iola Johnson, Phillis Johnson, Doris Huddleston, Sherrell Speer and Duria Jackson.

Roll Call and Excused Absences. After some discussion, Councilmember Russell Machann moved to excuse Mayor Tim Barker. Councilmember Steve Schneider seconded the motion. All voted in favor.

Public Comments.

Mr. Isaiah Coleman stated his concerns with the railroad crossings that were in poor condition in the City. Mr. Coleman stated that City of Wharton employee Charlie Jackson does a great job maintaining the weeds along the roadways, there was still a need to maintain weeds at some stop sign where weeds were so high the sign could not be viewed. He said there was also an issue with people walking the streets at all times of the night and the City should look into it.

Mr. Steven Roberts stated the restrooms at Harris Park were in poor condition and visitors were not able to even wash their hands. Mr. Roberts gave his support of the City helping assist Just Do It Now with assistance in removing debris left from the demolition of C.W. Dawson Elementary.

Wharton Moment.

Councilmember Terry Freese stated he was proud of Wharton Police Department in their quick response to creating a Take Me Home Program for the City. Councilmember Freese said he made the recommendation to Police Chief Terry David Lynch to help with those citizens that may not

be able to fully communicate due to a disability such as autism or dementia, that become lost or disoriented and he had it created by the next day.

The first item on the agenda was to review and consider the reading of the minutes from the regular meetings held July 8, 2019 and July 22, 2019 and special meeting held July 15, 2019. After some discussion, Russell Machann moved to approve the reading of the minutes from the regular meetings held July 8, 2019 and July 22, 2019 and special meeting held July 15, 2019. Councilmember Terry Freese seconded the motion. All voted in favor.

The second item on the agenda was to review and consider a request from Just Do It Now for City assistance in removing debris left from the demolition of C.W. Dawson Elementary. City Manager Andres Garza, Jr. presented a request from Mr. James Perez, President of Just Do It Now, for City assistance in removing debris left from the demolition of C.W. Dawson Elementary. City Manager Garza stated the Public Works Committee met on July 22, 2019 and voted to recommend this item to the City Council for consideration and approval. He said the Committee voted to recommend the City provide the assistance requested and allocate twelve (12) forty (40) cubic yard roll off boxes from its allocation from WCA to assist Just Do It Now. After some discussion, Councilmember Clifford Jackson moved to approve the request from Just Do It Now for City assistance in removing debris left from the demolition of C.W. Dawson Elementary by allocating twelve (12) forty (40) cubic yard roll off boxes from its allocation from WCA to assist Just Do It Now. Councilmember Alice Heard-Roberts seconded the motion. All voted in favor.

The third item on the agenda was to review and consider a resolution of the Wharton City Council ratifying the approval of the Interlocal Agreement with the Texas Municipal League Multistate Intergovernmental Employee Benefits Pool (TML Multistate-IEBP) for medical, long-term disability, life, accidental death & dismemberment, for flexible spending account and health reimbursement account plans for city employees for the October 1, 2019 to September 30, 2020 Fiscal Year; ratifying the Mayor of the City of Wharton's execution of all documents related to said agreements. City Manager Andres Garza, Jr. presented a memorandum from City Secretary Paula Favors regarding the City of Wharton TML-Multistate IEBP Health re-rate options for the 2019-2020 year. Mrs. Favors stated the recommendation from the City Staff was to consider Option 2 for the health insurance plan and contribute the previous year's amount of \$1,250.00 to a Health Reimbursement Agreement (HRA) to offset the deductible or other medical expenses. She said the City Council Finance Committee met on July 22, 2019 and voted to recommend to the City Council approval of the resolution. Mrs. Favors said the agreement needed to be executed by July 23, 2019 and submitted to TML Multistate (IEBP) in which Mayor Barker executed the agreement on the City's behalf and therefore the City Staff was seeking ratification of the action taken. After some discussion, Councilmember Russell Machann moved to approve City of Wharton Resolution No. 2019-86, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2019-86**

A RESOLUTION OF THE WHARTON CITY COUNCIL RATIFYING THE APPROVAL OF THE INTERLOCAL AGREEMENT WITH THE TEXAS MUNICIPAL LEAGUE MULTISTATE INTERGOVERNMENT EMPLOYEE BENEFITS POOL (TML MULTISTATE-IEBP) FOR MEDICAL, LONGTERM DISABILITY, LIFE, ACCIDENTAL DEATH & DISMEMBERMENT, FOR FLEXIBLE SPENDING ACCOUNT AND HEALTH REIMBURSEMENT ACCOUNT PLANS FOR CITY EMPLOYEES FOR THE OCTOBER 1, 2019 TO SEPTEMBER 30, 2020 FISCAL YEAR; RATIFYING THE MAYOR OF THE CITY OF WHARTON'S EXECUTION ALL DOCUMENTS RELATING TO SAID AGREEMENTS.

WHEREAS, The City of Wharton received the renewal rate for medical, long-term disability, life, accidental death & dismemberment for city employees; and,

WHEREAS, The City of Wharton medical plan with Texas Municipal League MultiState-Intergovernmental Employee Benefits Pool would be renewed with an 2% decrease; and,

WHEREAS, The City of Wharton would provide to each full time employee a \$1,250 yearly contribution to the employee health reimbursement account (HRA) administered by the TML MulitState-IEBP; and,

WHEREAS, The Mayor of the City of Wharton has executed on behalf of the City said agreement; and,

WHEREAS, The Wharton City Council wishes to ratify the Mayor's execution of said agreement.

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 ratifies the approval of an interlocal contract with the Texas Municipal League MultiState - Intergovernmental Employee Benefits Pool for medical, long-term disability, life and accidental death & dismemberment coverage signed by the Mayor.

Section II. That Wharton City Council hereby ratifies the approval of providing to each full time employee a \$1,250 yearly contribution to the employee health reimbursement account (HRA) administered by the TML MultiState – IEBP.

Section III. That the Mayor of the City of Wharton execution of all documents relating to the aforementioned agreements are hereby approved.

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

Passed, Approved, and Adopted this 12th day of August 2019.

CITY OF WHARTON, TEXAS

By: _____
DON MUELLER
Mayor Pro-Tem

ATTEST:

PAULA FAVORS
City Secretary

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

The fourth item on the agenda was to review and consider a resolution by the City of Wharton, Texas (“City”) denying the application of the CenterPoint Energy Houston Electric LLC for authority to increase rates submitted on or about April 5, 2019; requiring the reimbursement of municipal rate case expenses; finding that the meeting complies with the Open Meetings Act; making other findings and provisions related to the subject; and declaring an effective date. City Manager Andres Garza, Jr. stated that on April 5, 2019, CenterPoint Energy Houston Electric, LLC (“CEHE”) filed an application to increase its retail rates by approximately \$154 million in annual revenue, or 7.4% in comparison to current retail revenues. City Manager Garza said this was CEHE’s first comprehensive base rate proceeding since 2010 and CEHE requested that its proposed increase in rates become effective on May 10, 2019. City Attorney Paul Webb stated that by earlier action the City suspended CEHE’s requested effective date to August 8, 2019 and the City had to take final action on CEHE’s request to increase rates. City Manager Garza presented the legal consultants information to the Texas Coast Utilities Coalition of Cities (TCUC) of which the City of Wharton is a member. After some discussion, Councilmember Steve Schneider moved to approve the City of Wharton Resolution No. 2019-87, which read as follows:

RESOLUTION NO. 2019-87

RESOLUTION BY THE CITY OF WHARTON, TEXAS (“CITY”) DENYING THE APPLICATION OF THE CENTERPOINT ENERGY HOUSTON ELECTRIC LLC FOR AUTHORITY TO INCREASE RATES SUBMITTED ON OR ABOUT APRIL 5, 2019; REQUIRING THE REIMBURSEMENT OF MUNICIPAL RATE CASE EXPENSES; FINDING THAT THE MEETING COMPLIES WITH THE OPEN MEETINGS ACT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, CenterPoint Energy Houston Electric (“CEHE” or “Company”) filed a Statement of Intent with the City on or about April 5, 2019, to change its rates within the corporate limits of this municipality, specifically to increase its annual revenue for its retail transmission and distribution services by approximately \$154 million, which equates to an increase of approximately 7.4 percent, and by about \$6.8 million for its wholesale transmission service, which equates to an increase of approximately 1.8 percent; and

WHEREAS, the City is a regulatory authority under the Public Utility Regulatory Act (“PURA”) and under Chapter 33, §33.001 et seq. of PURA has exclusive original jurisdiction over CEHE’s rates, operations, and services within the municipality; and

WHEREAS, in order to maximize the efficient use of resources and expertise in reviewing, analyzing and investigating CEHE’s rate request and its changes in tariffs the City coordinated its efforts with a coalition of similarly situated municipalities known as Texas Coast Utilities Coalition (“TCUC”) of cities; and

WHEREAS, CEHE failed to establish that its overall revenue request resulted in no more than an amount that will permit CEHE a reasonable opportunity to earn a reasonable return on the utility’s invested capital used and useful in providing service to the public in excess of the utility’s reasonable and necessary operating expenses; and

WHEREAS, CEHE failed to establish that its proposed rates were just and reasonable; and

WHEREAS, the City has previously: (1) suspended CEHE’s proposed rate increase by 90 days; (2) authorized intervention in proceedings related to CEHE’s proposed rate increase as a member of the coalition of cities known as the Texas Coast Utilities Coalition of cities; (3) directed CEHE to reimburse TCUC’s rate case expenses; and (4) retained the law firm of Herrera Law & Associates, PLLC with respect to rate proceedings involving CEHE before the Public Utility Commission of Texas and courts of law and to retain consultants to review CEHE’s rate application subject to TCUC’s approval.

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

Section 1. The findings set out in the preamble are in all things approved and incorporated herein as if fully set forth.

Section 2. CEHE failed to show that its proposed rates are just and reasonable.

Section 3. The City hereby **DENIES** CEHE’s request to increase rates and in support of **DENIAL** finds that:

- a) CEHE failed in its burden of proof to establish that its requested increase in revenue or the changes set forth in its tariffs attached to CEHE’s Statement of Intent to increase rates, results in just and reasonable rates;
- b) CEHE failed in its burden of proof to establish that adoption of its proposed rate base, expenses, investment, return on equity, and other rate issues as presented in CEHE’s Statement of Intent to increase rates, result in just and reasonable rates.

Section 4. The City hereby orders CEHE to reimburse the City's rate case expenses as provided in the Public Utility Regulatory Act and that CEHE shall continue to do so on a monthly basis and within 30 days after submission of the City's invoices for the City's reasonable costs associated with the City's activities related to this rate review or to related proceedings involving CEHE before the City, the Public Utility Commission of Texas, or any court of law.

Section 5. The City, in coordination with the Steering Committee, delegates to the City Manager and/or the City Attorney, or designee of such office, review of the invoices of the lawyers and rate experts for reasonableness before submitting the invoices to CEHE for reimbursement.

Section 6. A copy of this resolution shall be sent to Mr. Alfred R. Herrera, Herrera Law & Associates, PLLC, 816 Congress Ave., Suite 950, Austin, Texas 78701, and a courtesy copy to Mr. Patrick H. Peters, III, Assistant General Counsel and Director of Regulatory Affairs, CenterPoint Energy, Inc., 1005 Congress Ave., Suite 650, Austin Texas 78701.

Section 7. The meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 8. This resolution supersedes any prior inconsistent or conflicting resolution or ordinance.

Section 9. This resolution shall become effective from and after its passage.

PASSED AND APPROVED this 12th day of August, 2019.

Don Mueller
Mayor Pro-Tem

ATTEST:

Paula Favors
City Secretary

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

The fifth item on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 18, Building and Construction, Article III Construction Codes, Sections 18-66 through Section 18-77; removing Section 18-69 through Section 18-70.2, Section 18-72 through Section 18-75, Exterior Building (Façade) Design Standards, providing that a violation of the ordinance or any part of the Code as adopted hereby shall constitute a penalty upon conviction of a fine; providing for separability and setting an effective date. City Manager Andres Garza, Jr. stated the item would be presented at a future meeting to allow for additional revisions to the draft Ordinance. After some discussion, no action was taken.

The sixth item on the agenda was to review and consider a resolution of the Wharton City Council supporting and authorizing the submission of a grant application for the Texas Department of Transportation 2019 Transportation Alternatives Set-Aside (TASA)/ Safe Routes to School-Infrastructure (SRTS) call for projects and authorizing the Mayor of the City of Wharton to execute all documents relating to said application. City Manager Andres Garza, Jr. stated the Texas Department of Transportation (TxDOT) issued a call for project in February 2019 for communities to apply for funding assistance through the Transportation Alternatives Set-Aside (TASA) and/or Safe Routes to School-Infrastructure (SRTS) Programs. City Manager Garza said the SRTS funds could be used for development of plans, specifications, and estimates; environmental documentation; and construction of pedestrian and/or bicycle infrastructure and the funds do not require a local match. Community Development Director Gwyn Teves stated as the Project Sponsor, the Local Government would be responsible for all non-reimbursable costs and 100% of overruns, if any, for SRTS funds and the City Staff wished to submit an application to the Texas Department of Transportation for sidewalk additions that would include the creation of safe routes to school and ADA compliant pedestrian accessibility in Wharton in accordance with the State of Texas regulations should the application not get funded through the SRTS Program the it would be considered for funding under the TASA which would require a 20% match if funded. After some discussion, Councilmember Steve Schneider moved to approve the City of Wharton Resolution No. 2019-88, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2019-88**

A RESOLUTION OF THE WHARTON CITY COUNCIL SUPPORTING AND AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION FOR THE TEXAS DEPARTMENT OF TRANSPORTATION'S 2019 TRANSPORTATION ALTERNATIVES SET-ASIDE (TASA) / SAFE ROUTES TO SCHOOL-INFRASTRUCTURE (SRTS) CALL FOR PROJECTS AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID APPLICATION.

WHEREAS, The Texas Department of Transportation (TxDOT) issued a call for projects in February 2019 for communities to apply for funding assistance through the Transportation Alternatives Set-Aside (TASA) and/or Safe Routes to School-Infrastructure (SRTS) Programs; and,

WHEREAS, The SRTS funds may be used for development of plans, specifications, and

estimates; environmental documentation; and construction of pedestrian and/or bicycle infrastructure. The SRTS funds do not require a local match. As the Project Sponsor, the Local Government would be responsible for all non-reimbursable costs and 100% of overruns, if any, for SRTS funds; and,

WHEREAS, The Wharton City Council wishes to submit an application to the Texas Department of Transportation for sidewalk additions that would include the creation of safe routes to school and ADA compliant pedestrian accessibility in Wharton in accordance with the State of Texas regulations; and,

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

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

Section I. The Wharton City Council supports funding the project. Wharton Safe and Accessible School Routes, as described in the Local Government's 2019 TASA/SRTS Detailed Application (including the construction budget, TxDOT's administrative cost, and the required local match, if any) and is willing to commit to the project's development, implementation, construction, maintenance, management, and financing. The (governing body) is willing and able to authorize, by resolution or ordinance, the Local Government to enter into an agreement with TxDOT should the project be selected for funding.

Section II. The Mayor of the City of Wharton is hereby authorized to execute all documents related to said application.

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

Passed, Approved and Adopted this the 12th day of August 2019.

CITY OF WHARTON, TEXAS

By: _____
DON MUELLER
MAYOR PRO-TEM

ATTEST:

PAULA FAVORS
CITY SECRETARY

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

The seventh item on the agenda was to review and consider a resolution of the Wharton City Council adopting a Limited English Proficiency (LEP) Plan for the United States Department of Agriculture (USDA) Funding and authorizing the Mayor of the City of Wharton to sign all documents related to said LEP Plan. City Manager Andres Garza, Jr. stated the City of Wharton, in accordance with Executive Order 13166 entitled, "Improving Access to Services by Persons with Limited English Proficiency" and further affirmed in the USDA Departmental Regulation 4330-005, "Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA." City Manager Garza said the City of Wharton, in accordance with Executive Order 13166, must take reasonable steps to ensure meaningful access to services in federally assisted programs and activities by persons with limited English proficiency and must have an LEP plan in place specific to the locality and beneficiaries for each project. Community Development Director Gwyn Teves stated the City of Wharton was requesting a loan from USDA for the Water Well Project on Halford Road (CR 122) and as part of the federal regulation the City must adopt a LEP Plan to comply with the regulations. After some discussion, Councilmember Russell Machann moved to approve City of Wharton Resolution No. 2019-89, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2019-89**

A RESOLUTION OF THE WHARTON CITY COUNCIL ADOPTING A LIMITED ENGLISH PROFICIENCY (LEP) PLAN FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE (USDA) FUNDING; AND AUTHORIZING THE MAYOR TO SIGN ANY DOCUMENTS RELATING TO SAID LEP PLAN.

WHEREAS, the City of Wharton, Texas, (hereinafter referred to as "City of Wharton") has applied for funding through the USDA; and,

WHEREAS, the City of Wharton, in accordance with Executive Order 13166 entitled, "Improving Access to Services by Persons with Limited English Proficiency" and further affirmed in the USDA Departmental Regulation 4330-005, "Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA."; and,

WHEREAS, the City of Wharton, in accordance with Executive Order 13166, must take reasonable steps to ensure meaningful access to services in federally assisted programs and activities by persons with limited English proficiency and must have an LEP plan in place specific to the locality and beneficiaries for each project; and,

WHEREAS, The Wharton City Council wishes to authorize the Mayor to act as the City's Executive Officer and Authorized Representative in all matters pertaining to the City's participation in the LEP Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS adopts the following:

Section I. Limited English Proficiency (LEP) Standards Plan (attachment A).

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

Passed, Approved, and Adopted this 12th day of August 2019.

CITY OF WHARTON, TEXAS

By: _____
DON MUELLER
Mayor Pro-Tem

ATTEST:

PAULA FAVORS
City Secretary

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

The eighth item on the agenda was to review and consider the Houston-Galveston Area Council Advisory (H-GAC) Committee-Regional Flood Management Council. City Manager Andres Garza, Jr. presented a letter from the Houston-Galveston Area Council regarding the re-nomination of a primary representative and alternate representative to the H-GAC Regional Flood Management Council. City Manager Garza stated the purpose of the Council was to assist and advise elected officials in the decision making responsibilities regarding to flood management issues. City Manager Garza said the current City representatives on committee were Building Official Ronnie Bollom and Community Development Director Gwyn Teves. After some discussion, Councilmember Russell Machann moved to approve re-nomination of a primary representative and alternate representative to the H-GAC Regional Flood Management Council. re-nomination of a primary representative Ronnie Bollom and alternate representative Gwyn Teves to the H-GAC Regional Flood Management Council. Councilmember Terry Freese seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider the Cloud Street Water Well Repair Project:

A. Pay Request No. 5 from Weisinger Incorporated.

City Manager Andres Garza, Jr. presented Pay Request No. 5 from Weisinger Incorporated for the Cloud Street Water Well Repair Project in the amount of \$104,526.60. Public Works Director John Plaia stated it was his recommendation that the City Council consider approving the request. After some discussion, Councilmember Steve Schneider moved to approve Pay Request No. 5 from Weisinger Incorporated for the Cloud Street Water Well Repair Project in the amount of \$104,526.60. Councilmember Clifford Jackson seconded the motion. All voted in favor.

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

- A. Public Works Committee Meeting held July 22, 2019.
- B. Finance Committee Meeting held July 22, 2019.
- C. Wharton Economic Development Corporation meeting held July 22, 2019.

After some discussion, no action was taken.

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

- 1. Appointments:
 - A. Beautification Commission.
 - B. Building Standards Commission.
 - C. Plumbing and Mechanical Board.
- 2. Resignations: None.

After some discussion, no action was taken.

The twelfth item on the agenda was Executive Session:

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

Discussion:

- A. City Managers Evaluation.

Mayor Pro-Tem Don Mueller moved the meeting into Executive Session at 7:28 p.m.

The thirteenth item on the agenda was Return to Open Session:

Action on items discussed in Executive Session:

- A. City Managers Evaluation.

Mayor Pro-Tem Don Mueller returned the meeting to Open Session at 8:05 p.m. Mayor Pro-Tem Mueller stated information only was received.

Adjournment. There being no further discussion, Councilmember Russell Machann moved to adjourn. Councilmember Clifford Jackson seconded the motion. All voted in favor.

The meeting adjourned at 8:06 p.m.

CITY OF WHARTON, TEXAS

By: *Tim Barker*
TIM BARKER
Mayor

ATTEST:

Paula Favors
PAULA FAVORS
City Secretary

