

**MINUTES
OF
CITY OF WHARTON
CITY COUNCIL MEETING
MAY 11, 2020**

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 Russell Machann led the opening devotion and Mayor Tim Barker led the pledge of allegiance.

Councilmember's present were: Mayor Tim Barker and Councilmembers Terry Freese, Clifford Jackson, Russell Machann, Don Mueller and Alice Heard-Roberts.

Councilmember absent was: Steve Schneider.

Staff members present were: City Manager Andres Garza, Jr, City Secretary Paula Favors, TRMC, CPM, MMC, Via Zoom: Finance Director Joan Andel, Assistant to the City Manager Brandi Jimenez, Emergency Management Coordinator Steve Johnson, Building Official Ronnie Bollom, Police Chief Terry David Lynch and Community Development Director Gwyn Teves.

Visitors present were: Albert Villegas with the Wharton Journal Specator and Executive Director Ron Sanders with the Wharton Chamber of Commerce.

Roll Call and Excused Absences.

After some discussion, Councilmember Terry Freese moved to excuse Councilmember Steve Schneider. Councilmember Clifford Jackson seconded the motion. All voted in favor.

Public Comments.

Mayor Tim Barker called for Public Comments. No comments were made.

Wharton Moment.

Councilmember Don Mueller thanked Mayor Tim Barker for issuing a message to the residents of Wharton regarding the importance of wearing face masks while in public during the COVID-19 pandemic. Mayor Tim Barker thanked Ms. Dot Hudgins who contacted him in regards to wanting to donate her stimulus check to a local organization. Mayor Barker helped assist Ms. Hudgins with her donation to Just Do It Now, Inc.

The first item on the agenda was to review and consider reading of the minutes from the regular meetings held April 13, 2020 and April 27, 2020. After some discussion, Councilmember Russell Machann moved to approve the reading of the minutes from the regular meetings held on April

13, 2020 and April 27, 2020. Councilmember Clifford Jackson seconded the motion. All voted in favor.

The second item on the agenda was to review and consider a request from Mr. Greg Janak, High School Addition, Lots 5A & 5B for a side property line setback variance of 2' 8" residential development. City Manager Andres Garza, Jr. presented a copy of the request from Mr. Greg Janak, High School Addition, Lots 5A & 5B for a side property line setback variance of 2' 8" residential development. City Manager Garza stated the request was approved by the Planning Commission on Friday, March 6, 2020 and City Council on Monday, March 9, 2020. Community Development Director Gwyn Teves stated that these applications had been previously approved by the City Council but were not being requested by the new property owner, Chapel Creek Investments, LLC. After some discussion, Councilmember Terry Freese moved to approve the request from Chapel Creek Investment, LLC, High School Addition, Lots 5A & 5B for a side property line setback variance of 2' 8" residential development. Councilmember Clifford Jackson 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 approving the City of Wharton COVID-19 Reopening Guidelines for City Facilities and Amenities. City Manager Andres Garza, Jr. presented a draft copy of the City of Wharton COVID-19 Reopening Guidelines for City Facilities and Amenities. City Manager Garza stated that on April 27, 2020, Governor Abbott released the "Open Texas" Guidelines and the City of Wharton management staff took the new information to assist in preparing the plan for Wharton to take the phased-in approach and reopen city facilities and amenities. City Secretary Paula Favors stated the guidelines had the steps that would be taken by the City of Wharton both for internal and external procedures. She said the City Staff was requesting the City Council consider reopening City Facilities and Amenities following the listed guidelines, on June 1, 2020. After some discussion, Councilmember Russell Machann moved to approve City of Wharton Resolution No. 2020-42, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2020-42**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE CITY OF WHARTON COVID-19 REOPENING GUIDELINES FOR CITY FACILITIES AND AMENITIES.

WHEREAS, On April 27, 2020, Governor Abbott released the "Open Texas" Guidelines; and,

WHEREAS, The City of Wharton management staff took the new information to assist in preparing the plan for Wharton to take the phased-in approach and reopen city facilities and amenities; and,

WHEREAS, The City of Wharton management staff wishes to follow the COVID-19 Re-Opening Guidelines for City Facilities and Amenities on June 1, 2020.

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

- Section I.** The Wharton City Council hereby recognizes Governor Abbott's "Open Texas" Guidelines.
- Section II.** The City of Wharton City Council wishes to approve the City of Wharton COVID-19 Re-Opening Guidelines for City Facilities and Amenities for June 1, 2020.
- Section III.** That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 11th day of May 2020.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

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 of the Wharton City Council granting the Chief of Police authority to retire the current Wharton Police Department's Narcotic Dog and giving him authority for this adoption and all future adoptions from the Wharton Police Department. City Manager Andres Garza, Jr. stated the Wharton Police Department had downed their Narcotic Dog Beau due to search and seizure issues raised by Texas prosecutors due to the legalization of THC in amounts up to .003%. City Manager Garza said Beau was trained to alert on the scent of marijuana/hemp, regardless of the amount of THC and could not effectively be untrained from alerting on marijuana. Police Chief Terry David Lynch stated the local District Attorney concurred with the general opinion, therefore, to avoid problems with the criminal narcotic cases, the Chief of Police had chosen to suspend the narcotic dog operations. City Manager Garza said that on November 5, 2019, Proposition 10 was passed which amended the State Constitution to allow retired law enforcement animals, such as dogs or horses, to be adopted by their handlers or other qualified caretakers. He said it was the Chief of Police recommendation that the City Council allow him to retire Beau and also grant him the authority for this adoption and all future adoptions from the Wharton Police Department. After some discussion, Councilmember Alice Heard-Roberts moved to approve the City of Wharton Resolution No. 2020-43, which read as follows:

CITY OF WHARTON

RESOLUTION NO. 2020 -43

A RESOLUTION OF THE WHARTON CITY COUNCIL GRANTING THE CHIEF OF POLICE AUTHORITY TO RETIRE THE CURRENT WHARTON POLICE DEPARTMENT'S NARCOTIC DOG AND GIVING HIM AUTHORITY FOR THIS ADOPTION AND ALL FUTURE ADOPTIONS FROM THE WHARTON POLICE DEPARTMENT.

WHEREAS, Due to search and seizure issues raised by Texas prosecutors and due to the legalization of THC in amounts up to .003% the Wharton Police Department's Narcotic Dog has been downed; and,

WHEREAS, The Narcotic Dog is trained to alert on the scent of marijuana/hemp, regardless of the amount of THC and cannot effectively be untrained from alerting on marijuana; and,

WHEREAS, On November 5, 2019, Proposition 10 was passed which would amend the State Constitution to allow retired law enforcement animals, such as dogs or horses, to be adopted by their handlers or other qualified caretakers; and,

WHEREAS, The Wharton City Council wishes to authorize the Chief of Police to retire the current Wharton Police Department's Narcotic Dog; and,

WHEREAS, The Wharton City Council wished to grant the Chief of Police authority for this adoption and all future adoptions for the Wharton Police Department; and,

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

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

Section I. That the Wharton City Council hereby authorizes the Chief of Police authority for the retirement of the current Wharton Police Department's Narcotic Dog.

Section II. That the Wharton City Council hereby authorizes the Chief of Police authority for this adoption and all future adoptions for the Wharton Police Department.

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

Passed, Approved, and Adopted this 11th day of May 2020.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER

Mayor

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 Wharton Community Tourism Assessment Report. City Manager Andres Garza, Jr. stated that on April 24, 2020 the City Staff received the final Wharton Tourism Assessment that was completed during February 2020 by the Office of the Governor Economic Development and Tourism Staff. City Manager Garza said the report was requested by the Wharton Downtown Business Association and the City of Wharton Staff, The Wharton Economic Development Corporation and Wharton Chamber of Commerce all participated in the assessment. Community Development Director Gwyn Teves stated the City Staff was recommending that the assessment be incorporated into the City of Wharton's Comprehensive Plan. After some discussion, Councilmember Russell Machann moved to approve incorporating the Wharton Community Tourism Assessment Report into the City of Wharton's Comprehensive Plan. Councilmember Alice Heard-Roberts seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider an ordinance declaring a public necessity for the acquisition of below listed properties located in Wharton, Texas, for a public purpose, namely the acquisition, construction and maintenance of the Lower Colorado River Basin Phase I, Texas, Wharton Flood Risk Management Project; ratifying and affirming all prior acts and proceedings done or initiated by attorneys and employees of the city to acquire such property; authorizing all other lawful action necessary or incidental to such acquisitions. City Manager Andres Garza, Jr. presented a draft ordinance declaring it a public necessity for the acquisition of the below listed properties for a public purpose for namely the acquisition, construction and maintenance of the Lower Colorado River Basin Phase I, Texas, Wharton Flood Risk Management Project. The properties are as follows:

1. R023656 SMITH GARDEN SPOT BLOCK 1 LOT 7
2. R023655 SMITH GARDEN SPOT BLOCK 1 LOT 6
3. R055352 WHARTON BLOCK ABS 38, PT RR CORR
4. R056955 WHARTON BLOCK 60 LOT 5-1
5. R026696 WHARTON BLOCK 60 LOT 5C
6. R023003 ROSEMONT ODD BLOCK ODD LOT 5
7. R056839 A20003 ABST.3 TRACT 33RR
8. R068877 A20034 ABST.34 TRACT 69 PT. (SOUTH)
9. R054004 A20034 ABST.34 TRACT 86C
10. R015979 JOHN HARRIS LOT 64D-4,64D-5
11. R054005 A20034 ABST.34 TRACT 86B, RR ROW
12. R056840 A20034 ABST.34 TRACT RR

After some discussion, Councilmember Terry Freese moved to approve City of Wharton Ordinance No. 2020-07, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2020-07**

AN ORDINANCE DECLARING A PUBLIC NECESSITY FOR THE ACQUISITION OF BELOW LISTED PROPERTIES LOCATED IN WHARTON, TEXAS, FOR A PUBLIC PURPOSE, NAMELY THE ACQUISITION, CONSTRUCTION AND MAINTENANCE OF THE LOWER COLORADO RIVER BASIN PHASE I, TEXAS, WHARTON FLOOD RISK MANAGEMENT PROJECT; RATIFYING AND AFFIRMING ALL PRIOR ACTS AND PROCEEDINGS DONE OR INITIATED BY ATTORNEYS AND EMPLOYEES OF THE CITY TO ACQUIRE SUCH PROPERTY; AUTHORIZING ALL OTHER LAWFUL ACTION NECESSARY OR INCIDENTAL TO SUCH ACQUISITIONS.

WHEREAS, the City of Wharton, Texas, has determined that the tract(s) or parcel(s) of land, hereinafter described, are required for City public works Levee flood control improvements; and

WHEREAS, the City may be unable to acquire or purchase fee simple interest in said parcel(s) by negotiation and the City would then be compelled to exercise its power of eminent domain; now

BE IT ORDAINED BY THE WHARTON CITY COUNCIL that:

SECTION I. AUTHORIZATION. The City Attorney, Paul Webb, and the Special Legal Counsel of the City, Davidson, Troilo, Ream & Garza P. C., is hereby authorized and funded to prepare appropriate legal documents and enter appropriate negotiations for the acquisition of the properties described in Exhibit "A". Failing such final attempt at negotiation, Special Legal Counsel is hereby authorized to initiate eminent domain condemnation proceedings in a court of competent jurisdiction in Wharton County, Texas on behalf of the City to obtain fee simple ownership of said parcel(s). Additionally, Special Legal Counsel is authorized to retain the professional services of an appraiser, to value the subject tract(s).

SECTION II. PUBLIC NECESSITY The City Council of Wharton, Wharton County, Texas, declares that a public necessity exists for the City of Wharton to acquire the real property located in Wharton County, Texas, and described in Exhibit "A" attached hereto and made a part hereof. The City Attorney, Paul Webb, and Special Legal Counsel, Davidson, Troilo, Ream & Garza P. C., are hereby directed to finally determine the owner(s) of said real property, coordinate with the Wharton City Manager in an attempt to finally negotiate the purchase or grant of a fee simple interest in and to said properties in Exhibit "A"; and failing such effort at final negotiation, to institute and prosecute to conclusion, an eminent domain condemnation suit against the known and/or unknown owner(s) of said property and against any and all other person(s) and legal entities

who own or claim any interest in said lands; and to acquire the real estate for the City of Wharton for use as a public flood control Levee.

SECTION III. INCORPORATION OF RECITALS. The City hereby finds that the statements set forth in the recitals of this Ordinance are true and correct and incorporates such recitals as findings of fact.

SECTION IV. SEVERABILITY. If any provision of this Ordinance or the application hereof to any circumstance shall ever be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the governing body hereby declares that this Ordinance would have been enacted without such invalid provision; and that in lieu of each clause or provision of this Ordinance that is deemed invalid, illegal, or unenforceable, there then will be added by the Mayor as necessary, with the approval of the City Manager and City Attorney as to form and legality, and as a part of the Ordinance, a substitute or additional clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be legally possible, valid and enforceable.

SECTION V. EFFECTIVE DATE. This Ordinance shall become effective immediately following its passage.

SECTION VI. OPEN MEETINGS The City finds that this Ordinance was discussed, considered, and appropriate action was taken upon it in accordance with the Texas Open Meetings Act requirements of Texas law, set forth in Tex. Gov't Code Ann. as amended, Title 5, Chapter Sec. 551.001 et seq.

PASSED AND ADOPTED this the 11th day of May 2020.

CITY OF WHARTON

TIM BARKER

Mayor

ATTEST:

PAULA FAVORS

City Secretary

APPROVED AS TO FORM:

PAUL WEBB

City Attorney

Exhibit "A"

R023656 SMITH GARDEN SPOT BLOCK 1 LOT 7
R023655 SMITH GARDEN SPOT BLOCK 1 LOT 6
R055352 WHARTON BLOCK ABS 38, PT RR CORR
R056955 WHARTON BLOCK 60 LOT 5-1
R026696 WHARTON BLOCK 60 LOT 5C
R023003 ROSEMONT ODD BLOCK ODD LOT 5
R056839 A20003 ABST.3 TRACT 33RR
R068877 A20034 ABST.34 TRACT 69 PT. (SOUTH)
R054004 A20034 ABST.34 TRACT 86C
R015979 JOHN HARRIS LOT 64D-4,64D-5
R054005 A20034 ABST.34 TRACT 86B, RR ROW
R056840 A20034 ABST.34 TRACT RR
R070250 A20038 ABST.38 TRACT 52B

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

The seventh 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 Regulation Ordinance, Article III Junk Dealers, Sections 42-76 through Section 42-113; providing that a violation of the ordinance or any part of the Code as adopted hereby shall constitute a penalty upon conviction of a fine; providing for separability and setting an effective date. City Manager Andres Garza, Jr. presented a memorandum to him from Building Official Ronnie Bollom regarding the adoption and revision of the City of Wharton Code of Ordinances, Chapter 42, Occupational Licenses, Taxes and Regulations, Article III, Junk Dealers. After some discussion, Councilmember Alice Heard-Roberts moved to table the item until further research could be made. Councilmember Clifford Jackson seconded the motion. Councilmembers Alice Heard-Roberts and Clifford Jackson voted for the motion. Councilmember Russell Machann, Councilmember Terry Freese and Councilmember Don Mueller voted against the motion. The motion failed. Councilmember Terry Freese moved to approve City of Wharton Ordinance No. 2020-08, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2020-08**

AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 42, OCCUPATIONAL LICENSES, TAXES AND REGULATON ORDINANCE, ARTICLE III JUNK DEALERS, SECTIONS 42-76 THROUGH SECTION 42-113; 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 III. JUNK DEALERS, SALVAGE YARDS, RECYCLE CENTERS, AND MOTOR VEHICLE STORAGE YARDS

DIVISION 1. - GENERALLY

Sec. 42-76. - Definitions.

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

Church means a structure where a society of persons who profess a religious belief regularly assemble for religious worship or religious instruction and which is exempt from ad valorem taxes.

Day-care center has the meaning set forth in V.T.C.A., Human Resources Code § 42.002. *Junk* means old or scrap steel, iron, tin, brass, copper, lead, zinc, ferrous or nonferrous material, and all metallic substances, except precious metals, handled, purchased, received or offered for sale by dealers in junk; secondhand plumbing, and electric fixtures, wires, globes, brass pipe, lead pipe and pipe of other metals, melted metals of any kind, such parts of machinery or machines that may be identified as such; any fixture pertaining to a residence, business house or other house of any kind; automobile accessories, including horns; prestolite tanks, tires and all detached and detachable parts of any automobile, motorcycle, bicycle or motor vehicle of any kind or any vehicle of any kind; hydrants, faucets, lawn hose, lawn sprinklers, gas fixtures, fittings and appliances, garden tools, mechanical tools of every description; batteries, paper, trash, debris, or waste; harness, rags, rubber, rope, bottles and utensils of every description. The enumeration of the articles in this definition shall not be held to exclude other articles that may be reasonably included under the general definition of junk, when given its usual trade meaning.

Junk dealer means any person who, irregularly or continually, either at wholesale or retail, buys, sells or deals in junk, whether as an itinerant or at a fixed place of business, or who keeps, maintains or allows junk to accumulate on any premises owned, used or controlled by such person in a quantity which exceeds that which can be reasonably used or consumed by such person.

Hospital means a building used to provide health services for human inpatient medical care for the sick or injured, licensed pursuant to the Texas Hospital Licensing Law (V.T.C.A., Health and Safety Code § 241.001 et seq.) or operated by an agency of the federal government, or a convalescent facility licensed pursuant to V.T.C.A., Health and Safety Code § 242.001 et seq.

Motor vehicle has the meaning assigned by V.T.C.A., Transportation Code § 541.201.

Motor vehicle salvage yard means an establishment that is maintained, used, or operated for storing, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles, watercraft, golf carts, equipment, used motor vehicle parts, or used equipment parts.

Motor vehicle storage yard means an establishment that is operated for the storing, buying, or selling of towed or wrecked vehicles.

Person means an individual, partnership, corporation, trust, association or any other legal entity howsoever formed.

Residence means any structure which, at the time of the application for a permit, is being used as a dwelling place for residential purposes, whether single-family or multi-family.

Recycle Center an establishment, place of business, facility or building which is maintained, operated, or used for the storing, keeping, buying, or selling of newspaper or used food or beverage containers or plastic containers for the purpose of converting such items into a usable product.

Salvage yard means an establishment maintained, used or operated for storing, buying or selling junk or processing scrap metal and/or junked, wrecked, scrapped, ruined or dismantled motor vehicles, watercraft, golf carts, equipment, motor vehicle parts, or equipment parts.

School means a public or private elementary, junior high and high school.

Sec. 42-77. - Declaration of nuisance and illegality.

All junkyards, salvage yards, recycle centers and motor vehicle storage yards are hereby declared to be a public or common nuisance, being obnoxious or offensive to the inhabitants of the city because of their interference with the comfortable enjoyment of life and property by the inhabitants and because of their potential as health and fire hazards. Junkyards, salvage yards, recycle centers and motor vehicle storage yards are unlawful within the city unless conducted under a valid license in the manner prescribed in this article.

Sec. 42-78. - Records—Form and contents.

- (a) Each junk, salvage, or motor vehicle storage dealer shall keep in a well-bound book an accurate daily record of each article purchased, including an accurate description of each article and whether a finished product or parts of a product, when purchased and the amount paid by the dealer for each of such articles and also an accurate description of the person selling the article, giving the name, color, sex, age and residence. If the dealer is not personally acquainted with such person so offering such article for sale, the dealer, before purchasing the article, shall require such person to furnish evidence of positive identification, such as a driver's license or other such evidence, and shall register in the book the number of such driver's license or the other means of identification and whether or not the person from whom such junk was obtained was an adult or minor, male or female. Such record shall further contain the source and place from which the junk came or was obtained. The dealer shall also make an entry in the book of the disposition made by him of such article and, if sold, he shall state to whom sold and the price paid therefor, together with the time of day, day of the week and month and year. All of the entries shall be made at the time of the purchase or sale.
- (b) The book shall be securely kept by the dealer and shall be open to the inspection of any peace officer at any time, and the dealer is further required to keep a copy of this article posted in a conspicuous place at his place of business.

- (c) Any person dealing in junk, salvage, or motor vehicle storage or purchasing junk, salvage, or motor vehicles who fails or refuses to comply with this section or any person who fails to permit any peace officer to, at any time, inspect the books shall be deemed guilty of a misdemeanor.

Sec. 42-79. - Same—Accessibility to police.

The book or record specified in section 42-78 shall be accessible at all times to the police or any other peace officer, and all such police and peace officers shall have the right at all times to examine such record when searching or looking for lost or stolen articles or in determining whether or not the provisions of this article are being faithfully kept and observed.

Sec. 42-80. - Examination of junk, salvage, or motor vehicles by police officers for lost or stolen property.

Every junk, salvage, or motor vehicle storage dealer shall at all reasonable times allow the chief of police or some other police officer the privilege of examining all articles of junk, salvage, or motor vehicle he may have received, whether at his place of business or elsewhere, for the purpose of ascertaining whether or not the articles are lost or stolen property.

Sec. 42-81. - Keeping junk, salvage, or motor vehicles for certain time.

No junk, salvage, or motor vehicle shall be sold or removed from the place of business of any junk, salvage, or motor vehicle storage dealer within 48 hours after the junk, salvage, or motor vehicle has been purchased or acquired, and all junk, salvage, or motor vehicles received shall be kept separate and apart from all other articles so that the junk, salvage, or motor vehicle may be fully identified for a full 48 hours after the junk, salvage, or motor vehicle is received. This section shall not apply to scrap iron, old tin, rags and bones.

Sec. 42-82. - Purchases from intoxicated persons or suspicious persons.

No junk, salvage, or motor vehicle storage dealer shall receive or purchase any junk, salvage, or motor vehicle from any intoxicated person or from any suspicious person or from any person under suspicious circumstances.

Sec. 42-83. - Business hours; purchase site restricted.

No junk, salvage, or motor vehicle storage dealer or recycle center shall receive, handle, purchase, sell or otherwise dispose of any junk, salvage, motor vehicle, or recyclables from a fixed place or location of business except during the hours between 7:00 a.m. and 7:00 p.m. No junk, salvage, or motor vehicle storage dealer or recycle center shall receive, handle, purchase, sell or otherwise dispose of any junk, salvage, motor vehicle, or recyclables at a place other than a fixed place or location of business except during the hours between 7:00 a.m. and 7:00 p.m.

Sec. 42-84. - Fencing.

The property and premises upon which any junk, salvage, or motor vehicle storage dealer or recycle center carries on his business or upon which any person keeps or accumulates junk, salvage, motor vehicles, or recyclables in a quantity which exceeds that which can be reasonably used or consumed by such person shall be completely surrounded and enclosed by a solid fence or wall not less than six feet in height, which fence shall be so constructed that no dust or other objectionable material may pass through the fence. The fence shall be kept in a good condition at all times and shall be kept in a neatly painted condition at all times, and no junk of any character or parts or machinery of any kind shall be allowed to remain or project outside of such fence. Any junkyard, salvage yard, motor vehicle storage yard, recycle center, or other place where junk is

kept or maintained in a quantity which exceeds that which can be reasonably used or consumed by such person shall comply with this section, whether or not licensed. Provided, however, a junk yard, salvage yard, motor vehicle storage yard, or recycle center lawfully existing on the date of adoption of this section that has a fence or wall that is at least six (6) feet in height, and otherwise meets the requirements of this section, shall satisfy the requirements hereof and may remain at its current height until it is replaced or it is destroyed or damaged in excess of fifty (50) percent of its then current value. Every fence or wall herein required shall be constructed and maintained as follows:

- (1) All fences shall be constructed of new wood, masonry, or twenty-six (26) gauge steel panels. All sides of the required fencing must be constructed of the same material and shall be the same color.
- (2) All fences or walls shall extend downward to within three (3) inches of the ground and shall test plumb and square at all times.
- (3) All fences or walls shall be constructed in compliance with all applicable provisions of the city's ordinances.
- (4) An existing chain link fence must be galvanized and have wood, plastic, or metal slats or strips that run through all links of the fence. A properly constructed and maintained chain link fence with slats or strips complies with requirements of this section.

Openings in the prescribed enclosure which are necessary to permit reasonable access to the junk yard, salvage yard, motor vehicle storage yard, or recycle center shall be equipped with a gate or gates, which are constructed and maintained in a manner that allows for unobstructed view of the internal lot. Such gates shall be closed and securely locked at all times, except during normal business hours.

No junk, motor vehicle, watercraft, golf carts, equipment, motor vehicle parts, equipment parts, or recyclables shall be kept or stored at a junk yard, salvage yard, recycle center, or motor vehicle storage yard in such a manner that it extends beyond the fence or wall required by this section. Furthermore, no vehicle shall be dismantled or worked on outside the fence or wall required by this section. If any junk, motor vehicle, watercraft, golf carts, equipment, parts, materials, or recyclables are stored in such a manner that extends above the six-foot fence, then the fence height shall be increased to equal the height of stored junk, motor vehicle, watercraft, golf carts, equipment, parts, materials, or recyclables. Fencing exceeding a height of six (6) feet must achieve a one hundred twenty (120) mph wind load.

For a motor vehicle storage yard, vehicles exceeding the height of six (6) feet may be stored for a maximum of one hundred eighty (180) days. Such vehicles shall have a minimum setback of twenty (20) feet from a perimeter fence or wall.

A person owning or operating a junk yard, salvage yard, recycle center, or motor vehicle storage yard on the date of enactment of this article shall have a period of six (6) months from the date of enactment of this article in which to comply with the fencing requirements set forth in section 42-84 of this article

Sec. 42-85. - Location restrictions.

No new junk yard, salvage yard, recycle center or motor vehicle storage yard shall be maintained, used or operated on any lot, plot or tract of land any part of which is located within

one thousand (1,000) feet of a church, school, hospital, day-care center or residence. The measurement of the distance between the junk yard, salvage yard, recycle center, or motor vehicle storage yard and the church, school, hospital, day-care center or residence shall be in a direct line from the property line of the junk yard, salvage yard, recycle center, or motor vehicle storage yard to the property line of the church, school, hospital, day-care center or residence. Furthermore, a minimum of three (3) acres shall be required for a new junk yard, salvage yard, recycle center, or motor vehicle storage yard.

Sec. 42-86. - Placement of junk.

- (a) Automobiles, trucks, tractors, or machinery shall be checked for leaks. If a leak is discovered, then a container shall be placed under the vehicle adequate to capture any leaking fluids.
- (b) Junk, motor vehicles, watercraft, golf carts, equipment, parts, recyclables, or materials located and stored outside an enclosed building shall be placed where there is no standing water and no water can collect that may provide mosquitoes a breeding ground. Any on-site drainage system shall capture and drain liquids and contaminants into a common collection system to prevent discharge into public storm drainage system.
- (c) All junk, motor vehicles, watercraft, golf carts, equipment, recyclables, or parts thereof stored on the premises of a junk yard, salvage yard, recycle center, or motor vehicle storage yard must be arranged so as to allow reasonable access to and inspection of the premises by authorized code, fire and police officials of the city. No junk, motor vehicle, watercraft, golf carts, equipment, recyclables, or parts thereof located outside shall be stacked, stored or piled to a height in excess of six (6) feet except when such stacking, storing or piling is necessary as an incident to the hauling and removal of same and then only during the time necessary to haul and remove the junk.
- (d) For new junk yards, salvage yards, recycle centers, or motor vehicle storage yards not in existence at the time of enactment of this article, all junk, salvage, recyclables and other items shall be stored on concrete flooring. If the concrete flooring is outside, it must be designed to capture and drain rainwater and contaminants.

Sec. 42-87. - Maintenance.

Every junk yard, salvage yard, recycle center, or motor vehicle storage yard shall be kept and maintained in a clean and sanitary condition so as not to attract rodents or insects. Grass and other vegetation shall not be allowed to grow to a height more than twelve (12) inches above the ground.

Sec. 42-88. - Emergency contact numbers.

Junk yard, salvage yard, or motor vehicle storage yard dealers or recycle centers shall place and maintain a sign at their junk yards, salvage yards, motor vehicle storage yards, or recycle centers which may be read from the nearest public right-of-way which lists the names and telephone numbers of one (1) or more persons in the county who may be contacted to give admittance to the junk yard, salvage yard, motor vehicle storage yard, or recycle center in the event of an emergency.

Sec. 42-89. - Fire prevention.

- (a) Fire extinguishers shall be present at junk yards, salvage yards, motor vehicle storage yards, and recycle centers. All operations thereon shall conform to the requirements of the fire prevention code adopted herein.

- (b) No toxic pollutants of any kind shall be discharged into the city's sanitary sewer system. Transmission fluid, motor oil or other related pollutants resulting from the storage of junk, salvaged, or recycled material may be stored at the site in leak-proof, EPA-approved containers, but may not exceed five hundred (500) gallons in quantity at a given time. The disposal of such pollutants shall only be made in accordance with the laws of the state and health department requirements.

Sec. 42-90. - Disturbing the peace.

All junk yards, salvage yards, motor vehicle storage yards, or recycle center operations shall comply with the City's Code of Ordinances, as amended, regarding noise.

Sec. 42-91. - Compliance with regulations and ordinances.

All junk yards, salvage yards, motor vehicle storage yards, and recycle centers must at all times be in full compliance with all federal and state laws and regulations and city ordinances regarding health and safety.

Sec. 42-92. - Junk yards, salvage yards, motor vehicle storage yards, and recycle centers to be open for inspection.

All persons having the care, custody or control of any junk yard, salvage yard, motor vehicle storage yard, or recycle center shall, during regular days and hours of business, allow the chief of police, building official, the code enforcement official, the fire marshal and the city's police officers, to inspect the premises for the purposes of ascertaining compliance with federal and state laws and regulations and all requirements of this article and other applicable city ordinances.

Sec. 42-93. - Penalty for violations of article.

Any person convicted of intentionally, knowingly, recklessly, or with criminal negligence, violating any provision, restriction or requirement of this article shall be deemed guilty of a misdemeanor and shall be fined in a sum not exceeding two thousand dollars (\$2,000.00). A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Secs. 42-100. - Reserved.

DIVISION 2. - LICENSE

Sec. 42-101. - Required.

No junk, salvage, or motor vehicle storage dealer or recycle center shall transact or engage in the business of a junk, salvage, motor vehicle storage, or recycle center dealer or maintain a junkyard, salvage yard, motor vehicle storage yard, or recycle center within the city until he shall have secured an annual license therefor.

Licenses shall expire on the 31st day of December of the year in which issued. Annual renewal of the license shall be required. Application for annual renewal of a license shall be made on or before December 31st of each year. No license shall be issued without the required fee having been paid. Furthermore, no license shall be issued until the chief of police, fire marshal, and code enforcement official have inspected the junk yard, salvage yard, motor vehicle storage yard, or recycle center and determined that it is in compliance with this article and all other applicable city ordinances, and state/federal laws and regulations.

Licenses shall not be transferable and shall be valid only for the location set forth in the application.

Sec. 42-102. - Application—Contents.

An applicant for a junk dealer's license or salvage yard, motor vehicle storage yard, or recycle center license shall make request therefor in writing, addressed to the chief of police, which application shall contain the following information:

- (1) The full name and mailing address of each owner and operator of the junk yard, salvage yard, motor vehicle storage yard, or recycle center;
- (2) The full name and address of the registered agent for service;
- (3) Whether any owner or operator is an individual, partnership, corporation, or other legal entity;
- (4) If any owner or operator is a corporation, all officers of the corporation; and if there are fewer than five (5) shareholders, the names of all shareholders;
- (5) If any owner or operator is a partnership, the names and addresses of all partners;
- (6) If any owner or operator is an association, the names and addresses of all officers of such association;
- (7) The location of the junk yard, salvage yard, motor vehicle storage yard, or recycle center;
- (8) The time period or periods during which the junk yard, salvage yard, motor vehicle storage yard, or recycle center will be open for business;
- (9) Other relevant information required by the chief of police.

The application shall be accompanied by a legal description of the property included within the application. For a new business, the application shall include a survey with verification of setbacks from the surrounding properties. Structures shall comply with all commercial building line setback requirements set forth in chapter 18 (Building and Construction) of the Code of Ordinances in subsection 18-77(e), as amended.

The application shall contain the following words:

"The license hereby applied for shall be subject to all of the provisions and regulations of the ordinances of the City of Wharton relating to junk, salvage, motor vehicle storage, recyclables and junk, salvage, or motor vehicle storage dealers and recycle centers."

Sec. 42-103. - Same—Oath.

The application for a junk dealer's license, salvage yard or motor vehicle storage yard license, or recycle center license shall be signed and sworn to by the person applying therefor, before a notary public or other officer authorized by law to administer oaths, or for a firm or partnership or corporation, by one member of the firm or partnership or officer or agent of the corporation.

Sec. 42-104. - Grant and refusal.

The application for a junk dealer's license, salvage yard or motor vehicle storage yard license, or recycle center license when so made out, shall be filed with the chief of police, who shall carefully examine the facts of the application and approve or disapprove the application. If the chief of police shall deem the applicant an unsafe or improper person to be granted a license as a junk, salvage, or motor vehicle storage dealer or recycle center, he shall disapprove the application; if he shall disapprove the application, the application shall be referred by him to the city council, which may grant a license to the applicant. If the city council shall be of the opinion that a license should not be granted, it shall order a hearing upon such application, naming the date and hour of the hearing, and notice thereof in writing shall be given by the chief of police to the applicant, at least five days before the date of the hearing, and the applicant may appear and be heard thereupon. If the city council finds such applicant to be an unsafe and improper person to engage in the business of a junk, salvage, or motor vehicle storage dealer or recycle center or if it finds that this article has not been satisfied or has been violated, it may in its discretion refuse to grant a license to such applicant.

Sec. 42-105. - Fee.

An annual license fee of \$100.00 shall be paid prior to December 31st of each year to the city by every junk, salvage, or motor vehicle storage yard dealer and every recycle center. The fee shall be paid at the time of submission of the application for a license or renewal thereof. Such fee shall not be prorated and shall be nonrefundable.

Applications for a license received after December 31st shall pay a license fee of one hundred fifty dollars (\$150.00)

Sec. 42-106. - Bond.

No junk, salvage, or motor vehicle storage dealer or recycle center within the city shall engage in business or shall be granted a license therefor, unless and until such junk, salvage, or motor vehicle storage dealer or recycle center shall have made and executed a bond in the sum of \$25,000, with two or more good and sufficient sureties or with a surety company authorized to do business in this state. Such bond shall be approved by the city attorney as to form and by the chief of police as to the sufficiency thereof and shall be made payable to the city, conditioned that such dealer will strictly and faithfully keep and observe the provisions of this article and other ordinances of the city regulating such business of a junk, salvage, or motor vehicle storage dealer or recycle center. Such bond may be sued on by the city or by any person aggrieved, in any court of competent

jurisdiction; provided, if any article or thing found in the possession of any junk, salvage, or motor vehicle storage dealer or recycle center shall be identified and claimed as lost or stolen property and the claimant or owner shall make affidavit as to the ownership of the property and such dealer shall refuse to deliver such property to the claimant or owner, suit may be brought in any court of competent jurisdiction by such claimant or owner against such dealer for the property or for the value of the property upon his bond. Where any suit is maintained by some person other than the city, the city shall not be responsible for the court costs or any other matter therein involved. At any time, the bond required in this section shall be by the city manager deemed insufficient, written notice thereof shall be given the principal therein, and if a new bond is not furnished within five days after such notice, the license shall be canceled.

Sec. 42-107. - Issuance.

Upon compliance with this division and upon the approval of the application by the city council, the city secretary shall issue the junk dealer's license, salvage yard or motor vehicle storage yard license, or recycle center license and shall number all such licenses consecutively.

Sec. 42-108. - Display.

Each holder of a junk dealer's license, salvage yard or motor vehicle storage yard license, or recycle center license shall at all times cause the license to be posted in a conspicuous place on the premises described in the application for such license for such period of time as the license shall remain in full force and effect.

Sec. 42-109. - Identification of vehicles.

Each vehicle kept or used by a junk, salvage, or motor vehicle storage dealer in pursuit of his business shall be plainly marked on each side with the number of his license in plain letters and figures at least two inches high and of such a color as to be plainly legible at a distance of 60 feet, and preceded by the designation "J.D. No."

Sec. 42-110. - Disapproval, revocation, or suspension.

A license may be disapproved, revoked or suspended after it has been granted under this article for any of the following reasons.

- (1) Fraud or misrepresentation in obtaining the license.
- (2) Upon satisfactory proof that the licensee, on at least two (2) incidents in the past twenty-four (24) months, has been convicted of a violation for any of the provisions of this ordinance adopted by the city council.
- (3) Upon satisfactory proof that the licensee has violated any of the federal laws or laws of Texas affecting its junk yard, salvage yard, or motor vehicle storage yard operation.

Sec. 42-111. - No vested rights.

No license issued under this article shall be construed as the grant of a vested right, but shall be subject to such other regulations or amendments as the city council may from time to time promulgate in the regulation of junk yards, salvage yards, motor vehicle storage yards, or recycle centers coming within the scope of this article.

Sec. 42-112. - Existing junk yards, salvage yards, motor vehicle storage yards, or recycle centers within prohibited distance.

- (a) A junk yard, salvage yard, motor vehicle storage yard, or recycle center lawfully in operation on the effective date of this article that is located within the prohibited distance set forth in section 42-85 shall make application to the chief of police for a special license within sixty (60) days of the effective date of this article. The special license shall indicate that the junk yard, salvage yard, motor vehicle storage yard, or recycle center is located within the prohibited distance established in this article. It shall be unlawful to operate within such prohibited distance without the special license.
- (b) If the use of a junk yard, salvage yard, motor vehicle storage yard, or recycle center is ceased at any time for a period of ninety (90) or more consecutive days, the special license shall expire and shall not be subject to renewal. A special license may be revoked for failure to comply with any applicable law, regulation or statute relating to licensing, permitting or other regulation of the business.
- (c) No holder of a special license shall be entitled to expand or otherwise enlarge the business unless otherwise permitted under the City's Code of Ordinances and shall not apply to improvements made in order to comply with any state or local ordinance, statute or regulations.

Secs. 42-113—42-150. – 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 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.

Reparability

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 22nd day of May 2020.

Passage and Approval

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on the 11th day of May 2020.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

APPROVED AS TO FORM:

PAUL WEBB
City Attorney

Councilmember Russell Machann seconded the motion. Councilmember Terry Freese, Councilmember Russell Machann and Councilmember Don Mueller voted in favor of the motion. Councilmember Alice-Heard Roberts and Councilmember Clifford Jackson voted against the motion. The motion carried.

The eighth item on the agenda was to review and consider a ratification of the approval of an application by Acadian Ambulance Service of Texas LLC for an Ambulance Provider Permit. City Manager Andres Garza, Jr. stated that on April 2, 2020 the City notified Oakbend Hospital that the City of Wharton Emergency Medical Services would no longer be able to be the secondary transfer services due to call volume. City Manager Garza stated that he informed Oakbend that if they needed to get another secondary transfer provider, he would expedite the application. He said Acadian Ambulance Service of Texas LLC had submitted an application and he approved the application; a permit was issued and he was requesting that the City Council approve this ratification. After some discussion, Councilmember Russell Machann moved to approve the ratification of the approval of the application by Acadian Ambulance Service of Texas LLC for an

Ambulance Provider Permit. Councilmember Terry Freese seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider an Ordinance of the Wharton City Council of the City of Wharton, Texas; Establishing a Municipal Court Security Committee, validating activities, and assigning, and assigning security functions to the City of Wharton Police Department and providing an effective date of this Ordinance. City Manager Andres Garza, Jr. presented a memorandum to him from City Secretary Paula Favors regarding the creation of a Municipal Court Security Committee. City Manager Garza stated the 85th Texas Legislature enacted the Judge Julie Kocurek Judicial and Courthouse Security Act of 2017 and the Act required judges to establish a court security committee. Mrs. Favors stated the security committee would be required to establish security policies and procedures for the courts and recommend to the governing body the uses of resources and expenditures of money for courthouse security, but it would not direct the assignment of those resources or the expenditure of those funds. After some discussion, Councilmember Russell Machann moved to approve City of Wharton Ordinance No. 2020-09, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2020-09**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS;
ESTABLISHING A MUNICIPAL COURT SECURITY COMMITTEE, VALIDATING
ACTIVITIES, AND ASSIGNING SECURITY FUNCTIONS TO THE CITY OF
WHARTON POLICE DEPARTMENT AND PROVIDING AN EFFECTIVE DATE OF
THIS ORDINANCE.**

WHEREAS, Chapter 29 of the Texas Government Code requires the establishment of court security committees for all courts in the State of Texas; and,

WHEREAS, the City Council finds that the City of Wharton Police Department, the primary law enforcement agency for the City of Wharton, should be assigned the function of security for the Wharton Municipal Court; and,

WHEREAS, Pursuant to section 29.014 of the Texas Government Code, there is hereby recognized the Court Security Committee for the City of Wharton Municipal Court, a judicial advisory committee under the direction of the presiding judge of the City of Wharton Municipal Court; and,

WHEREAS, the Committee shall be composed as follows:

Membership

- (a) The presiding or municipal judge, as applicable, shall establish a court security committee composed of:
 - (1) The presiding judge, or the presiding judge's designee;
 - (2) A representative of the City of Wharton Police Department;
 - (3) The chief clerk of the municipal court, or the chief clerk's designee;
 - (4) Any other person the committee determines necessary to assist the committee;
- (b) The person described by Subsection (a)(1) serves as presiding officer of the committee; and,

WHEREAS, the Committee shall have the following Powers and Duties:

- (a) Establish the policies and procedures necessary to provide adequate security to the municipal courts served by the presiding or municipal judge, as applicable;
- (b) The committee may recommend to the municipality the uses of resources and expenditures of money for courthouse security, but may not direct the assignment of those resources or the expenditure of those funds.

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

SECTION I. All ordinances of the City of Wharton, in conflict with the provisions of this ordinance be, and the same are hereby, repealed provided, however that all other provisions of said ordinances not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION II. Should any word, sentence, paragraph, subdivision clause, phrase or section of this ordinance as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

SECTION III. This Ordinance shall be effective upon its passage and publication as required by law.

Severability

If any court of competent jurisdiction rules that any section, subsection, sentence, clause, phrase, or portion of this ordinance is invalid or unconstitutional, any such portion shall be deemed to be a separate, distinct, and independent provision, and any such ruling shall not affect the validity of the remaining portions hereof.

Passage and Approval

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on this 11th day of May, 2020.

CITY OF WHARTON, TEXAS

ATTEST:

By: _____
TIM BARKER
Mayor

PAULA FAVORS
City Secretary

APPROVED AS:

PAUL WEBB
City Attorney

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

The tenth item on the agenda was to review and consider the reschedule of the May 25, 2020 Regular Wharton City Council Meeting. City Manager Andres Garza, Jr. stated the next regularly scheduled meeting would fall on Memorial Day which was a City Holiday. City Manager Garza said it was his request that the City Council consider rescheduling the regular meeting to May 26, 2020. After some discussion, Councilmember Terry Freese moved to approve the rescheduling of the May 25, 2020 Regular Wharton City Council Meeting to May 26, 2020. Councilmember Clifford Jackson seconded the motion. All voted in favor.

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. Building Standards Commission.
 - B. Mayor's Committee on People with Disabilities.
 - C. Plumbing and Mechanical Board.

After some discussion, no action was taken.

Executive Session:

City Council may adjourn into an Executive Session in accordance with Sections 551.072 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. Acquisition of Real Property-Wharton Flood Reduction Project-Levee.

Mayor Tim Barker moved the meeting into Executive Session at 7:51 p.m.

Return to Open Session:

Action on items discussed in Executive Session:

A. Acquisition of Real Property-Wharton Flood Reduction Project-Levee.

Mayor Tim Barker returned the meeting to Open Session at 8:06 p.m. Mayor Barker stated information only was received.

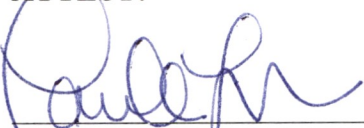
Adjournment. There being no further discussion, Councilmember Don Mueller moved to adjourn. Councilmember Clifford Jackson seconded the motion. All voted in favor.

The meeting adjourned at 8:06 p.m.

CITY OF WHARTON, TEXAS

By: 
TIM BARKER
Mayor

ATTEST:


PAULA FAVORS
City Secretary

