

ORDINANCE NO. 2011- 004

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 15th 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.
- (B) An approved Conditional Use Permit (CUP) shall be required for a bed and breakfast lodging facility.
- (C) All approved CUPs 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:
- (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:

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

- (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:
- (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.
 - (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 renting guests and a limited number of non-renting guests, provided adequate parking and septic system capacity exists for such a gathering. The total number of renting and non-renting guests allowed to attend such gatherings, at any given time, shall be established in the CUP approval process along with any time limitations on such gatherings. 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.”

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 ON FIRST READING this 6th day of January, 2011, by a 3 (Ayes) 2 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

PASSED AND APPROVED ON SECOND READING this 20th day of January, 2011, by a 3 (Ayes) 2 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY

By: Bob Flocke
Bob Flocke, Mayor

ATTEST:

Cara McPartland
Cara McPartland, City Secretary

(SEAL)

APPROVED AS TO FORM:
C. Crosby
C. Crosby, City Attorney

