

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

City Council meeting called to order at 6:31 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 and City Secretary Cara McPartland.

Presentations of Citizens:

- Citizen Communications

Kirk Holland, General Manager for the Barton Springs/Edwards Aquifer Conservation District, spoke in support of full Texas Water Code (TWC) Chapter 36 authority for Hays Trinity Groundwater Conservation District (HTGCD) and offered his district's services as a resource. He stated that groundwater conservation districts (GCDs) are the preferred method of groundwater management in Texas, charged with specific authorities that are particularly important during times of drought. He outlined authorities under TWC Chapter 36 relating to the importance of joint regional planning with respect to desired future conditions and regulatory response. Mr. Holland noted that GCDs are responsive to the local electorate and distributed his business card to Council.

Jim McMeans, representative of Citizens Alliance for Responsible Development (CARD), reported that approximately 400 signatures were received via email for a petition supporting full TWC Chapter 36 authority for HTGCD. He noted the importance of proper management of groundwater to Wimberley's water features. Without proper groundwater management, Mr. McMeans feared that the Wimberley area's attractiveness and quality of life will decline. He stressed the importance of this issue and urged Council to support providing HTGCD with the proper funding, authority, and necessary management tools.

HTGCD Wimberley representative, Jack Hollon, stated that HTGCD has operated with very limited funds/staffing and commended the support given by hard-working volunteers and Kirk Holland. Mr. Hollon characterized comments questioning the motives of HTGCD as false, insulting and divisive. He stated the importance of finding common ground on this important resource (groundwater), which should not be a politically divisive issue. Mr. Hollon highlighted the HTGCD's mission to understand groundwater as a resource and manage water levels/quality through tracking/testing and trends. He agreed with Mr. Holland's remarks that GCDs are best able

to manage groundwater and asked for Council's support of full TWC Chapter 36 authority for HTGCD.

Woodcreek Property Owners Association manager, Janelle Delaney, stated past/present water-related problems and described provider Aqua Texas as an out-of-control water profiteer that does not care about the community or its natural water resources. She stated that Aqua Texas (and parent company Aqua America) is the single largest water waster in the HTGCD and asked for Council's support of full TWC Chapter 36 authority for HTGCD.

Despite reservations people may have over regulations, Wimberley citizen, Martha Knies, felt that HTGCD needs full authority in order to protect one of our most basic needs, which is water. She asked for Council's support in helping to give the very capable members of HTGCD the tools to manage groundwater in the best way possible.

Wimberley Valley Watershed Association Executive Director David Baker noted the current drought conditions and associated challenges of managing water resources that do not follow jurisdictional lines. He stressed the importance of setting aside politics and giving HTGCD the needed tools to protect property values and the future of our creeks and rivers against threats from corporate interests such as Aqua Texas. Mr. Baker closed by urging Council to use its voice to support HTGCD in its goal of attaining full authority under TWC Chapter 36.

Wimberley resident, Susan Nenney, cited a news headline reporting Hays County as the tenth fastest-growing county nationally and stated the urgent need for a fully authorized groundwater district to manage that kind of growth. She noted Wimberley's position on the far eastern edge of a major desert area and felt that politics should be set aside in order to deal with future water needs and pressures placed on the aquifer. Ms. Nenney expressed her full support of TWC Chapter 36 authority for HTGCD, cautioned against relying on historical practices, and encouraged innovative thinking.

Charles O'Dell, spoke in support of full Chapter 36 authority for HTGCD, which he described as an organization of educated, honorable officials elected to preserve its portion of the Trinity Aquifer through equitable, fair and sustainable use. Along with his neighbors, Mr. O'Dell expressed support for HTGCD's efforts to have full authority under TWC Chapter 36 as intended by legislators.

Wimberley citizen, Bill Johnson, stated his understanding of the City's lack of life guards at Blue Hole and the City's liability limitations. He recalled a past agreement between the Austin Parks Department and the University of Texas (UT) swim coach allowing team members to use certain City of Austin parks free of charge, provided that the UT swimmers "keep their eyes open." As a way to improve safety at no expense, Mr. Johnson suggested to Mayor Haley, Council, and City Administrator Ferguson that the Wimberley High School Swim Team be given free admission to Blue Hole this season with the understanding that should any problems arise, swim team members will be available to provide assistance and first aid.

1. **Consent Agenda**

- A. Approval of minutes of the regular City Council meeting of March 5, 2009.
- B. Approval of minutes of the special City Council meeting of March 11, 2009.

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

2. **City Administrator Report**

- Status report on City of Wimberley Sales and Use Tax collections

City Administrator Ferguson reported that January 2009 collections were down three percent (3%) from January 2008. He noted the impact of declining collections on surrounding cities and advised that expenditures are being considered very carefully.

- Status report on preparations for the May 9, 2009 City of Wimberley General Election

City Administrator Ferguson reported on the ballot as follows: Council Places One and Five are uncontested with respective candidates Charles Roccaforte and John White running unopposed. Three candidates remain in the election for Place Three: Bill Appleman, Mac McCullough, and Alice Wightman. Incumbent Councilmember Dick Larson and David Estey have withdrawn as candidates for Places Five and Three, respectively.

- Status report on City Council Hotel Occupancy Tax workshop

City Administrator Ferguson thanked Council, Scott Joslove, and the public for attending the informative and productive workshop held on March 11, 2009.

- Status report on Ranch Road 12 roadway improvements on the Wimberley Square

City Administrator Ferguson reported that Transportation Advisory Board's subcommittee will be presenting a downtown mobility plan to Council at its next meeting. As discussed at a recent meeting among subcommittee members and downtown business merchants, it was agreed that Texas Department of Transportation (TxDOT) work to improve traffic conditions should preferably be done during January, which is typically a slower month for merchants. Discussion addressed specifics of work scheduled for Old Kyle Road and Ranch Road 12, including re-painting/stripping.

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

City Administrator Ferguson reported on meetings scheduled with Hays County officials to wrap up the downtown inspection process, provided statistics on competition for available stimulus funds,

and noted that the City's submitted application meets "green" criteria for its proposed project. Discussion addressed specific phases of the project that may be funded should the City's application be approved.

- Status report on activities of the Wimberley Municipal Court

City Administrator Ferguson reported that the Court's docket has been light, but noted that activity is anticipated to pick up as traffic enforcement increases, particularly in the downtown area.

- Status report on activities of the City Marshal

City Administrator Ferguson reported that Marshal Robinson has returned from required training at Sam Houston State University with a very favorable report on the week-long seminar.

3. Presentations

Presentation of the Wimberley Parks Advisory Board Quarterly Activities Report.

Parks Advisory Board Chairman Thad Nance reported on updates of the Parks Master Plan and Blue Hole Regional Park fees/hours. He noted current subcommittee reviews underway assessing respondents to the City's Request for Qualifications (RFQ) for the design/construction of Blue Hole Regional Park improvements and proposed plans for the recently donated property at Ranch Road 12 and FM 2325. Chairman Nance reported on coordinated efforts of City staff and the Wimberley Chamber of Commerce on the proposed use of Blue Hole Regional Park for the Fourth of July Jubilee. Chairman Nance stated that continued monitoring of the Cypress Creek Nature Trail will watch for overgrowth and trash, and he commended the entire Parks Board for working well together. Discussion clarified Blue Hole's 2009 season hours of operation.

4. Resolutions

- A. Consider approval of a resolution of the City of Wimberley, Texas establishing a temporary policy on the initial zoning of real property within the city limits (*City Administrator*).

City Administrator Ferguson highlighted past discussion and action on this item and read Item Nos. 1 and 2 of the proposed resolution. Discussion addressed:

- Unintended consequences of zoning to the least intensive use
- Specific notification actions in the administrative process (via written correspondence and/or telephone contact) helping to counteract unintended consequences
- Possible amendment to resolution language changing references from "90-day(s)" to "45-day(s)"
- Addition of language requiring Council review/consideration of recommended changes to the City's current zoning regulations, and other applicable Code requirements, regarding

the entry corridors (RR 12, FM 3237, FM 2325) to the City *prior* to the zoning of referenced unzoned properties

Councilmember Thurber moved to approve the proposed resolution with the following modifications: Change time period references from 90-day(s) to 45-day(s) and require the implementation of Resolution Item No. 2 *prior* to proceeding with actions stated in Resolution Item No. 1. Councilmember Roccaforte seconded.

Mayor Haley called for a vote as follows: Councilmember Roccaforte, aye; Councilmember Flocke, aye; Councilmember Xiques, aye; Councilmember Thurber, aye; Councilmember Larson, aye. Motion carried on a vote of 5-0.

- B. Consider approval of a resolution of the City Council of the City of Wimberley, Texas relating to the future consideration of a Hotel Occupancy Tax in the City of Wimberley (*Place Five Councilmember Dick Larson*).

Lodging owner/manager Bill Appleman spoke of the divisiveness and misunderstanding surrounding possible implementation of a Hotel Occupancy Tax (HOT), past consideration/action, and results of a recent petition drive initiated by lodging owners. He thanked Councilmember Thurber and City Administrator Ferguson for the productive workshop session and presentation by Scott Joslove held on March 11, 2009. Mr. Appleman noted the importance of: lodging owners and other business owners working together; having a plan for administration/expenditure of revenues; and, support for the HOT by the lodging industry. In reference to his upcoming meeting scheduled with the Wimberley Merchants Association president, Mr. Appleman felt that this is a positive move forward for the community to work together in a way that is beneficial to all and thanked Council for its time.

City Administrator Ferguson read the proposed resolution aloud and Mayor Haley opened Council discussion. Discussion on the resolution addressed:

- Correction of the word “Ordinance” to “Resolution” (first page)
- Positive aspects/outcomes of the informative workshop held on March 11, 2009
- Changes to resolution language suggested by Councilmember Flocke relating to Mr. Joslove’s title as a “State” expert
- Statements by Councilmember Flocke that this resolution is meaningless, unnecessary, and negative (resolution is for *not* taking action)
- Desire of Councilmember Larson to have the resolution read into the minutes as guidance for future Councils
- Need for the lodging industry and other types of businesses to come together in a productive manner in order to form a plan
- Differing opinions that the resolution fosters either divisiveness or cohesiveness among community groups/members

Councilmember Flocke requested the following changes (italicized):

First paragraph: “WHEREAS, Mr. Scott Joslove, *an* expert on the subject. . .” (Delete reference to *State’s* expert)

Second paragraph, last sentence (a): “. . . and if it *promotes tourism and the lodging industry;*” (rather than “and if it *will produce benefits to the lodging industry;*”)

Second paragraph (b): “. . . and expenditure of the tax revenue has the support of *the City’s lodging owners.*” (Delete reference to *majority* of lodging owners)

Third paragraph: “WHEREAS, these three basic criteria as recommended by *an* expert regarding municipal hotel occupancy tax have not yet been accomplished.” (Delete reference to *State’s* expert)

Councilmember Flocke moved to approve the resolution as amended in his aforementioned changes. Councilmember Thurber seconded. Mayor Haley called for a vote as follows: Councilmember Larson, nay; Councilmember Thurber, nay; Councilmember Xiques, nay; Councilmember Flocke, aye; Councilmember Roccaforte, nay. Motion failed on a vote of 1-4.

Councilmember Larson moved to approve the resolution as presented, except for the following correction: Change the term “Ordinance” to “Resolution” on Page 1. Councilmember Xiques seconded. Mayor Haley called for a vote as follows: Councilmember Larson, aye; Councilmember Thurber, nay; Councilmember Xiques, aye; Councilmember Flocke, aye; Councilmember Roccaforte, aye. Motion carried on a vote of 4-1.

5. Ordinances

- A. Consider approval of an ordinance granting Aqua Texas, Inc. a non-exclusive franchise to construct, operate and maintain a retail wastewater utility system within the rights-of-way of the City of Wimberley for a term of ten years with renewal provisions; prescribing certain rights, duties, terms and conditions; providing for a franchise fee based on the gross receipts related to said system; providing for form of acceptance and termination; containing miscellaneous provisions; severability; proper notice and meeting and providing an effective date (*City Administrator*).

City Administrator Ferguson explained major ordinance provisions and recommended approval. Discussion between Mayor Haley and Mr. Ferguson established that this proposed ordinance does not allow Aqua Texas to go out of its current Certificate of Convenience and Necessity (CCN) for operations.

Councilmember Xiques moved to approve the item as presented. Councilmember Roccaforte seconded. Motion carried on a vote of 4-0. Councilmember Larson abstained.

- B. Consider approval of an ordinance repealing Ordinance Nos. 2006-015 and 2007-009 of the City of Wimberley, Texas, establishing the Economic Development Commission in order to dissolve such Commission; and amending Title III (Administration), Chapter 33 (Boards and Commissions) of the Code of Ordinances of the City of Wimberley, Texas, in order to create Section 33.05 establishing an Economic Development Commission, its purpose, membership requirements and duties; providing for an effective date; proper notice and meeting, severability and repealer (*City Administrator*).

City Administrator Ferguson detailed this proposed ordinance establishing the Economic Development Commission as a seven-member standing advisory committee. Discussion addressed various options for membership requirements.

Councilmember Thurber moved to approve the item as presented, with the exception of the following changes to §33.05(H): amend language to reflect regular quarterly meetings and meetings to be scheduled at any other time the Commission deems necessary. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

6. Discussion and Possible Action

- A. Discuss and consider approval of a request to allow the usage of the Blue Hole Regional Park for a recognition event for the Wimberley High School Swim Team and the waiver of fees for such use (*City Administrator*).

City Administrator Ferguson outlined the event and recommended approval. Councilmember Roccaforte moved to approve the item as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

- B. Discuss and consider authorizing the purchase of computer software for the City of Wimberley Municipal Court (*City Administrator*).

City Administrator Ferguson explained the need for this software and detailed costs and certain terms of the agreement. Discussion addressed technical support, responses issues, and initial/annual fees. Councilmember Thurber moved to approve the item as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

7. City Council Reports

- Announcements
- Future Agenda Items

Councilmember Flocke inquired about prior action relating to Texas Water Code Chapter 36 and discussion clarified that such action was in the form of a letter of support sent to State officials several years ago.

As future agenda items, Councilmember Thurber requested an update on the water quality ordinance, hike/bike trail, and progress on the "pocket park." City Administrator Ferguson acknowledged Councilmember Thurber's requests and advised that there is a committee meeting scheduled for March 31, 2009 to discuss the "pocket park."

Councilmember Flocke announced details of the Spring Walk to be held on March 21-22, 2009 sponsored by the New Braunfels Marsch-und Wandergruppe and the Wimberley Mayor's Fitness Council.

In response to Mayor Haley's inquiry about future agenda items relating to Texas Water Code Chapter 36 legislation, discussion established that staff will provide more detailed information to Council to help guide its decision regarding future action. There was brief discussion between City Administrator Ferguson and Councilmember Larson regarding presence of legal counsel at Council meetings.

Hearing no further announcements or future agenda items, Mayor Haley called the meeting adjourned.

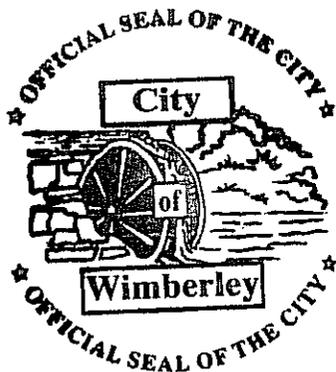
Adjournment: Council meeting adjourned at 8:02 p.m.

Recorded by:

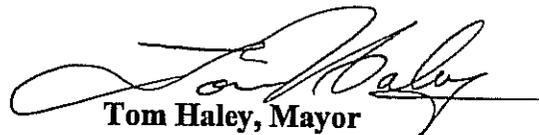


Cara McPartland

These minutes approved on the 2nd of April, 2009.



APPROVED:



Tom Haley, Mayor