

**City of Wimberley**  
City Hall, 221 Stillwater  
Wimberley, Texas 78676  
**Minutes of Regular Meeting of City Council**  
January 6, 2011 at 6:00 p.m.

City Council meeting called to order at 6:00 p.m. by Mayor Bob Flocke.

Mayor Flocke gave the Invocation and Councilmembers led the Pledge of Allegiance to the United States and Texas flags.

Councilmembers Present: Mayor Bob Flocke and Councilmembers Marilee Wood, Mac McCullough, Bill Appleman, Steve Thurber, and John White.

Staff Present: City Administrator Don Ferguson, City Secretary Cara McPartland, and City Attorney Cindy Crosby.

### **Proclamations**

- A. Proclamation recognizing the various individuals and businesses who organized and implemented the 2010 Christmas celebration in Wimberley
- B. Proclamation recognizing the various individuals and businesses who provided assistance to the City of Wimberley with the Blue Hole Regional Park Ground Breaking Ceremony

Mayor Flocke introduced Mayor's Fitness Council representative Barry Tyler who announced the winner of the LoneStart 63-Day Challenge and the upcoming Healthy Fair to be held on January 15, 2011 at the Wimberley Community Center. Because the winner, Ron Bullied, was not unable to attend, Mr. Tyler presented the \$400 prize check to Mrs. Bullied. He cited statistics related to the need for healthy lifestyle choices and provided information on programs furthering the goal to make Wimberley "the fittest little town in Texas."

Mayor Flocke read aloud the proclamations and presented a proclamation to each recipient present.

### **Citizens Communications**

Clint Frankmann distributed supporting documents (*attached to these minutes*) to Council and asked for review of the City's recently completed boundary survey relating to four (4) specific properties that he stated were in the City of Woodcreek's ETJ. He urged Council to delete all legal claims to these properties. City Administrator Ferguson advised that Mr. Frankmann's correspondence will be forwarded to Jack Avis of Baker-Aicklen & Associates for review.

#### **1. Consent Agenda**

- A. Approval of the minutes of the Special City Council meeting of November 12, 2010
- B. Approval of the minutes of the Special City Council meeting of December 15, 2010

- C. Approval of the minutes of the Regular City Council meeting of December 16, 2010
- D. Approval of the reappointment of Thad Nance to the Wimberley Parks and Recreation Advisory Board (*Place Five Councilmember John White's nominee*)
- E. Approval of the reappointment of Charles Lancaster to the Wimberley Transportation Advisory Board (*Place Five Councilmember John White's nominee*)
- F. Approval of the reappointment of Steve Gartside as an alternate member of the Wimberley Board of Adjustment. (*Place Five Councilmember John White's nominee*)
- G. Approval of the reappointment of Rodney Jones to the Wimberley Transportation Advisory Board. (*Mayor Pro-tem Steve Thurber's nominee*)
- H. Approval of the reappointment of Mike Stevens to the Wimberley Ethics Commission. (*Mayor Bob Flocke's nominee*)
- I. Approval of the reappointment of Paul Polhemus to the Wimberley Ethics Commission. (*Consensus nominee of Mayor Bob Flocke*)

Councilmember Thurber moved to approve all Consent Agenda Items as presented. Councilmember White seconded. Motion carried on a vote of 5-0.

## **2. City Administrator Report**

- Status report on the efforts underway to secure federal funding for the downtown wastewater project

City Administrator Ferguson reported on exploration of alternative funding and cost saving measures with Guadalupe Blanco River Authority (GBRA), including discussion of reducing the service area. He noted that GBRA plans to hire consultants to explore such alternatives. He stated that efforts are currently underway to secure funding for irrigation of the planned soccer fields at Blue Hole Regional Park.

- Status report on the implementation of the Single Stream Recycling Program

City Administrator Ferguson reported that crews are distributing bins to customers, with program implementation set to start on January 13, 2011. He advised that customers who have not received their containers by Monday, January 10<sup>th</sup> may call City Hall for assistance.

- Status report on the development of a water quality protection ordinance

City Administrator Ferguson anticipated Council's consideration of the proposed ordinance at its January 20<sup>th</sup> meeting, pending a recommendation from the Planning and Zoning Commission.

- Status report on the preparations for the 2011 City of Wimberley General Election

City Administrator Ferguson reported on key dates and deadlines for the May 14, 2011 General Election for City Council Places One, Three, and Five.

- Status report on the development of a community C-P-R initiative

City Administrator Ferguson reported that the City is working with Wimberley EMS to develop a community C-P-R initiative that will provide education on “hands only” C-P-R. He provided details on the timeframe for the program and course of instruction.

- Status report on the Ranch Road 12 billboard enforcement effort

City Administrator Ferguson reported that Texas Department of Transportation (TxDOT) has notified the City that despite its earlier determination, the subject billboards are not in violation. He stated that Council will be presented with a draft sign ordinance that includes provisions to address such signage.

- Status report on the development of the Blue Hole Regional Park

City Administrator Ferguson reported on the pre-construction meeting held this week and on scheduled demolition work. He highlighted key deadlines for completion.

- Status report on the food service establishment and on-site sewage facilities permitting and inspection programs

City Administrator Ferguson stated that this report will be included on Council’s next agenda.

- Status report on the preparation of the *City of Wimberley Fiscal Year 2010 Financial Report*

City Administrator Ferguson anticipated presentation of the completed report to Council at its next meeting.

Councilmember McCullough stated his lack of confidence in GBRA’s efforts to date and encouraged instituting a strong timeline for production of alternatives.

In response to Councilmember Wood, City Administrator Ferguson replied that the Blue Hole Regional Park manager’s job opening has been posted. To date, no applications have been submitted, however, several phone inquiries have been received.

### **3. Public Hearing and Possible Action**

- A. Hold a public hearing and consider approval of the first reading of an ordinance of the City of Wimberley, Texas amending Chapter 155 (Zoning) of the Code of Ordinances as follows:
  - 1) Amending Section 155.005 (Definitions) to revise definitions related to bed and breakfast lodging and add “Vacation Rental” as a definition;
  - 2) Deleting Section 155.075(F)(4) (Off-Street Parking and Loading Requirements) to delete the parking requirement for bed and breakfast lodging;
  - 3) Deleting Subsection 155.105(C) (Bed and Breakfast Lodging) and re-lettering subsequent subsections;

- 4) To add Section 155.064 “Bed and Breakfast Lodging Requirements” and accompanying development regulations of such use;
- 5) Add Section 155.065 “Vacation Rental Lodging Requirements” and accompanying development regulations of such use;
- 6) Amending Subsection (C) of the following sections: §155.035 (Residential Acreage; RA), §155.036 (Rural Residential 1; R-1), §155.037 (Single-Family Residential 2; R-2), §155.038 (Single-Family Residential 3; R-3), §155.045 (Office-Low Impact; O-1), §155.046 (Office-High Impact; O-2), §155.047 (Commercial-Low Impact; C-1), §155.048 (Commercial-Moderate Impact; C-2), §155.049 (Commercial-High Impact; C-3), §155.061 (Neighborhood Services District; NS), and §155.094 (Scenic Corridor; SC) to add “Vacation Rental” as a conditional use; and,

providing for the following: findings of fact; repealer; severability; effective date; and proper notice and meeting. (*Planning and Zoning Commission; this item was continued from the December 16, 2010 City Council meeting*)

This item was heard after Agenda Item 4C.

City Administrator Ferguson reviewed the revised draft distributed at tonight’s meeting (*attached to these minutes*), highlighted key changes, and provided reasoning for specific language.

Mayor Flocke opened the public hearing.

Wimberley property owner Phil Collins expressed concerns with §155.065(E)(12) relating to so-called “party house” vacation rentals. He did not favor inclusion of the following “. . . a number equaling the maximum occupancy as established in the CUP, plus thirty (30) percent of that maximum capacity,” which may result in fractions that need to be rounded. He felt that Wimberley lodging owners discourage problem rentals such as wedding/graduation parties and encourage renters that will contribute to the local economy without posing potential nuisance issues. Mr. Collins stated that requiring outdoor gatherings to end at 10 p.m. will be unenforceable.

Wimberley property owner Wayne Kochenderfer expressed concerns similar to Phil Collins relating to the “thirty (30) percent” maximum occupancy language as noted above, which he felt is unrealistic. He stated that rental of “porta-potties” has worked for gatherings that may exceed septic capacity and should continue to work, since property owners have an interest in avoiding septic system abuse. He cited problems with “unruly gatherings” requirements and gave examples that he felt would prevent renters/guests from enjoying a glass of wine by the river at certain times. Mr. Kochenderfer did not favor the prohibition from parking on grass and parking surface requirements. He asked Council to consider rental unit square footage to yard size ratio to arrive at an acceptable unpaved surface space for parking areas. Mr. Kochenderfer also found unrealistic the nine (9) month period relating to duration of operation requirements and thirty (30) day maximum rental period. He cited examples of long-term rentals that would be exempt from Hotel Occupancy Tax (HOT) collecting or reporting requirements. He suggested that upon nine (9) months of no apparent rental activity the City should initiate contact with the property

owner asking for an explanation, rather than arbitrarily terminating the CUP. He felt that posting of CUP requirements for guests should be left to the property owner's discretion. Mr. Kochenderfer stated his understanding that the bed and breakfast (B & B) currently operating on the Square was denied a CUP and City Administrator Ferguson clarified that the facility in question was granted a CUP and that parking on grass is prohibited only on commercial properties.

B & B owner Dale Dugger asked where the proposed regulations came from and specifically who authored them. Clarification was provided on staff's drafting of regulations per direction from the Planning and Zoning Commission and City Council. Mr. Dugger did not feel that there are any problems that need correcting. Mr. Dugger warned Council that voting for the regulations could mean the demise of his B & B, which he relies on to supplement his fixed retirement income.

Mayor Flocke reminded that the proposed regulations would not apply to pre-existing B & Bs or vacation rentals and City Administrator Ferguson noted that a large portion of the proposed regulations are included in the current City Code.

Clint Frankmann commented on past issues and "phantom problems" faced by Paradise Hills residents related to B & B/rental properties. He pointed out inconsistencies in deed restrictions among properties in specific Paradise Hills locations and noted that the subdivision's deed restrictions were consistent "across the board" in allowance of single family residences, with no commercial or business activity permitted. Mr. Frankmann spoke of his prior warnings about allowing the operation and marketing of B & B/vacation rentals in Paradise Hills, but did not feel that permanent residents were as upset by rentals as they were about teenagers speeding through their neighborhood. He was unaware of problems with rowdy parties at B & B/vacation rentals and stated that Paradise Hills "brought it on themselves," then asked the City to "do their work for them." Mr. Frankmann spoke negatively about the City's development regulations.

Paradise Hills resident Barry Tyler spoke of past problems related to the steadily increasing concentration of B & B/vacation rentals in his neighborhood. He noted challenging aspects to the proposed regulations such as oversight, enforcement, and complaint procedures. He cited increased vehicle traffic from renters. Based on conversations with Paradise Hills residents, Mr. Tyler felt that the proposed regulations are not necessary and asked that current CUP process be left in place with no changes.

Referring to earlier comments by Phil Collins, local realtor Melinda Everett believed that typical Wimberley renters such as family wedding/reunion guests are needed to support the local economy. She felt that the proposed regulations would hurt the B & B industry and asked Council to reconsider maximum occupancy/prohibited gathering requirements and associated enforcement problems.

Phil Collins stated his business standards for dealing with and solving identified problems. He asked for data on B & B/vacation rental problems, including trends and law enforcement reporting, as opposed to anecdotal evidence. City Administrator Ferguson reported that there

have been few reported complaints. Absent such evidence of complaints, Mr. Collins suggested working on other more pressing problems.

Referring to a specific Cypress Creek rental property owner, Clint Frankmann asked whether the proposed regulations would require future owner(s) to have an on-site manager living in one of the cabins on the property or allow for management of the property from the owner's home elsewhere in Wimberley. Discussion clarified various management scenarios and clarified that CUP conditions apply to the property, not the owner.

Hearing no further comments, Mayor Flocke closed the public hearing.

Discussion addressed:

- Lot size requirements for different types of lodging
- Protection of residential areas from commercialization
- Use of the Wimberley Planned Development District (WPDD) zoning process for larger tracts
- Need for clearer language relating to water access and prohibited gatherings
- Recourse for neighborhood residents when CUP conditions are violated
- Unintended consequences of the proposed regulations, which may discourage B & Bs and encourage vacation rentals
- Grandfathering of existing B &Bs/rentals/lodging establishments
- Promotion of B & Bs as beneficial to the local economy
- Problematic nature of enforcement
- Adherence to the Comprehensive Plan's vision, definitions of Planning Areas I and II, and whether or not vacation rentals should be considered low/very low impact residential developments (*handout distributed by Councilmember Thurber and attached to these minutes*)
- Difficulty in policing arbitrary maximum occupancy requirements and "party houses" under the proposed regulations compared to the current process which establishes case-specific CUP/WPDD conditions
- Need to balance individual property rights with protection of residential areas
- Documented evidence of problems (or lack thereof) that proposed regulations are intended to address
- Definition of "unruly" and enforcement issues
- General agreement that §155.065(E)(12) contains arbitrary language [relating to thirty percent (30%) maximum occupancy and unruly/prohibited gatherings] that is difficult to enforce
- Establishment of an acceptable cut-off time for evening outdoor gatherings
- Need to encourage and incentivize B & Bs and protect both neighborhoods and the lodging industry, while benefitting the local economy
- Positive effects of B & Bs on the economy
- Allowance of B & Bs in all planning areas
- Allowance of vacation rentals in all planning areas, *except* Planning Areas I and II
- Burden on neighboring residences to police B & B/vacation rental properties

- Comparative benefits of B &B income on the local economy versus income generated by vacation rentals owned by non-Wimberley residents
- Parking and septic capacity as limiting factors for large parties
- Need for prompt response from management/responsible parties to neighbor's complaints
- Specific language in the City's noise ordinance and complaint procedures
- Importance of better communication among neighbors in order to resolve complaints
- Positive economic impact of income from vacation rentals that are second homes for those who intend to retire and live full-time in Wimberley

There was an exchange between Planning and Zoning Commissioner Jean Ross and Vice Chair Steve Klepfer about Commissioner Ross's comments on the Commission's original intent and purpose for the recommended regulations. Commissioner Ross stated that her comments reflected her personal viewpoint as someone who owns vacation rental property and has substantial knowledge of the B & B/lodging industry in Wimberley. Vice Chair Klepfer clarified the reasoning for the Commission's recommendation.

In response to Mayor Flocke's inquiry, several audience members provided information on how neighbors' complaints are handled, whether by property owners, managers, or reservation agencies.

Subsequent discussion among Mayor Flocke, Councilmember Wood, and Councilmember Thurber addressed possible compromise language that would prohibit vacation rentals in Planning Area I (unless granted under a WPDD agreement) and allow vacation rentals in Planning Area II subject to case-specific CUP conditions.

Councilmember Appleman moved to approve the item as presented, except for §155.065(E)(12) in order to eliminate the clause relating to the maximum occupancy [thirty (30) percent threshold] and the reference prohibiting outdoor gatherings past 10 p.m., with both issues to be addressed as part of the CUP process. Councilmember White seconded.

Discussion clarified what constitutes an outdoor gathering and current noise ordinance language and enforceability.

Mayor Flocke called for a vote as follows: Councilmember Wood, nay; Councilmember McCullough, aye; Councilmember Appleman, aye; Councilmember Thurber, nay; Councilmember White, aye. Motion carried on a vote of 3-2.

- B. Hold a public hearing and consider approval of the second and final reading of an ordinance of the City of Wimberley, Texas amending Chapter 155 (Zoning) of the Code or Ordinances, certain subsections of Section 155.023 (Districts Established; Designation and Review) in order to add "Village Inn (VI)" as a base zoning district, revise the planning areas accordingly; and add Section 155.063 Village Inn District and accompanying development regulations; and providing for the following: findings of fact; repealer; severability; effective date; and proper notice and meeting. (*Planning and Zoning Commission*)

City Administrator Ferguson provided background information and reasoning for creation of the VI zoning district, which is meant to address small lodging operations. The VI zoning district would be allowed in largely commercial Planning Areas III-VII and sets specific parameters for maximum number of rooms, occupancy, building footprint, and minimum lot size.

No public comments were heard.

Councilmember Wood moved to approve the item as presented. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

- C. Hold a public hearing and consider approval of the second and final reading of an ordinance amending portions of Sections 155.107 (Planning and Zoning Commission) and 155.108 (Board of Adjustment; Variances and Appeals) of the Code of Ordinances of the City of Wimberley, Texas in order to revise the removal process for board members appointed to the above referenced boards; and providing for findings of fact, an effective date; proper notice and meeting, and severability. (*City Administrator*)

City Administrator Ferguson advised that the revisions suggested by Council on the proposed ordinance's first reading have been incorporated into the draft ordinance.

No public comments were heard.

Councilmember Appleman moved to approve the item as presented. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

#### **4. Discussion and Possible Action**

- A. Discuss and consider possible action authorizing the City Administrator to contract with *Lynx Contractors* of San Marcos, Texas and *Asbestos Consulting and Environmental (ACE)* of Austin, Texas for the abatement of asbestos in the Blue Hole Regional Park area. (*City Administrator*)

This item was heard after Agenda Item 2.

City Administrator Ferguson provided information on both firms' services and associated costs.

Councilmember Thurber moved to approve the item as presented. Councilmember Appleman seconded. Motion carried on a vote of 5-0.

- B. Discuss and consider possible action regarding the determination of the future role of the Wimberley Economic Development Commission. (*Mayor Pro-tem Steve Thurber & Place Three Councilmember Bill Appleman*)

Mayor Pro-tem Thurber reported on a recent meeting with Economic Development Commission (EDC) Chair Gary Weeks that agreed on the need for EDC to continue work on prioritizing goals

toward full implementation of the City's Economic Development Strategy. Councilmember Appleman noted the need for EDC to re-examine and re-define goals and strategies over time.

Discussion addressed filling current EDC vacancies. Councilmember Thurber suggested a joint City Council/EDC workshop in order to provide guidance to EDC and recommended no action. No action was taken.

- C. Discuss and consider possible action designating Gene Woodruff to fill the Place One position on the Wimberley Transportation Advisory Board. (*Mayor Bob Flocke*)

Due to reduction of the number of board members, Mayor Flocke explained the need to change one (1) current consensus member's place to Place One's designee. Councilmember Wood moved to approve designating Gene Woodruff to fill the Place One position on the Transportation Advisory Board (TAB). Councilmember Thurber seconded. Motion carried on a vote of 5-0.

City Administrator Ferguson reminded Council that appointments are needed to fill vacancies on the TAB. Councilmember Wood spoke favorably of Mr. Woodruff's long service on TAB.

## 5. City Council Reports

- Announcements
- Future Agenda Items

City Administrator Ferguson responded affirmatively to Councilmember Thurber's request to post financial statements online that were received after agenda packet production.

As a future agenda item, Mayor Flocke asked for Council discussion of the current tree clearing along Ranch Road 12 and whether or not Council should take a position on this issue.

Hearing no further announcements or future agenda item requests, Mayor Flocke called the meeting adjourned at 8:48 p.m.

**Adjournment:** Council meeting adjourned at 8:48 p.m.

Recorded by:

*Cara McPartland*

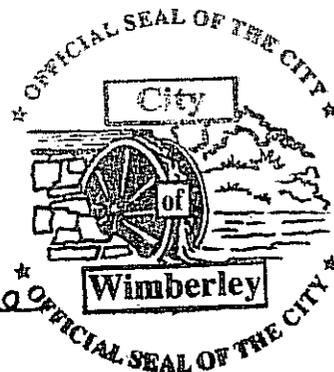
Cara McPartland

These minutes approved on the 20<sup>th</sup> of January, 2011.

**APPROVED:**

*Bob Flocke*

**Bob Flocke, Mayor**



**Resolution**

**Whereas**, the City Council of the City of Woodcreek, Texas has been petitioned by owners of property contiguous to the City's extra-territorial jurisdiction to have their property included in the City of Woodcreek's ETJ.

**Now, therefore,**

**Be it resolved by the City Council of the City of Woodcreek, Texas that:**

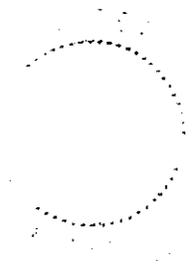
The City of Woodcreek's extra-territorial jurisdiction be extended to include the following properties:

- ⊗ Eagle Rock Ranchitos, Section 3, Blocks 14 and 12, Lots 7 and 10. (Requested by Clinton S. Frankmann)
- ⊗ Eagle Rock Ranchitos, Section 3, Block 14, Part of Lot 5. (Requested by Diane Hruska)
- ⊗ Eagle Rock Ranchitos, Section 3, Block 14, Lot 6, Part of Lot 4. (Requested by Robert Fowler)
- Eagle Rock Ranchitos, Section 3, Block 13, Lot 20. (Requested by B.J. Buenger)
- Eagle Rock Ranchitos, Section 3, Block 13, Lot 19. (Requested by T.W. Beels)
- Eagle Rock Ranchitos, Section 3, Block 13, Lot 4. (Requested by Earl H. Dorsett, Jr.)
- Eagle Rock Ranchitos, Section 3, Block 18, Lot 3. (Requested by Lynda M. Lackner)

Adopted November 12, 1997.

CITY OF WOODCREEK, TEXAS

*Kenneth E. Jacobs*  
 By: Kenneth E. Jacobs, Mayor  
 Date: May 20, 1999



ATTEST:

*Peg Sharp*  
 Peg Sharp, City Secretary

(Seal)

*City of Woodcreek  
 PO Box 1570  
 Wimberley, TX 78676*

FILED AND RECORDED  
 OFFICIAL PUBLIC RECORDS

*Lee Carlisle*  
 6-22-99 12:49 PM 9914596  
 COLEY \$9.00  
 LEE CARLISLE, County Clerk  
 HAYS COUNTY

**Resolution**

**Whereas**, the City Council of the City of Woodcreek, Texas has been petitioned by two owners of property contiguous to the City's extra-territorial jurisdiction to have their property included in the City of Woodcreek's ETJ.

**Now, therefore,**

**Be it resolved by the City Council of the City of Woodcreek, Texas that:**

The City of Woodcreek's extra-territorial jurisdiction be extended to include:

- ⊙ Eagle Rock Ranchitos, Section 3, Block 14, All of Lot 4 and part of Lot 5. (By request of Mr. Salsman)
- Eagle Rock Ranchitos, Section 3, Block 18, Lots 4 and 5. (By request of Mr. John Markolf)

Adopted January 10, 1996.

CITY OF WOODCREEK, TEXAS

*Kenneth E. Jacobs*  
 By: Kenneth E. Jacobs, Mayor  
 Date: May 20, 1999

ATTEST:

*Peg Tharp*  
 Peg Tharp, City Secretary

(Seal)

*City of Woodcreek*  
*PO Box 1570*  
*Wimberley, TX 78676*

FILED AND RECORDED  
 OFFICIAL PUBLIC RECORDS

*Lee Carlisle*

6-22-99 12:49 PM 9914595  
 COLEY \$9.00  
 LEE CARLISLE, County Clerk  
 HAYS COUNTY

# Transmission Report

Date/Time  
Local ID 1  
Local ID 2

09-29-2010  
1234567

12:11:03 p.m.

Transmit Header Text  
Local Name 1  
Local Name 2

CITY OF WOODCREEK

This document : Confirmed  
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Document size : 8.5"x11"

41 Champions Circle  
Woodcreek, Texas 78678  
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City of Woodcreek

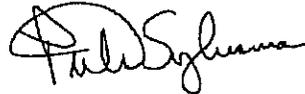
## Fax

To: Jack L. Avis From: Pieter Sybesma, City Administrator  
Fax: 512.260.3701 Pages: Cover + 2  
Phone: \_\_\_\_\_ Date: 9/29/10  
Re: Woodcreek ETL Annexation ccs:  
 Urgent  For Review  Please Comment  Please Reply  Please Recycle

• Comments:

Mr. Avis:

Attached are 2 resolutions I found which were filed with Hays Co. in 1999. The resolutions accept are inclusion in Woodcreek's ETL requests from 9 property owners, all in Eagle Rock Ranchitos.



Confidential / Privileged Attorney-Client Communication

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Total Pages Scanned : 3

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Abbreviations:

HS: Host send  
HR: Host receive  
WS: Waiting send

PL: Polled local  
PR: Polled remote  
MS: Mailbox save

MP: Mailbox print  
CP: Completed  
FA: Fall

TU: Terminated by user  
TS: Terminated by system  
RP: Report

G3: Group 3  
EC: Error Correct



AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS AMENDING CHAPTER 155 (ZONING) OF THE CODE OF ORDINANCES AS FOLLOWS:

- (1) AMENDING SECTION 155.005 (DEFINITIONS) TO REVISE DEFINITIONS RELATED TO BED AND BREAKFAST LODGING AND ADD "VACATION RENTAL" AS A DEFINITION;
- (2) DELETING SECTION 155.075(F)(4) (OFF-STREET PARKING AND LOADING REQUIREMENTS) TO DELETE THE PARKING REQUIREMENT FOR BED AND BREAKFAST LODGING;
- (3) DELETING SUBSECTION 155.105(C) (BED AND BREAKFAST LODGING) AND RELETTERING SUBSEQUENT SUBSECTIONS;
- (4) TO ADD SECTION 155.064 "BED AND BREAKFAST LODGING REQUIREMENTS" AND ACCOMPANYING DEVELOPMENT REGULATIONS OF SUCH USE;
- (5) ADD SECTION 155.065 "VACATION RENTAL LODGING REQUIREMENTS" AND ACCOMPANYING DEVELOPMENT REGULATIONS OF SUCH USE;
- (6) AMENDING SUBSECTION (C) OF THE FOLLOWING SECTIONS: § 155.035 (RESIDENTIAL ACREAGE; RA), § 155.036 (RURAL RESIDENTIAL 1; R-1), § 155.037 (SINGLE-FAMILY RESIDENTIAL 2; R-2), § 155.038 (SINGLE-FAMILY RESIDENTIAL 3; R-3), § 155.045 (OFFICE-LOW IMPACT; O-1), § 155.046 (OFFICE-HIGH IMPACT; O-2), § 155.047 (COMMERCIAL-LOW IMPACT; C-1), § 155.048 (COMMERCIAL-MODERATE IMPACT; C-2), § 155.049 (COMMERCIAL-HIGH IMPACT; C-3), § 155.061 (NEIGHBORHOOD SERVICES DISTRICT; NS), AND § 155.094 (SCENIC CORRIDOR; SC) TO ADD "VACATION RENTAL" AS A CONDITIONAL USE; AND,

PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; REPEALER; SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the City of Wimberley ("City Council") seeks to provide for the orderly arrangement and regulation of compatible uses within its corporate limits; and,

WHEREAS, the City Council and Planning and Zoning Commission have held a series of public meetings and allowed all interested parties to express their opinion and present evidence on the issue; and,

WHEREAS, the City Council finds that after hearing the evidence and testimony of the public, it is in the best interest of the City to clarify the regulations related to the development and use of new bed and breakfast lodging facilities as well as provide for the use of property as vacation rentals as defined herein; and such regulations will promote the zoning principles described below, while at the same time balancing the property rights of its citizens; and,

WHEREAS, in the course of reviewing the proposed amendments detailed in this Ordinance, the Planning and Zoning Commission and City Council have given careful consideration to the unique qualities of the City, including the demographics of its inhabitants, the City's history, geography, natural resources, existing structures, property values, workforce, education levels, commercial base, surrounding communities, public facilities and infrastructure; and,

WHEREAS, further the P&Z and Council have considered, among other things, the character of each zoning district and its peculiar suitability for the particular uses; with a view of conserving property values and encouraging the most appropriate use of land in the City; and,

WHEREAS, the regulations established by this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City; and,

WHEREAS, the following enactments are a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to Texas Local Government Code Chapters 51, 52, 211 and 213; and,

WHEREAS, the City Council finds that the provisions of this Ordinance will serve to promote the public health, safety, morals and general welfare; and,

WHEREAS, parties in interest and citizens have had an opportunity to be heard at numerous public hearings conducted by the Planning and Zoning Commission and City Council, notice of which was published in the City's official newspaper before the 15<sup>th</sup> day before the first public hearing and agendas for each hearing were posted at City Hall more than seventy-two (72) hours prior to the respective hearing.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, COUNTY OF HAYS, STATE OF TEXAS:**

**I. FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Wimberley and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

## II. AMENDMENTS

A. THAT section 155.055 (Definitions) of the City of Wimberley Code of Ordinances, Chapter 155 (Zoning) is hereby amended to revise the following definitions and add the definition of "Vacation Rental" to such section alphabetically to read as follows:

### "§ 155.005 DEFINITIONS.

**BED AND BREAKFAST LODGING.** A residential facility, otherwise permitted in a zoning district authorized by this code as a conditional use permit, that is offered for rental and the owner or the owner's designated non-renting representative occupies a facility located on the property at the time the residential facility is being rented. All residential facilities of this type located on or within the property or properties identified in the conditional use permit shall be considered as constituting a single **BED AND BREAKFAST LODGING**. All bed and breakfast lodging shall comply with section 155.064 (Bed and Breakfast Lodging Requirements), and all applicable laws and regulations.

**OCCUPANCY.** The number of guests who are permitted to sleep in a bed and breakfast lodging, vacation rental or other commercial lodging facility.

**OCCUPANT.** A person permitted hereunder to occupy a bed and breakfast lodging, vacation rental or other commercial lodging facility.

**VACATION RENTAL.** A residential facility otherwise permitted in a zoning district authorized by the approval of a conditional use permit that is offered for rental for a period not to exceed thirty (30) days. The owner or the owner's designated representative shall not be required to occupy the facility at the time the facility is being rented. All residential facilities of this type located on or within the property or properties identified in the conditional use permit shall be considered as constituting a single **VACATION RENTAL**. All vacation rentals shall comply with section 155.065 (Vacation Rental Lodging Requirements), and all applicable laws and regulations."

B. THAT subsection 155.075(F)(4) (Off-Street Parking and Loading Requirements) of the City of Wimberley Code of Ordinances, Chapter 155 (Zoning) is hereby deleted in its entirety.

C. THAT subsection 155.105(C) (Conditional Use Permits) of the City of Wimberley Code of Ordinances, Chapter 155 (Zoning) is hereby deleted in its entirety and the remaining subsection are re-lettered accordingly.

D. THAT the City of Wimberley Code of Ordinances, Chapter 155 (Zoning) is hereby amended to add section 155.064 (Bed and Breakfast Lodging Requirements) to read as follows:

### "§ 155.064 BED AND BREAKFAST LODGING REQUIREMENTS

(A) Purpose. The requirements listed below are intended to promote the orderly development and use of property as bed and breakfast facilities in order to promote the public health and safety of the community. Bed and breakfast rental facilities are permitted in residential zoning districts and as such the regulations herein are the minimal necessary to mitigate any possible impact of such uses on the surrounding neighborhood, while allowing property owners to reasonably use their property. The residential feel and character of a bed and breakfast lodging facility shall be maintained and not unnecessarily intrude upon the adjacent neighbors. By requiring the presence of the owner or the owner's designated representative while the facility is rented (the representative shall not be a renter of the property at the time the facility is rented out), will help ensure that the impact of traffic, noise or other nuisance does not occur or is immediately stopped to avoid any adverse effects on the surrounding neighborhood.

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(B) An approved Conditional Use Permit (CUP) shall be required for a bed and breakfast lodging facility.

(C) All approved CUP's shall comply with any conditions imposed as part of the CUP application process, this section 155.064 and any other applicable ordinance, law or regulation.

(D) The review for CUP approval of a bed and breakfast lodging facility shall consider the impact of tenant activity on the surrounding residential properties, the neighborhood and environment, and other factors as the Commission deems appropriate. Factors for review of a CUP application shall include but not be limited to consideration of the following:

Deleted: Conditional Use Permit ("CUP").

- (1) Permitted uses in the applicable zoning district;
- (2) The proposed occupancy and the size of the property, and whether a smaller occupancy level is appropriate;
- (3) Setbacks and proximity to other dwellings;
- (4) Rental regulations (such as no large parties, no extra guests) imposed by the owner and the degree of owner involvement in property management;
- (5) Occupant access to waterways and other environmentally sensitive areas;
- (6) Vehicle access and on-site parking and the number of parking spaces available;
- (7) Compliance with all state, county, and city ordinances, laws, rules, and regulations, including the Building Code and Fire Code; and
- (8) Adequacy of wastewater treatment systems.

(E) In addition to any conditions imposed as part of the approved CUP, the following regulations shall be applicable to bed and breakfast lodging facilities:

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- (1) An approved conditional use permit (CUP) shall be required.
- (2) Property shall be subject to inspection at any time by designated City representatives, if compliance is in question, with proper notice provided if feasible.
- (3) The CUP shall terminate and be considered abandoned if and when there is evidence of no rental activity, based in part on the State Occupancy Tax Reports, for a period of nine (9) consecutive months. The burden is on the property owner to prove that the use of the property has been in continuous use.
- (4) One (1) smoke alarm shall be provided in each guest bedroom along with a fire extinguisher visible and be accessible to guests. A fire escape plan shall be developed and graphically displayed in each guest room. A second exit from the lodging facility structure shall be provided.
- (5) Signage for bed and breakfasts located in Planning Areas I and II shall be limited to one (1) non-illuminated sign not to exceed four (4) square feet in area and shall be of traditional hill country design and color. Signage on such properties located in all other Planning Areas shall be subject to the regulations set forth in the City Sign ordinance.
- (6) A valid taxpayer number for reporting any Texas tax shall be provided to the City along with a copy of the completed *State of Texas Hotel Occupancy Tax Questionnaire (form AP-102)* no later than thirty (30) days following the approval of the CUP.
- (7) If there is a change in ownership of the property, the City shall be notified of any change in property ownership within thirty (30) days of such change.
- (8) If guests have water access, guests may not enter upon any property which is not part of the owner's property for the purpose of entering or exiting the water.
- (9) The on-site sewage facility shall be inspected and shall be sufficient to provide adequate capacity for the maximum occupancy permitted. The City may request that written proof of capacity be provided at any time.
- (10) A copy of the requirements set forth in the CUP shall be made available to all guests.

(11) The Owner or the owner's designated representative shall occupy the property subject to the CUP at all times whenever the property is rented to third persons.

(12) On-street parking is prohibited. Two (2) parking spaces are required plus one additional space per room rented subject to modification as part of the CUP approval process. Required off-street parking shall be provided on the same site as the use it is to serve. Parking areas shall be clearly identified on the property and adequate maneuvering space shall be provided for vehicle ingress and egress. In Planning Areas I and II, all vehicle parking shall be on a suitable parking surface as determined by the City. In all other Planning Areas, all off-street parking shall be surfaced in accordance with the parking lot surfacing requirements in the City's ordinances. In such areas, no parking shall be permitted on grass, within landscaped areas, or on other unimproved surfaces.

(13) The maximum occupancy allowed shall be reviewed and determined in each individual CUP application based on number of rooms, beds, parking, neighborhood input, septic system capacity and any other factor determined to be relevant by the Commission or Council."

E. THAT the City of Wimberley Code of Ordinances, Chapter 155 (Zoning) is hereby amended to add section 155.065 (Vacation Rental Lodging Requirements) to read as follows:

**"§ 155.065 VACATION RENTAL LODGING REQUIREMENTS**

(A) Purpose. The requirements listed below are intended to promote the orderly development and use of property as vacation rentals in order to promote the public health and safety of the community. Vacation rental facilities are permitted in residential zoning districts and as such the regulations herein are the minimal necessary to mitigate any possible impact of such uses on the surrounding neighborhood, while allowing property owners to reasonably use their property. The residential feel and character of a vacation rental property shall be maintained and not unnecessarily intrude upon the adjacent neighbors.

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(B) An approved Conditional Use Permit (CUP) shall be required for a vacation rental lodging facility.

(C) All approved CUP's shall comply with any conditions imposed as part of the CUP application process, this section 155.065 and any other applicable ordinance, law or regulation.

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(D) The review for CUP approval of a vacation rental lodging facility shall consider the impact of tenant activity on the surrounding residential properties, the neighborhood and environment, and other factors as the Commission deems appropriate. Factors for review of a CUP application shall include but not be limited to consideration of the following:

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- (1) Permitted uses in the applicable zoning district;
- (2) The proposed occupancy and the size of the property, and whether a smaller occupancy level is appropriate;
- (3) Setbacks and proximity to other dwellings;
- (4) Rental regulations (such as no large parties, no extra guests) imposed by the owner and the degree of owner involvement in property management;
- (5) Occupant access to waterways and other environmentally sensitive areas;
- (6) Vehicle access and on-site parking and the number of parking spaces available;
- (7) Compliance with all state, county, and city ordinances, laws, rules, and regulations, including the Building Code and Fire Code; and
- (8) Adequacy of wastewater treatment systems.

(E) In addition to any conditions imposed as part of the approved CUP, the following regulations shall be applicable to all vacation rental lodging facilities:

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- (1) An approved Conditional Use Permit (CUP) shall be required.
- (2) Property shall be subject to inspection at any time by designated City representatives, if compliance is in question, with property notice provided if feasible.
- (3) The CUP shall terminate and be considered abandoned if and when there is evidence of no rental activity, based in part on the State Occupancy Tax Reports, for a period of nine (9) consecutive months. The burden is on the property owner to prove that the use of the property has been in continuous use. One (1) smoke alarm shall be provided in each guest bedroom along with a fire extinguisher visible and accessible to guests. A fire escape plan shall be developed and graphically displayed in each guest room. A second exit from the lodging facility structure shall be provided.

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(4) Signage for vacation rentals located in Planning Areas I and II shall be limited to one (1) non-illuminated sign not to exceed four (4) square feet in area and shall be of traditional hill country design and color. Signage on such properties located in all other Planning Areas shall be subject to the regulations set forth in the City Sign Ordinance.

(5) A valid taxpayer number for reporting any Texas tax shall be provided to the City along with a copy of the completed *State of Texas Hotel Occupancy Tax Questionnaire (form AP-102)* no later than thirty (30) days following the approval of the CUP.

(6) If there is a change in ownership of the property, the City shall be notified of any change in property ownership within thirty (30) days of such change.

(7) If guests have water access, guests may not enter upon any property which is not part of the owner's property for the purpose of entering or exiting the water.

(8) The on-site sewage facility shall be inspected and shall be sufficient to provide adequate capacity for the maximum occupancy permitted. The City may request that written proof of capacity be provided at any time.

(9) A copy of the requirements set forth in the CUP shall be made available to all guests.

(10) On-street parking is prohibited. One (1) parking space is required per room rented subject to modification as part of the CUP approval process. Required off-street parking shall be provided on the same site as the use it is to serve. Parking areas shall be clearly identified on the property and adequate maneuvering space shall be provided for vehicle ingress and egress. In Planning Areas I and II, all vehicle parking shall be on a suitable parking surface approved by the City. In all other Planning Areas, all off-street parking shall be surfaced in accordance with the parking lot surfacing requirements in the City's ordinances. In such areas, no parking shall be permitted on grass, within landscaped areas, or on other unimproved surfaces.

(11) The maximum occupancy allowed shall be reviewed and determined in each individual CUP application based on number of rooms, beds, parking, neighborhood input, septic system capacity and any other factor determined to be relevant by the Commission or Council. Owner occupancy is permitted but not required. However, the subject property owner shall provide the City and property owners, within 200 feet of the subject property, with the current name and contact information (including telephone numbers and e-mail address) for the local responsible party for the subject property. The local contact shall be able to respond to any incident within thirty (30) minutes of a call and shall be

authorized to make decisions regarding tenants at the property. If the name or contact information for the local contact changes, then the property owner shall notify the City and property owners within 200 feet of the subject property, with the current name and contact information.

(12) In Planning Areas I and II, property used as a vacation rental may be used for receptions, private parties or the like attended by paying guests and a limited number of non-paying guests, provided adequate parking and septic system capacity exists for such a gathering. At any given time, the total number of ~~renting and non-renting~~ guests attending such gatherings shall not exceed ~~a number equaling the maximum occupancy as established in the CUP plus thirty (30) percent of that maximum capacity.~~ All outdoor activities associated with such gatherings shall end at 10 p.m. Unruly gatherings are prohibited. Unruly gathering means a gathering of more than one person which is conducted on a premises within the city and which, by reason of the conduct of those persons in attendance, results in the occurrence of one or more of the following conditions or events on public or private property; rioting; trespassing, the unlawful sale, furnishing, possession or consumption of alcoholic beverages; the destruction of property; obstruction of roadways, driveways, or public ways by crowds or vehicles; excessive noise; disturbances, brawls, fights, or quarrels; public urination or defecation; or indecent or obscene conduct or exposure.”

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F. THAT subsection (C) of sections § 155.035 (Residential Acreage; RA), § 155.036 (Rural Residential 1; R-1), § 155.037 (Single-Family Residential 2; R-2), § 155.038 (Single-Family Residential 3; R-3), § 155.045 (Office - Low Impact; O-1), § 155.046 (Office - High Impact; O-2), § 155.047 (Commercial - Low Impact; C-1), § 155.048 (Commercial - Moderate Impact; C-2), § 155.049 (Commercial - High Impact; C-3), § 155.061 (Neighborhood Services District; NS), and § 155.094 (Scenic Corridor; SC) of the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), are each hereby amended to add “Vacation Rental” as a conditional use.

Except as amended herein, the Code of Ordinances of the City of Wimberley shall remain in full force and effect.

**III. REPEALER**

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

**IV. SEVERABILITY**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance be 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 or sections of this ordinance, and the remainder of this Ordinance shall be enforced as written.

**V. EFFECTIVE DATE**

This Ordinance shall take effect immediately upon its passage and publication as may be required by governing law.

**VI. PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by a \_\_\_\_\_ (Ayes) \_\_\_\_\_ (Nays) \_\_\_\_\_ (Abstain) vote of the City Council of the City of Wimberley, Texas.

**CITY OF WIMBERLEY**

By: \_\_\_\_\_  
Bob Flocke, Mayor

**ATTEST:**

\_\_\_\_\_  
Cara McPartland, City Secretary

(SEAL)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
C. Crosby, City Attorney

- To this Vision we commit ourselves as a community. We call upon our current and future leaders to shape City policies accordingly:

1. To preserve and enhance the beauty of our environment, protecting and conserving our natural resources and the habitat of wildlife that share the Valley with us.

2. To permit only such development and use of land as fulfills our commitment to conservation, quality and harmony, rejecting over-commercialization and development of any kind that is inappropriate in size, character, purpose or appearance.

3. To carry forward into the future the cherished traditions of our chosen lifestyle as residents of a small town — neighborliness, vibrant volunteer spirit and gracious welcome to visitors.

- **Definition of Planning Areas :**

**Planning Area I:** Primary location for **very low impact** larger lot **residential** developments and agricultural uses.

**Planning Area II:** Primary location for **low impact traditional residential** developments.

**Planning Area III:** Primary location for minimal impact commercial and community services.

- **C. Commercial Development**

Consistent with citizens' expressed desires to see the City remain mostly residential in character, much of the commentary concerning commercial development was focused upon the ways in which such development could be made to reflect the Wimberley profile, maintaining the quaint small town aura.

- 2. Encourage and reinforce the development and enhancement of the City Center as the heart of Wimberley's commercial/visitor-oriented activity.