

**MINUTES
OF
CITY OF WHARTON
CITY COUNCIL MEETING
MARCH 13, 2023**

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; Don Mueller and Steve Schneider.

Councilmember absent was: Councilmember, Larry Pittman and Councilmember, Russell Machann.

Staff members present were: City Manager, Joseph R. Pace; City Attorney, Paul Webb; Finance Director, Joan Anandel; City Secretary, Paula Favors, TRMC, CPM, MMC; Assistant to the City Manager, Brandi Jimenez; and Director of Planning and Development, Gwyn Teves.

Visitors present were: Stephanie Konvicka; Debbie Cenko; Sammy Wisnieski; Kodi Kieler, President of the Wharton County Farmer's Market and Joe Southern with the Wharton Journal Spectator.

Roll Call and Excused Absences.

After some discussion, Councilmember, Clifford Jackson, moved to excuse Councilmember, Larry Pittman and Councilmember, Russell Machann. Councilmember, Steve Schneider, seconded the motion. All voted in favor.

Public Comments.

Mayor Tim Baker called for Public Comments.

Mr. Sammy Wisnieski stated there were continuing drainage issues at Barfield Road and Stadium Road. Mrs. Wisnieski said that he felt the City needed to meet with Wharton Independent School District and formulate a plan to resolve the drainage issue. He said he also had an issue with expanding his business due to drainage. Mr. Wisnieski stated that he was informed by the previous Building Official that he would have to work with the Texas Department of Transportation regarding the drainage from his business to FM 1301. He said that other businesses in town were able to build without having to address drainage issues.

Wharton Moment.

Mayor, Tim Barker, thanked City Staff for their work while City Manager, Joseph R. Pace, was unable to attend a prior City Council meeting due to a speaking engagement.

Review and Consider:

The first item on the agenda was to review and consider the reading of the minutes from the regular meetings held February 13, 2023, and February 27, 2023. City Secretary, Paula Favors, presented a copy of the draft minutes from the regular meetings held February 13, 2023, and February 27, 2023. After some discussion, Councilmember, Clifford Jackson, moved to approve the minutes from the regular meetings held February 13, 2023, and February 27, 2023. Councilmember, Terry Freese, seconded the motion. All voted in favor.

The second item on the agenda was to review and consider a request from Mr. Olan Bengé of 603 Salisbury Drive, Briargrove Section 1, Block 12C Pt., for a 12-foot variance from the required 25-foot front property line setback resulting in a 13-foot setback for the installation of a carport. Director of Planning & Development, Gwyn Teves, presented a copy of the request from Mr. Olan Bengé of 603 Salisbury Drive, Briargrove Section 1, Block 12C Pt., for a 12-foot variance from the required 25-foot front property line setback resulting in a 13-foot setback for the installation of a carport. Mrs. Teves stated the Planning Commission met on March 6, 2023, and voted to recommend this item to the City Council for consideration. After some discussion, Councilmember, Don Mueller, moved to approve a request from Mr. Olan Bengé of 603 Salisbury Drive, Briargrove Section 1, Block 12C Pt., for a 12-foot variance from the required 25-foot front property line setback resulting in a 13-foot setback for the installation of a carport. Councilmember, Steve Schneider, seconded the motion. All voted in favor.

The third item on the agenda was to review and consider Wharton County Farmers Market:

A. Request from the Wharton County Farmers Market for the following:

1. Use of Riverfront Park for the Wharton County Farmers Market for the Spring Market from April 8, 2023, through July 1, 2023, and Fall Market from September 30, 2023, through December 23, 2023.
2. Allow glass containers.
3. Waive all park fees.

B. Resolution: A resolution of the Wharton City Council approving a Memorandum of Understanding between the City of Wharton and the Wharton County Farmers Market regarding the use of Riverfront Park's Storage Space and authorizing the Mayor of the City of Wharton to execute all documents related to said Memorandum of Understanding.

Ms. Kodi Kieler, President of the Wharton County Farmer's Market, presented a letter requesting the use of Riverfront Park for the Spring Market starting on April 8, 2023, and ending on July 1, 2023, and the Fall Market starting on September 30, 2023, and ending on December 23, 2023. Ms. Kieler stated the hours of the market are from 8:00 a.m. to allow for set up and opening from 9:00 a.m. to 1:00 p.m. She said that they were also requesting permission to allow glass containers in Riverfront Park. City Manager, Joseph R. Pace, presented a copy of a draft Memorandum of Understanding between the City of Wharton and the Wharton County Farmers Market for the use of Riverfront Park's Storage Spare. City Attorney, Paul Webb, stated he had reviewed the

Memorandum of Understanding and it was his recommendation that the City Council consider approving it. After some discussion, Councilmember, Terry Freese, moved to approve the request from the Wharton County Farmers Market for aforementioned items 1. through 3. and the City of Wharton Resolution No. 2023-20, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2023-20**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WHARTON AND THE WHARTON COUNTY FARMERS MARKET REGARDING THE USE OF RIVERFRONT PARK'S STORAGE SPACE AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID MEMORANDUM OF UNDERSTANDING.

WHEREAS, The City of Wharton City Council wishes to approve a Memorandum of Understanding with the Wharton County Farmers Market regarding the use of Riverfront Park's Storage Space; and,

WHEREAS, The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents relating to said Memorandum of Understanding.

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

SECTION I. The Wharton City Council hereby approves the Memorandum of Understanding with the Wharton County Farmers Market regarding the use of Riverfront Park's Storage Space.

SECTION II. The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute all documents related to said Memorandum of Understanding.

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

PASSED, APPROVED, and ADOPTED this 13th day of March 2023.

CITY OF WHARTON, TEXAS

By: _____

TIM BARKER

Mayor

ATTEST:

PAULA FAVORS

City Secretary

Councilmember, Don Mueller, 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 approving a lease agreement between the City of Wharton and Hesed House of Wharton for use of the Dickson Rowan House located in Dinosaur Park, 421, 421A, 421B, 501 and 505 Colorado Street and authorizing the Mayor of the City of Wharton to execute all documents related to said agreement. Director of Planning and Development, Gwyn Teves, stated that on September 9, 2019, the Wharton City Council approved a lease agreement with Hesed House of Wharton, a nonprofit 501(c) 3 organization, for the lease of the Dickson Rowan House at Dinosaur Park. Mrs. Teves said the programs and funding at the Hesed House had been growing daily and it was the intent of Hesed House to further expand services, if approved, to include the adjoining properties of 501 and 505 Colorado Street to the lease to incorporate a new technology center and provide possible space for the Wharton County Recovery Team in times of need. She said it has also been requested to expand the lease to a twenty-five (25) year term to provide more stability to the funders who are generously providing funds to continue the programs. City Attorney, Paul Webb, stated he had reviewed the lease and was recommending a six (6) month termination clause, but Hesed House and their board are requesting the twelve (12) month termination time remain. After some discussion, Councilmember, Terry Freese, moved to approve expanding the lease to a twenty-five (25) year term with a six (6) month termination clause and City of Wharton Resolution No. 2023-21, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2023-21**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF WHARTON AND HESED HOUSE OF WHARTON FOR USE OF THE DICKSON ROWAN HOUSE LOCATED IN DINOSAUR PARK, 421, 421A, 421B, 501 & 505 COLORADO STREET AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID AGREEMENT.

WHEREAS, The City of Wharton wishes to approve a lease agreement with Hesed House of Wharton and to enter into said agreement as per the requirements set forth in said agreement (Attachment A.); and,

WHEREAS, The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute a lease agreement with Hesed House of Wharton.

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

Section I. That the City Council hereby approves the lease agreement for twenty-five (25) years with one (1) renewal term of ten (10) years in accordance with the lease agreement between the City of Wharton and Hesed House of Wharton.

- Section II.** That the City Council of the City of Wharton hereby authorizes the Mayor of the City of Wharton to execute the lease agreement with Hesed House of Wharton.
- Section III.** That the City of Wharton and Hesed House of Wharton are hereby bound by the conditions set forth in the agreement.
- Section IV.** That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 13th of March 2023.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

Councilmember, Clifford Jackson, seconded the motion. All voted in favor.

The fifth item on the agenda was to review and consider an ordinance declaring the unopposed candidate for Councilmember District No. 3 and Councilmember At Large Place No. 5 as elected to office; providing that the general election held on May 6, 2023, for Councilmember District No. 3 and Councilmember At Large Place No. 5 shall be canceled; providing that this ordinance shall be cumulative of all ordinances; providing for severability; repealing all ordinances or parts of ordinances inconsistent or in conflict herewith and providing an effective date.

Ordenanza: Una ordenanza declarando el candidato sin oposición para Concejal para el Distrito No. 3 y el Concejal de forma irrestricta para la Posición No. 5 según elegido a su puesto; disponiendo que se cancele la Elección General programada para el 6 de mayo 2023, para Concejal para el Distrito No. 3 y el Concejal de forma irrestricta para la Posición No. 5; disponiendo que esta ordenanza sea cumulativa para todas las ordenanzas; disponiendo la divisibilidad; revocando todas las ordenanzas o parte de ellas que sean inconsistentes o en conflicto con la presente y disponiendo una fecha vigente.

City Secretary, Paula Favors, stated the deadline to file for positions on the City of Wharton Election Ballot was Friday, February 17, 2023, at 5:00 p.m. and the positions of Councilmember District No. 3 and Councilmember At Large Place No. 5 were not contested and there were no write-in candidates. Mrs. Favors said that the Wharton City Council may cancel the City of Wharton General Election that is to be held on May 6, 2023, for Councilmember District No. 3 and Councilmember At Large Place No. 5. After some discussion, Councilmember, Clifford

Jackson, moved to approve City of Wharton Ordinance No. 2023-03A and 2023-03B, which read as follows:

**CITY OF WHARTON, TEXAS
ORDINANCE NO. 2023-03A**

AN ORDINANCE DECLARING THE UNOPPOSED CANDIDATE FOR COUNCILMEMBER DISTRICT NO. 3, AND COUNCILMEMBER AT LARGE PLACE NO. 5 AS ELECTED TO OFFICE; PROVIDING THAT THE GENERAL ELECTION HELD ON MAY 6, 2023, FOR COUNCILMEMBER DISTRICT NO. 3 AND COUNCILMEMBER AT LARGE PLACE NO. 5 SHALL BE CANCELLED; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Wharton, Texas is a home rule municipality located in Wharton County, created in accordance with the provisions of Title 2 Chapter 9 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and,

WHEREAS, Pursuant to the City of Wharton, Ordinance No. 2023-01-A and 2023-01B, passed and approved January 23, 2023, a general election was ordered to be held on May 6, 2023, for the purpose of electing Councilmember District No. 1, Councilmember District No. 3, and Councilmember At Large Place No. 5 to serve on the City of Wharton City Council; and,

WHEREAS, Pursuant to Section 143.007 Texas Election Code, the deadline for filing for a place on the City's General Election was expired on February 17, 2023, at 5:00 P.M.; and,

WHEREAS, The City Secretary, in accordance with Section 2.052 Texas Election Code, has certified to the City Council in writing that Terry Freese is unopposed for election to the office of Councilmember District No. 3 and Russell Machann is unopposed for election to the office of Councilmember At Large Place No. 5; and,

WHEREAS, The City Council hereby finds and determines that the candidate for Councilmember District No. 3 and Councilmember At Large Place No. 5 whose name is to appear on the ballot in said election is unopposed, and there are no declared write-ins.

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

SECTION 1.

In accordance with Section 2.053(a) Texas Election Code, the following candidate, who is unopposed in the May 6, 2023, general election, is hereby declared duly elected to the respective offices.

Councilmember – District No. 3 – Terry Freese
Councilmember at Large - Place No. 5 – Russell Machann

SECTION 2.

Pursuant to Section 2.053 (b) Texas Election Code, the General Election for, Councilmember District No. 3 and Councilmember At Large Place No. 5 heretofore called and ordered by the City of Wharton by Ordinance No. 2023-01A and 2023-01B, for the 6th day of May 2023, shall not be held and is hereby canceled.

SECTION 3.

The City Secretary is hereby directed to post a copy of this Ordinance at the designated polling place on Election Day, same being May 6, 2023.

SECTION 4.

This ordinance shall be cumulative of all provisions of ordinances of the City of Wharton, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 5.

It is hereby declared to the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the city council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 6.

This ordinance shall be in full force and effect from and after its passage, and it is so ordained.

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on this **13th day of March 2023.**

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS

City Secretary

APPROVED AS:

PAUL WEBB

City Attorney

**CIUDAD DE WHARTON, TEXAS
ORDENANZA N° 2023-03B**

UNA ORDENANZA DECLARANDO EL CANDIDATO SIN OPOSICIÓN PARA CONCEJAL PARA EL DISTRITO NO. 3 Y EL CONCEJAL DE FORMA IRRESTRICTA PARA LA POSICIÓN NO 5 SEGÚN ELEGIDOS A SU PUESTO; DISPONIENDO QUE SE CANCELE LA ELECCIÓN GENERAL PROGRAMADA PARA EL 6 DE MAYO 2023 PARA CONCEJAL PARA EL DISTRITO NO. 3 Y CONCEJAL DE FORMA IRRESTRICTA PARA LA POSICIÓN NO. 5; DISPONIENDO QUE ESTA ORDENANZA SEA CUMULATIVA PARA TODAS LAS ORDENANZAS; DISPONIENDO LA DIVISIBILIDAD; REVOCANDO TODAS LAS ORDENANZAS O PARTE DE ELLAS QUE SEAN INCONSISTENTES O EN CONFLICTO CON LA PRESENTE Y DISPONIENDO UNA FECHA VIGENTE.

POR CUANTO, la Ciudad de Wharton, Texas es una municipalidad de gobierno autónomo ubicada en el condado de Wharton, creada de acuerdo con las disposiciones del Título 2, Capítulo 9 del Código de Gobierno Local y opera de acuerdo con la legislación habilitante del estado de Texas; y

POR CUANTO, de acuerdo con la Ordenanza No. 2023-01-A y 2023-01B la Ciudad de Wharton, pasada y aprobada el 23 de enero de 2023, se ordenó una elección a realizarse el 6 de mayo de 2023, con el propósito de elegir Concejal del Distrito No. 1, Concejal del Distrito No. 3, y Concejal de forma irrestricta para la Posición No.5 para desempeñarse en el Consejo Municipal de la Ciudad de Wharton; y

POR CUANTO, de acuerdo con la Sección 143.007 del Código de Elecciones de Texas, el plazo límite para solicitar un puesto en la elección general de la Ciudad venció el 17 de febrero de 2023, a las 5:00 de la tarde; y

POR CUANTO, la Secretaria Municipal, de acuerdo con la Sección 2.052 del Código de Elecciones de Texas, ha certificado por escrito al Consejo Municipal que Terry Freese es el candidato

único para el puesto de Concejal del Distrito No. 3, y Russell Machann es el candidato único para la elección al puesto de Concejal para la Posición No. 5 de forma irrestricta; y

POR CUANTO, el Consejo Municipal por el presente encuentra y determina que el candidato para Concejal del Distrito No. 3 y Concejal para la Posición No. 5 de forma irrestricta cuyo nombre ha de aparecer en la balota de dicha elección es candidato único, y no hay ningún candidato declarado para anotarse.

AHORA, POR LO TANTO, EL CONSEJO MUNICIPAL DE LA CIUDAD DE WHARTON, TEXAS, ORDENA QUE:

SECCION 1.

De acuerdo con la Sección 2.053 (a) del Código de Elecciones de Texas, el siguiente candidato único en la elección general del 6 de mayo de 2023, por la presente queda declarado debidamente elegido a los respectivos puestos

Concejal - Distrito No. 3 - Terry Freese
Concejal de forma irrestricta - Posición No. 5 - Russell Machann

SECCION 2.

De acuerdo con la Sección 2.053 (b) del Código de Elecciones de Texas, la Elección General para Concejal del Distrito No. 3, y Concejal de forma irrestricta de la Posición No. 5 antes convocada y ordenada por el Consejo Municipal de la Ciudad de Wharton por medio de la Ordenanza No. 2023-01A y 2023-01B para el 6 de mayo de 2023, no se celebrará y queda cancelada por medio del presente.

SECCION 3.

Por medio del presente se ordena que la Secretaria Municipal anuncie una copia de esta ordenanza en el lugar de votación designado el día de la elección, que es el 6 de mayo de 2023.

SECCION 4.

Esta ordenanza será cumulativa de todas las disposiciones de las ordenanzas de la Ciudad de Wharton, Texas, excepto donde las disposiciones de esta ordenanza estén en conflicto directo con las disposiciones de tales ordenanzas, en cuyo caso las disposiciones en conflicto de esas ordenanzas quedan revocadas por medio del presente.

SECCION 5.

Por medio del presente se declara que la intención del Consejo Municipal es que las frases, cláusulas, oraciones, párrafos, y secciones de esta ordenanza sean divisibles, y que si cualquier frase, cláusula, oración, párrafo o sección de esta ordenanza es declarada inconstitucional mediante un fallo o decreto válido de cualquier corte de jurisdicción competente, dicha inconstitucionalidad no afectará

a ninguna de las frases, cláusulas, oraciones, párrafos, y secciones de esta ordenanza, puesto que la misma habría sido promulgada por el consejo municipal sin incorporar en esta ordenanza dicha frase, cláusula, oración, párrafo o sección.

SECCION 6.

Esta ordenanza será vigente y aplicable desde su aprobación y a partir de entonces, y así queda ordenado.

PASADO Y APROBADO por El Consejo Municipal de la Ciudad de Wharton, Texas este día **13 de marzo de 2023.**

CIUDAD DE WHARTON, TEXAS

Por: _____
TIM BARKER
Alcalde

ATESTIGUACIÓN:

PAULA FAVORS
Secretaria Municipal

APROBADO:

PAUL WEBB
Abogado Municipal

Councilmember, Don Mueller, 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 approving the termination of the current land lease agreement between the City of Wharton and Mr. Manuel Cabrera and Mr. Sergio Cabrera and authorizing the Mayor of the City of Wharton to execute all documents relating to said termination. City Secretary, Paula Favors, presented a copy of the termination of a land lease agreement between the City of Wharton and Mr. Manuel Cabrera and Mr. Sergio Cabrera. Mrs. Favors stated the City of Wharton had leased the property on which Los Cucos Mexican Restaurant stood since July 10, 1972, but not the building itself. She said that due to the recent fire destroying the restaurant, the City wished to terminate the land lease agreement with the Cabrera's and give a 90-day notice. Mrs. Favors said the termination of the agreement would require the tenant to vacate the premises and remove all the buildings, equipment, etc., owned by the tenant. City Attorney, Paul Webb, stated he had reviewed the agreement and it met with his approval. After some discussion, Councilmember, Terry Freese, moved to approve City of Wharton Resolution No. 2023-22, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2023 -22**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE TERMINATION OF THE CURRENT LAND LEASE AGREEMENT BETWEEN THE CITY OF WHARTON AND MR. MANUEL CABRERA AND MR. SERGIO CABRERA AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID TERMINATION.

WHEREAS, The City of Wharton wishes to authorize the Mayor of the City of Wharton to terminate the land lease agreement between Mr. Manuel Cabrera and Mr. Sergio Cabrera and the City of Wharton; and,

WHEREAS, The City of Wharton with said termination of the land lease agreement wishes to give a 90-day notice to Mr. Manuel Cabrera and Mr. Sergio Cabrera; 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 Mayor of the City of Wharton to terminate, on behalf of the City of Wharton, the land lease agreement with Mr. Manuel Cabrera and Mr. Sergio Cabrera.

Section II. That the City of Wharton wishes to give a 90-day notice of termination of the land lease agreement.

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

Passed, Approved, and Adopted this 13th day of March 2023.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

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

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

- A. Appointments.
- B. Resignations.
- C. Vacancies.

After some discussion, no action was taken.

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

- A. Parks and Recreation Committee meeting held February 27, 2023.
- B. Finance Committee meeting held February 27, 2023.

After some discussion, no action was taken.

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 7:20 p.m.

CITY OF WHARTON, TEXAS

By: *Tim Barker*
TIM BARKER
Mayor

ATTEST:

Paula Favors

PAULA FAVORS
City Secretary

