

ORDINANCE NO. 2009- 031

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

1. SECTION 155.005 (DEFINITIONS) TO AMEND, ADD AND DELETE DEFINITIONS RELATED TO ALCOHOL USES;
2. PORTIONS OF SECTION 155.047 (COMMERCIAL - LOW IMPACT (C-1), SECTION 155.048 COMMERCIAL – MODERATE IMPACT (C-2)), AND SECTION 155.049 (COMMERCIAL – HIGH IMPACT (C-3)) TO ALLOW EATING ESTABLISHMENTS: SIT-DOWN, TO SELL BEER, WINE AND ALCOHOL FOR ON-PREMISE CONSUMPTION AS A CONDITIONAL USE;
3. PORTIONS OF SECTION 155.047 (COMMERCIAL - LOW IMPACT (C-1)), AND SECTION 155.048 (COMMERCIAL – MODERATE IMPACT (C-2)) TO ALLOW PACKAGE STORES OF BEER AND WINE AS A CONDITIONAL USE;
4. PORTIONS OF SECTION 155.049 (COMMERCIAL – HIGH IMPACT (C-3)) TO ALLOW LIQUOR STORES AS A CONDITIONAL USE;
5. PORTIONS OF SECTION 155.049 (COMMERCIAL – HIGH IMPACT (C-3)) TO ALLOW PACKAGE STORES OF BEER AND WINE AS A PERMITTED USE; AND,
6. SECTION 155.091(E) CITY CENTER OVERLAY DISTRICT (CC) ADD LIQUOR STORE AND PACKAGE STORES OF BEER AND WINE AS PROHIBITED USES;

**AND PROVIDING FOR THE FOLLOWING: PENALTY; 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, on May 9, 2009, a majority of the voters of Hays County voted to allow the public to purchase alcohol in stores and to purchase and consume alcoholic drinks at restaurants and bars in Justice of the Peace, Precinct Three of Hays County; and,

WHEREAS, amendments to the City’s zoning code is necessary to allow certain sales and on-premise consumption of beer, wine and liquor in order to permit such uses in the City’s various zoning districts; 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, and 211; 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 several 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 the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), Section 155.005 (Definitions) shall be amended as follows:

1. The following definitions shall be amended to read as follows:

***"BARS AND TAVERNS.*** Establishments or places of business where customers are seated and served which are primarily engaged in the sale, mixing, or dispensing of beer, wine and alcoholic beverages for consumption on the premises, and which fifty

percent (50%) or more of gross revenue is derived from the on-premises sale of alcoholic beverages. Typical uses include a tavern, bar or cocktail lounge with minimal or no kitchen facilities and little or no food items served.

***EATING ESTABLISHMENTS: SIT-DOWN.*** Establishments or places of business where customers are seated and served, and that are primarily engaged in the sale of prepared foods and beverages, and may include alcoholic beverages, for on-premises consumption upon approval of a conditional use permit. They are located at high capacity or high volume sites that are easily accessed by vehicles and pedestrians. Typical uses include restaurants, short-order eating places, cafeterias, and coffee shops.

***FOOD AND BEVERAGE RETAIL SALES.*** Establishments or places of business primarily engaged in the retail sale of food and beverages for home consumption, including beer and wine beverages. Typical uses include grocery stores and delicatessens, but does not include sale of alcoholic beverages.

***RETAIL SALES AND SERVICES: GENERAL.*** Establishments engaged in the sale or rental of goods and services, both retail and wholesale, of commonly used goods, merchandise, and services, not including the sale of beer, wine, or alcoholic beverages for on or off-premise consumption.

***RETAIL SALES AND SERVICES: LIMITED.*** Establishments engaged in the sale or rental of commonly used retail goods and services, and serving primarily neighborhood or localized population centers, not including the sale of beer, wine, or alcoholic beverages for on or off-premise consumption.

***SPECTATOR SPORTS AND ENTERTAINMENT: LOW IMPACT.*** Establishments or places engaged in the provision of cultural, entertainment, athletic, and other events to spectators as well as parking space for social or fraternal gatherings. These uses are conducted in open facilities or within an enclosed building with a capacity of 100 or fewer people and include retail sales, storage facilities, and other activities incidental to the operation. Typical uses include theaters or amusement places, not including the sale of beer, wine, or alcoholic beverages for on or off-premise consumption.”

2. The following definition shall be deleted in its entirety:

***ALCOHOLIC BEVERAGE SALES***

3. The following definitions shall be added alphabetically to read as follows:

***“ALCOHOLIC BEVERAGE*** means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

*PACKAGE STORE* means a store that sells bottled or canned beer and wine beverages for consumption off the premises.

*LIQUOR STORE* means a store that sells bottled or canned alcoholic beverages for consumption off the premises.”

- B. **THAT** the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), Subsection 155.047(B)(7) (Commercial – Low Impact (C-1)), Permitted Uses, is hereby amended to read as follows:

“(B)(7) Eating establishments: sit-down, not including the sale of beer, wine, or alcohol for on-premise consumption;”

- C. **THAT** the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), Subsection 155.047(C) (Commercial – Low Impact (C-1)), Conditional Uses, is hereby amended to add subsection (6) to read as follows:

“(6) Eating establishments: sit-down, including the sale of beer, wine, and alcohol for on-premise consumption.”

- D. **THAT** the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), Subsection 155.048(B) (Commercial – Moderate Impact (C-2)), Permitted Uses, is hereby amended to read as follows:

“(8) Eating establishments: sit-down, not including the sale of beer, wine, or alcohol for on-premise consumption;”

- E. **THAT** the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), Subsection 155.048(C) (Commercial – Moderate Impact (C-2)), Conditional Uses, is hereby amended to add subsection (9) to read as follows:

“(9) Eating establishments: sit-down, including the sale of beer, wine, or alcohol for on-premise consumption.”

- F. **THAT** the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), Subsections 155.049(B)(3) and (5) (Commercial – High Impact (C-3)), Permitted Uses, are hereby amended to read as follows:

“(3) Food and beverage retail sales (such as grocery), not including the sale of beer, wine, or alcohol for on or off premise consumption;

(5) Eating establishments: sit-down, not including the sale of beer, wine, or alcohol for on-premise consumption;”

- G. **THAT** the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), Subsection 155.049(C)(2) (Commercial – High Impact (C-3)), Conditional Uses, is hereby amended to read as follows, and subsection (17) is added to read as follows:

“(2) Liquor and package stores;

(17) Eating establishments: sit-down, including the sale of beer, wine, and alcohol for on-premise consumption;”

- H. **THAT** the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), Section 155.091(E) (City Center Overlay (CC)) is hereby amended to add subsection (11) to read as follows:

“(11) Liquor Stores, excluding establishments that solely serve and sell wine for on and off-premise consumption.”.

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.

FIRST READING PASSED AND APPROVED this 2<sup>nd</sup> day of July, 2009, by a 5 (Ayes) 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

SECOND READING PASSED AND APPROVED this 16 th day of July, 2009, by a 5 (Ayes) 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY

By: Tom Haley  
Tom Haley, Mayor

ATTEST:

Cara McPartland  
Cara McPartland, City Secretary

(SEAL)

APPROVED AS TO FORM:

Carolyn J. Crosby  
Carolyn J. Crosby, City Attorney

