

City of Wimberley
City Hall, 12111 Ranch Road 12, Ste. 114
Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
February 19, 2009 at 6:30 p.m.

City Council meeting called to order at 6:30 p.m. by Mayor Tom Haley.

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

Councilmembers Present: Mayor Haley and Councilmembers Charles Roccaforte, Bob Flocke, Jeri Xiques, Steve Thurber, and Dick Larson.

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

Presentations of Citizens:

- Citizen Communications

Speaking as a Wimberley resident/voter, Planning and Zoning Commissioner David Glenn voiced support of tonight's first reading of the Non-Point Source Pollution Control Ordinance (see Agenda Item No. 5B), noted that the proposed ordinance only applies to land within the incorporated areas of Wimberley, and does not include the Extra Territorial Jurisdiction (ETJ). He stated that both Dripping Springs and City of Woodcreek have in place ordinances that cover areas within their city limits and ETJ. He recommended that Council allow both the Water/Wastewater Advisory Board and Planning and Zoning Commission to review and make recommendations to Council before any action is taken to best utilize volunteer talent and ensure complete understanding of the proposed ordinance.

Craig Reitz, speaking on behalf of more than sixty (60) citizens who expressed objections at Planning and Zoning Commission's February 12, 2009 meeting, thanked Mayor Haley and Planning and Zoning Chairman Tracey Dean for reconsideration of the proposed citywide zoning map. He asked that no commercial zoning be applied to any properties along the Blanco River, Cypress Creek, Smith Creek, or any other viable creek within the city limits in order to prevent increased pollution. Mr. Reitz also requested that commercial zoning *not* be continuously applied to all entrance corridors. Because of citizen opposition, Mr. Reitz felt that additional community review should be provided before zoning plans are finalized.

1. Consent Agenda

- A. Approval of minutes of the regular City Council meeting of February 5, 2009.

B. Approval of minutes of the special City Council meeting of February 12, 2009.

C. Approval of the December 2008 City of Wimberley Financial Statements.

Councilmember Roccaforte pulled Consent Agenda Item No. 1C. Councilmember Xiques moved to approve the remaining Consent Agenda items as presented. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

In response to Councilmember Roccaforte's inquiry, City Administrator Ferguson advised that it is very common for new municipal court operations to bring in less revenue than expenditures. In response to Councilmember Flocke's inquiry about *Miscellaneous Income* (page 7), Mr. Ferguson stated that \$311.00 was coded to 504.1 and then backed out (as an expense from a prior period). Mr. Ferguson noted minor unrelated format changes consolidating personnel expenses. Councilmember Flocke moved to approve Consent Agenda Item No. 1C as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

2. City Administrator Report

- Status report on efforts underway to secure state and federal funding for the Downtown Wastewater Project

City Administrator Ferguson reported on a very productive meeting with Texas Water Development Board officials regarding the City's grant application for stimulus funding. He stated that rules for dispensation of funds are being developed and felt encouraged by the response received to the City's request for project funds.

Discussion addressed assistance and support provided by the offices of Governor Perry, Senators Patrick Rose and Jeff Wentworth, and Hays County Precinct Three Commissioner Will Conley; percentage of funds allocated for "green" projects; and, positive feedback from the Executive Director of the Texas Water Development Board.

- Status report on the development of revised steep slope regulations for the City of Wimberley

At the request of Councilmember Roccaforte, City Administrator Ferguson reported that staff is researching suggestions to bring to Council that address concerns over regulations and building/use limitations relating to steep slope requirements without negatively impacting the beauty of the environment or neighboring properties.

- Status report on preparations for the May 9, 2009 Municipal General Election

City Administrator Ferguson reported that one candidate has filed for a place on the ballot to date (incumbent Place Five Councilmember Dick Larson). He noted specific election-related deadlines and that the 2009 Candidate Packet is available on the City's website.

- Status report on proposed designation of a truck route on Ranch Road 12 in Wimberley

City Administrator Ferguson reported on progress made with State and Hays County officials and the need for a resolution in support of the proposed route from the City of Woodcreek. He outlined the proposed route which will prevent heavy truck traffic from going through downtown Wimberley.

- Status report on a proposed road maintenance agreement with Hays County

City Administrator Ferguson reported on acceptance of a draft agreement by Hays County that would give the City of Wimberley an *option* (as opposed to *requirement*) to work with Hays County's road maintenance operations on street construction/maintenance projects. Action on the agreement is expected at the Hays County Commissioners Court meeting on February 24, 2009. Discussion briefly addressed delays experienced in the process to complete this proposed agreement.

- Status report on the Blue Hole Regional Park Request for Qualifications

City Administrator Ferguson reported that more than a dozen submittals were received by the February 12, 2009 deadline from multi-dimensional firms to oversee and manage the development of Blue Hole according to the Blue Hole Master Plan. He was pleased with the quality of the submittals and noted that a task force will be reviewing submittals in order to make a recommendation to Council. Mr. Ferguson reported that Council will be receiving recommendations made by the Parks and Recreation Board on 2009 Blue Hole Regional Park's rates/operating adjustments. He stated that task force members have been appointed from Parks and Recreation Board, Transportation Advisory Board, and Keep Wimberley Beautiful to make recommendations for use of the real property located at Ranch Road 12 and FM 2325 recently donated to the City by Pedernales Electric Cooperative.

- Status report on upcoming Fourth of July Activities

City Administrator Ferguson reported that the City is working with the Wimberley Chamber of Commerce on Fourth of July activities including possible route changes for the parade. He stated that the Parks and Recreation Board and Wimberley Chamber of Commerce are working on a proposal for the use of Blue Hole Regional Park for the Fourth of July Jubilee.

- Status report on activities of the Wimberley Municipal Court

City Administrator Ferguson reported on a light court docket for February and advised that court management software will be ordered soon in order to better track court operations as activity increases.

- Status report on activities of the City Marshal

City Administrator Ferguson reported on positive feedback regarding the City Marshal's activities and efforts to resolve continuing code enforcement issues.

3. Presentations

Introduction of Hays County Sheriff Tommy Ratliff to Wimberley City Council by Hays County Judge Liz Sumter.

This item was heard after Agenda Item No. 6C. Mayor Haley announced that this item will be postponed until a later date due an illness in Sheriff Ratliff's family.

4. Public Hearing and Possible Action

- A. Hold a public hearing and consider approval of the first reading of an ordinance amending Subsection 155.107(B)(1) (Planning and Zoning Commission), of the Code of Ordinances of the City of Wimberley, Texas, in order to revise the membership requirements; providing for an effective date; proper notice and meeting, severability and repealer (*Place Five Councilmember Dick Larson*).

City Administrator Ferguson reviewed the history of latest revisions to this proposed ordinance. Mayor Haley opened the public hearing.

Wimberley resident Rob Pitzer asked for clarification on rationale behind the proposed ordinance. Discussion reviewed prior deliberations and Mr. Pitzer expressed objections to the residency requirement as denying a voice to business owners not residing within the City limits or Extra Territorial Jurisdiction (ETJ).

Discussion among Wimberley resident Craig Reitz, staff, and Council established that the owner/operator of the business may either lease or own the business. Planning and Zoning Commissioner Lila McCall reviewed past Planning and Zoning discussions/actions on earlier drafts of this proposed ordinance and discussion addressed the recent modifications made per Council's direction that allow up to two residents living within City limits *or* the ETJ (as opposed to within City limits only).

Planning and Zoning Commissioner Xiques questioned the need for this proposed ordinance and Councilmember Larson replied that during his last campaign many business owners complained that Council ignored them and that this ordinance is proposed in a gesture of good will to those who feel disenfranchised.

Rob Pitzer received clarification that *business* ownership/operation is required, not necessarily ownership of the *property* that the business occupies.

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

Discussion among Council addressed:

- Whether or not there is a need for changing Planning and Zoning membership requirements
- Pros/cons of all Planning and Zoning Commission members potentially being business owners
- Council's duty to appoint Planning and Zoning Commission members with attention to composition of membership
- Definitions of what constitutes "ownership"

Councilmember Larson moved to approve the item as presented. Councilmember Roccaforte seconded. Mayor Haley called for a vote as follows: Councilmember Roccaforte, aye; Councilmember Flocke, nay; Councilmember Thurber, nay; Councilmember Larson, aye; Councilmember Xiques, aye. Motion carried on a vote of 3-2.

- B. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, amending Section 155 (Zoning), Appendix F, of the Code of Wimberley, designating geographic boundaries for a particular zoning district and classification for a 0.477 acre tract located at 500 Blue Heron Run, Wimberley, Hays County, Texas, designating initial zoning for such tract as Single Family Residential 2 (R2); and providing for the following: delineation on zoning map; severability; effective date and proper notice and meeting (*Betty Sue Cooper, Applicant*).
- C. Hold a public hearing and consider approval of an ordinance approving an application for a Conditional Use Permit submitted by Betty Sue Cooper to operate a bed and breakfast lodging facility on an approximately 0.477 acre tract located at 500 Blue Heron Run, Wimberley, Texas, zoned Single Family Residential 2 (R2) , and imposing certain conditions; and providing for findings of fact; amendment of the zoning district map; repealer; severability; effective date; proper notice and meting; and providing for certain conditions (*Betty Sue Cooper, Applicant*).

City Administrator Ferguson requested continuance of Agenda Item Nos. 4B and 4C until Council's meeting on March 5, 2009 due to the need for re-notification.

Councilmember Flocke moved to continue the items as requested. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

- D. Hold a public hearing and consider approval of an ordinance approving an application for a Conditional Use Permit submitted by Lon Breitenbach to operate a bed and breakfast lodging facility on an approximately 1.008 acre tract located at 2635 Flite Ares Road, Wimberley, Texas, zoned Residential Acreage (RA), and imposing certain conditions; and

providing for findings of fact; amendment of the zoning district map; repealer; severability; effective date; proper notice and meeting; and providing for certain conditions (*Lon Breitenbach, Applicant*).

City Administrator Ferguson reviewed the application and prior approved subdivision. He outlined the subject property's location, acreage, current/proposed zoning/uses, and the applicant's efforts to resolve emergency access issues. He concluded with staff's recommendation for approval.

Mayor Haley opened the public hearing. Hearing no comments, Mayor Haley closed the public hearing.

In response to Councilmember Thurber, City Administrator Ferguson confirmed that exhibits referred to in the draft ordinance will be included should the ordinance be approved. Discussion established that no feedback has been received from neighboring property owners and addressed allowed signage versus "grandfathered" signs along Flite Acres. No comments were heard before the Planning and Zoning Commission which unanimously recommended approval.

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

5. Ordinances

- A. Consider approval of the first reading of an ordinance amending Chapter 70 (Traffic Regulations) of the Code of Ordinances of the City of Wimberley, Texas, in order to add a subsection entitled "Through-Truck Traffic," providing for a penalty, findings of fact, an effective date, proper notice and meeting, severability and repealer (*City Administrator*).

City Administrator Ferguson stated the need for this ordinance and cited past problems with truck traffic on CR 1492, especially at the sharp curve just south of the Blanco River crossing. He expressed concern over the impact of heavy truck traffic on the CR 1492 Blanco River crossing bridge and advised of the Transportation Advisory Board's unanimous recommendation to approve this proposed regulation of through truck traffic. He noted "proof of route" requirements for trucks using CR 1492 as a delivery/pick-up destination and placement of appropriate regulatory signage.

Discussion established that advanced warning signage will be placed ahead of the sharp curve where large tractor trailer rigs have become stuck in the past. Councilmember Flocke noted ordinance language in §71.01(4) that does not specifically address CR 1492. City Administrator Ferguson advised that the draft language in that section will be changed to add the proper references to CR 1492.

Councilmember Thurber moved to approve the item with the change as noted by Councilmember Flocke. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

- B. Consider approval of the first reading of an ordinance of the City of Wimberley, Texas, amending Title XV (Land Usage) of the Code of Ordinances to create a new Chapter 156 entitled "Non-Point Source Pollution Control," in order to establish and adopt a non-point source pollution program and regulation; providing for a penalty as provided in Section 10.99 of the Code; and providing findings of fact, a repealing clause, to provide a savings and severability clause and providing for an effective date (*City Administrator*).

City Administrator Ferguson explained this proposed ordinance as means of protecting water quality from the effects of runoff. Discussion among Mr. Ferguson, Assistant City Attorney Crosby, and Council addressed the City's authority to enforce this proposed ordinance in its ETJ and comparison to similar ordinances in other governmental entities. Councilmember Flocke commented on the need for review of this proposed ordinance by the Planning and Zoning Commission for recommendation to Council. Councilmember Thurber agreed with Councilmember Flocke and suggested additionally that the Water/Wastewater Advisory Board review the draft ordinance. Councilmember Larson and Mr. Ferguson briefly discussed the potential impact of this ordinance on the need for removal of graffiti and any associated runoff as a result of cleaning.

Mayor Haley entertained a motion to refer this item to the Water/Wastewater Advisory Board and the Planning and Zoning Commission for review and recommendation. Councilmember Larson so moved. Councilmember Roccaforte seconded. Motion carried on a vote of 5-0.

- C. Consider approval of an ordinance of the City of Wimberley, Texas amending Ordinance No. 2009-004, which ordered the General Election to be held jointly with other entities on May 9, 2009, for the purpose of electing City Council members for Places One, Three and Five of the City of Wimberley City Council and all matters related to holding such election, is hereby amended to add the Hays Trinity Groundwater Conservation District; and providing for findings of fact, severability, conflicting provisions, governing law, proper notice and open meeting, and an effective date (*City Administrator*).

City Administrator Ferguson explained the need for this ordinance and noted that election costs will be shared equally. Councilmember Xiques moved to approve the item as presented. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

6. Discussion and Possible Action

- A. Discuss and consider possible action regarding a proposed Joint Election Agreement with the Hays Trinity Groundwater Conservation District for the May 9, 2009 Election (*City Administrator*).

Mayor Haley introduced the item and entertained a motion. Councilmember Xiques moved to approve item as presented. Councilmember Larson seconded. Motion carried on a vote of 5-0.

- B. Discuss and consider possible action on issues relating to the implementation of the City of Wimberley Economic Development Strategy (*Place Four Councilmember Steve Thurber*).

Councilmember Thurber commended Economic Development Commission (EDC) Chairman Gary Weeks for outstanding work on the City's adopted Economic Development Strategy. He felt that direction is needed on implementation of the Strategy and asked Chairman Weeks for his thoughts on how to proceed and prioritize tasks to achieve the goal of implementation. Chairman Weeks stated that certain EDC members have expressed willingness to continue, thus needing reappointment. Remaining expired EDC positions will need to be filled and discussion addressed possible recruitment efforts to fill those positions. Major points of discussion among Council, City Administrator Ferguson, EDC Chairman Weeks, Planning and Zoning Commissioner McCall, Planning and Zoning Commissioner Xiques, and former EDC member Craig Reitz included:

- Status of EDC as an "evergreen" commission
- Modifications to applicable EDC ordinance(s) including possible revisions of membership requirements
- Need to help existing businesses
- Need for future joint workshop between Council and EDC
- Possible reduction of EDC from seven to fewer members
- Use of multiple boundaries (such as City limits, WISD, and 78676 zip code) to achieve broad cross section reflected in EDC membership
- Need for guidance and framework in order to carry out EDC tasks

Council generally agreed to direct staff to proceed with work on an ordinance and reappointments, with future scheduling of workshop sessions as needed. No vote was taken on this item.

C. Discuss and consider approval of a Racial Profiling Policy and Annual Racial Profiling Report for the City of Wimberley City Marshal (*City Marshal*).

This item was heard after Agenda Item No. 2.

City Administrator Ferguson reviewed policy development and statutory requirements for various policies, procedures, and reporting that require submittal to Council.

City Marshal Robinson summarized the reporting methodology, provided population demographics according to the latest U.S. Census data, and stated percentages of citations/warnings issued to certain racial categories. He also noted his personal background/training, routine data collection procedures, and required reporting related to searches and arrests. Summary of the 2008 data analysis concluded the following:

- Whites were cited at a rate higher than the percentage of Whites in the City population
- Hispanics were cited at a rate lower than the percentage of Hispanics in the City population
- No African American, American Indian, or Asian drivers received citations/warnings
- No searches were conducted, whether based on probable cause or incident to arrest
- No persons were arrested
- No complaints for racial profiling were reported or filed with the Wimberley City Marshal's

Office

- Wimberley City Marshal's Office is fully in compliance with all applicable Texas laws concerning the prohibition of racial profiling

In response to Councilmember Xiques inquiry, City Marshal Robinson replied that his vehicle is equipped with video recording equipment that is working very well. In response to Councilmember Thurber's inquiry regarding the complaint process, City Administrator Ferguson advised that appropriate information and forms will be posted on the City's website and staff will receive training on handling complaints. Discussion between Mr. Ferguson and Councilmember Xiques established that certain references to the year 2003 accurately reflect when State legislation required compliance by law enforcement agencies. Council thanked City Marshal Robinson for his hard work and service to the community.

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

- D. Discuss and consider action regarding the current city-wide zoning project and the previous City Council charge to the Planning and Zoning Commission relating to the project (*Mayor Tom Haley*).

Mayor Haley reiterated the need for citywide zoning and proposed that existing unzoned property be zoned according to its current use and allow a 90-day window for property owners in any planning area to apply for a change in zoning at no charge to the applicant.

Councilmember Flocke outlined several benefits of city-wide zoning and the need for approval of an ordinance defining setbacks before zoning of properties along entrance corridors. He spoke of the types of businesses most beneficial to Wimberley from a long-term economic standpoint that will provide employment to future generations while maintaining aesthetic appeal.

Councilmember Thurber agreed with Mayor Haley's proposal and felt that the public process has worked well in giving citizens a voice and commended the Planning and Zoning Commission for its handling of this issue during public hearings. Councilmember Thurber complimented the City's Zoning Ordinance for its award-winning foresight, questioned the need for city-wide zoning, and asked whether the same purpose cannot be accomplished through an overlay district.

Assistant City Attorney Crosby stated that zoning all City property may make the City less susceptible to accusations of spot zoning. She noted that cities have a tremendous amount of discretion in zoning/rezoning decisions, which are almost always upheld by the courts. City Administrator Ferguson noted that having all City property zoned will be more convenient for citizens applying for building permits, which requires that the property be properly zoned before issuance.

Assistant City Attorney Crosby clarified for Councilmember Thurber that the overlay district regulates design/construction standards, but does not address permitted/conditional uses. She also

clarified that while the Comprehensive Plan may make *recommendations*, it is not a regulation or requirement that gives a property owner any use rights.

Planning and Zoning Commissioner Xiques spoke about the need for zoning, but stressed that the Planning and Zoning Commission needs to come up with a plan for growth (both short- and long-term) that shows where the City wants growth, as well as what type of growth is wanted for certain areas.

Discussion between Councilmember Flocke and Craig Reitz clarified Mr. Reitz's position requesting that the City *not* apply commercial zoning to any property along waterways *that is not already existing as commercial use*. In particular, Mr. Reitz stated that his earlier reference applied to commercial zoning under the proposed zoning map that was proposed for residential areas such as Blue Heron and on FM 3237 that abuts creeks, which may have possible detrimental environmental effects. Councilmember Flocke noted that there is already some existing commercial use along waterways, which he felt should be zoned according to its current use. City Administrator Ferguson reminded that there is currently a Protected Water Overlay District in place that prohibits any new commercial construction.

Planning and Zoning Commissioner Lila McCall agreed that the Commission needs to do more planning than zoning and questioned the difference between large homes (with a large family of residents) and bed and breakfast operations that are both located on waterways.

Discussion between City Administrator Ferguson and Council arrived at options for action in order to formalize direction to staff. Councilmember Flocke moved as follows: to cease the public hearing process on the proposed city-wide zoning map; to direct staff to draft a resolution implementing Mayor Haley's proposal to zone all unzoned property to current use; to allow a 90-day window (starting from a date to be determined) for property owners in any planning area wanting to be rezoned to apply for such rezoning; that the application fee for said zoning will be at the City's expense, with other associated costs for items such as surveys to be borne by the applicant. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

City Administrator Ferguson advised that the zoning maps currently on display will be removed from all locations.

- E. Discuss and consider possible action relating to the annual performance review of the City Administrator (*Mayor Tom Haley*).

Mayor Haley announced that Council will retire to Executive Session pursuant to Chapter 551.074 of the Texas Government Code at 8:27 p.m.

Mayor Haley reconvened into Open Session at 8:50 p.m. No action was taken during Executive Session.

7. City Council Reports

- Announcements
- Future Agenda Items

Councilmember Flocke requested that a resolution be presented to the Wimberley High School Swim Team for its successful record this season.

Discussion among City Administrator Ferguson and Council agreed on Monday, March 30, 2009 as an acceptable date to hold a Council workshop meeting to be attended by Hays County Precinct Three Commissioner Will Conley to discuss the proposed joint governmental services facility.

Councilmember Thurber requested that City Administrator Ferguson provide a report on the compliance review of downtown septic systems. Citing recent news coverage, Councilmember Thurber also requested that staff look into the problem that some small cities have had with enforcing distance limitations for sex offenders living in proximity to facilities such as schools. Councilmember Thurber also requested scheduling of a Council workshop session with Scott Joslove for discussion of possible implementation of a Hotel Occupancy Tax.

Hearing no further announcements or future agenda items, Mayor Haley entertained a motion. Councilmember Larson moved to adjourn. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

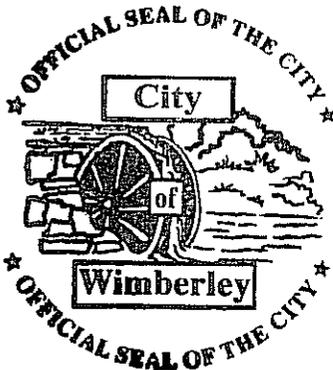
Adjournment: Council meeting adjourned at 8:54 p.m.

Recorded by:

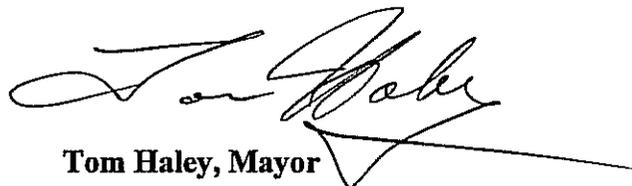


Cara McPartland

These minutes approved on the 5th of March, 2009.



APPROVED:



Tom Haley, Mayor