

City of Wimberley
City Hall, 221 Stillwater
Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
January 5, 2017 at 6:00 p.m.

City Council meeting called to order at 6:00 p.m. by Mayor Mac McCullough.

Former Hays County Constable Darrell Ayres gave the Invocation and Mayor McCullough and Council led the Pledge of Allegiance to the United States and Texas flags.

Councilmembers Present: Mayor Mac McCullough, Councilmembers Bob Dussler, Craig Fore, Sally Trapp, Gary Barchfeld, and John White.

Staff Present: City Administrator Don Ferguson & City Secretary Cara McPartland

Proclamations

- A. Proclamation of the City Council of the City of Wimberley, Texas, recognizing former Hays County Precinct Three Constable Darrell W. Ayres for his years of dedicated public service to the residents of Wimberley, Texas

Mayor McCullough presented the proclamation to Darrell Ayres, who expressed appreciation for everyone's support, highlighted his professional experience, and said it has been a great honor to serve the citizens of the Wimberley Valley and Hays County.

- B. Proclamation of the City Council of the City of Wimberley, Texas, recognizing former Hays County Elections Administrator Joyce Cowan for her years of dedicated public service to the residents of Wimberley, Texas

Mayor McCullough presented the proclamation to Joyce Cowan, who spoke of her love and admiration for this community and her staff and of all of the friends she has made over the years. Mayor McCullough and Ms. Cowan spoke of Wimberley's typically high voter turnout.

City Administrator Ferguson stated the City has been blessed to work with these two consummate professionals.

- C. Proclamation of the City Council of the City of Wimberley, Texas, recognizing Hugh Campbell for his years of dedicated public service to the Village Store in Wimberley, Texas

Mayor McCullough read the proclamation and advised he would deliver the proclamation to Mr. Campbell.

Citizens Communications

Former Mayor Steve Thurber voiced concerns regarding reducing the City's Hotel Occupancy Tax (HOT) to zero percent. He spoke on the history of enacting and implementing the HOT program, which he said involved complex issues and differing opinions, and felt it is not in the Wimberley spirit to give up on the program. He said that a \$5,000 reserve fund to be used in calamity situations would be wholly inadequate. He favored finding out how to improve the program without giving up.

Former Wimberley resident and current property owner Alice Wightman expressed her opposition to having a wastewater treatment plant at Blue Hole Regional Park and felt there are better and cheaper alternatives. She asked if any E. coli testing has been done to establish a baseline and to determine whether the source of pollution is of animal versus human origin. She favored spending money on independent testing to make sure the pollution problem is remedied.

Wimberley Square property owner Phil Van Ostrand expressed concerns about a serious traffic bottleneck at the northwest corner of the Square, which he felt also causes access issues for emergency personnel. He asked that Council consider better signage, including wayfinding signage, as a possible remedy.

Wimberley property owner Al Sander read a statement expressing his support for the HOT and asked that the tax not be killed for political reasons. He spoke of the need for a central sewer system and said that giving up the City's CCN to Aqua Texas would allow it to be in charge and open the door to uncontrolled development. *(The full text of Mr. Sander's statement and accompanying Texas Municipal League article titled "The Hotel Tax Two-Step" are attached to these minutes.)*

Phil Collins, Wimberley resident and owner of multiple properties, asked that Council not kill the HOT, as he felt it is good for the City, but said there needs to be agreement on how to spend the money. He favored a referendum to let voters decide on whether or not to keep the HOT. He offered to pay for a consultant to come in and help with decisions on HOT expenditures. He also urged Council to take action on central Wimberley wastewater service and encouraged the City to figure net present value as a method to compare options and determine real costs. Regarding short-term rental conditional use permits (CUPs), Mr. Collins said problems started with "grandfathering gone wild," and stated that realtors would agree that properties within the City are of less value. He felt the proposed permit period of two years is too low for investors to base decisions on. Mr. Collins asked the City to poll realtors on the effect of CUPs on property values in order to find out when an ad valorem tax might be required to meet budget shortfalls. He asked for an update on the Hidden Valley Low Water Crossing Reconstruction Project.

Citizens for Responsible Development (CARD) representative Louis Parks spoke on CARD's town hall meeting to be held Thursday, January 12, 2017 at 6 p.m. at the Wimberley Community Center. He said CARD will explain why giving our central wastewater to Aqua Texas would be bad for the citizens and future of Wimberley. He invited everyone to attend the meeting to hear why the City's sewer plan should be adopted and why a contract with Aqua Texas should be rejected. He cited multiple notices via emails to CARD subscribers, on CARD's website, and in Wimberley View notices, and asked anyone who wishes an invitation to request one on CARD's website. He thanked Council and hoped to see everyone at the meeting.

1. Consent Agenda

- A. Approval of minutes of the Regular City Council meeting of December 1, 2016
- B. Approval of minutes of the Special City Council meeting of November 30, 2016
- C. Approval of minutes of the Special City Council meeting of December 7, 2016
- D. Approval of November 2016 Financial Statements for the City of Wimberley
- E. Approval of the appointment of Matt Meeks to the City of Wimberley Parks and Recreation Advisory Board. (*Place Two Councilmember Craig Fore's nominee*)

Councilmember White moved to approve the Consent Agenda, as presented. Councilmember Barchfeld seconded.

Mayor McCullough pulled Consent Agenda Item 1D per Councilmember Fore's request to consider this item later in the meeting.

Councilmember White amended his notion to approve all Consent Agenda items, except for Item 1D. Councilmember Barchfeld seconded. Motion carried on a vote of 5-0.

2. City Administrator Report

This item was heard after Agenda Item 5B.

- Status report on the Central Wimberley Wastewater Project (Bid process, discharge permit, easements, potential Aqua Texas agreement, parkland conversion, Impact Fee Advisory Committee, timeline, etc.)

City Administrator Ferguson reported on Texas Water Development Board (TWDB) review of the construction bid package and anticipated its release for bidding next week. He advised easements approval and a proposed water reuse agreement will be presented to Council in mid-February. He noted that the parkland conversion has been approved by Texas Parks and Wildlife and the National Parks Service, with a required Chapter 26 public hearing scheduled for mid-February. He reported on upcoming consideration of a parkland deed restriction to include a 75,000 gpd capacity limit at the proposed plant, as well as inclusion of the stated capacity limit in the TPWD grant. He noted a public meeting on wastewater service rates will be held later this month. He stated the need for Council to appoint a wastewater impact advisory committee of at least five members to make recommendations on impact fees and composition requirements for committee members. He noted that Council could use the Planning and Zoning Commission as the advisory committee, if it so desires, or could appoint an ad hoc member to sit with Planning and Zoning to fill the requirement that at least one member represent the real estate business. He recommended a seven-member committee and requested that Council submit names for consideration at Council's next meeting.

City Administrator Ferguson provided information on various construction/funding timeframes for the City-owned wastewater option, with Council anticipated to hold a workshop on project options later this month. He spoke on recent subcommittee meetings with Councilmembers Barchfeld and Trapp, John Urban, and Aqua Texas representatives resulting in the need to get all

proposals/costs/timelines on the table to examine the pros and cons of each option and the expedite the decision-making process.

City Administrator Ferguson presented the following four basic options:

- The City's proposed wastewater system
- Retail service from Aqua Texas
- Wholesale service from Aqua Texas, with the City building the collection system, but not a treatment plant, which would require modification of the City's TCEQ permit
- Wait two years in order to complete the transfer of the City's CCN to Aqua Texas, and Aqua Texas would then build the system and provide retail service

He stated there will be an item on Council's February 2nd agenda to consider extending the City's TWDB loan closure deadline, which requires giving TWDB sixty days notice.

- Status report on River Road Riverbank Restoration Project

City Administrator Ferguson reported River Road is now open and said Myers Construction did an outstanding job on the project, which is complete with the exception of some upcoming pressure washing of the concrete stain. He said the project is expected to come in at budget when all invoices are in and the neighbors are very pleased.

- Status report Hidden Valley Low Water Crossing Reconstruction Project

City Administrator Ferguson reported the City is awaiting the issuance of the sand and gravel permit from Texas Parks and Wildlife (TPW), which is required for construction to begin. He spoke on the contractor's role in securing necessary permits and advised a meeting with TPW will be held tomorrow to help expedite permit issuance. In response to Councilmember Barchfeld, City Administrator Ferguson advised that any trees targeted for removal have been removed and there are no plans to take down the large cypress tree at the crossing.

- Status report on Blue Hole Regional Park operations

City Administrator Ferguson announced that Interim Park Manager Rebecca Manning has been hired as Park Manager, highlighted her education and experience, and her positive staff relations.

City Administrator Ferguson reported that Louis Parks of the Wimberley Valley Dark Sky Committee has approached the City about holding regular "moon" and "star" watches at Blue Hole Regional Park. He said facility use agreements are being drafted for such use, as well as for use of the soccer fields. He thanked Gary Pigg for being instrumental in bringing people together on soccer field use issues. It was noted that there were over 36,500 visitors to the swimming area this past season, generating over \$281,000 in revenue.

In addition, City Administrator Ferguson announced that Hays County is holding a meeting on Thursday, January 12th regarding the update of its Hazard Mitigation Plan. He also reported on a meeting with TxDOT on serious traffic issues at the intersection of Ranch Road 12 and Spoke

Hollow Road. He said there are plans to install a traffic signal at Ranch Road 12 and CR 1492, which was not requested by the City, but came from citizens' requests. He said there was also discussion of a possible traffic signal on FM 3237 at Winters Mill Parkway.

3. Public Hearings and Possible Action

- A. Hold a public hearing and consider approval of an ordinance approving an application for a conditional use permit to allow for the limited duration on-premise sale and consumption beer and wine on property zoned Participant Recreation – High Impact (PR-2) located at 450 Old Kyle Road, Wimberley, Hays County, Texas. (*Wimberley Players, Applicant*)

Mayor McCullough introduced the item, opened the public hearing, and invited David Bisett to speak.

Wimberley Players President David Bisett thanked Council and offered to answer any questions.

No further public comments were heard.

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning and uses, and the applicant's intent to sell beer and wine for on-premise consumption in conjunction with theatre performances, including the provision that the applicant cannot derive more than 75 percent of its gross revenue from on-premise sale of alcoholic beverages. He advised that the Planning and Zoning Commission unanimously recommended approval at its December 8th meeting. He noted that the applicant intends to sell beer and wine only. Brief discussion addressed certain types of alcoholic beverages.

Councilmember Trapp moved to approve the ordinance, as presented. Councilmember Barchfeld seconded. Motion carried on a vote of 5-0.

- B. Hold a public hearing and consider approval of the first reading of an ordinance amending Title XI (Business Regulations), Chapter 112 (Regulation of Vacation Rentals and Bed and Breakfast Lodgings) of the City of Wimberley Code of Ordinances; and amending Title XV (Land Usage), Chapter 155 (Zoning), Section 155.065 (Vacation Rental Lodging Requirements) of the City of Wimberley Code of Ordinances; and providing for the following: findings of fact, a savings clause, a repealing clause, a severability clause, and effective date, and proper notice and meeting. (*City Administrator*)

Mayor McCullough opened the public hearing.

Dan Sturdivant felt the City is putting more restrictions on bed and breakfast owners than regular homeowners. He did not favor requiring both a CUP and a license, which he stated is "double-dipping." He questioned how this would be policed and said he and his clients are being punished, while the City is not going after the real culprits.

City Administrator Ferguson reviewed the recommended changes in short-term rental regulations arrived at through an extensive public process and reasoning for recommendations, including requiring a non-transferable license to be renewed every two years, certain complaint procedures, signage, advertising of maximum occupancy, establishment of a “20-Percent Rule” for the Planning and Zoning Commission, and provision of maps to renters that show property boundaries. He noted that the Planning and Zoning Commission unanimously recommended approval of the proposed ordinance at its December 8th meeting.

Discussion addressed clarification on applicability to grandfathered properties, exclusion of bed and breakfasts from ordinance modifications, number of complaints (listed as “two” in proposed ordinance) triggering enforcement procedures, direct violations of City/State laws, difficulties associated with establishing validity of complaints, tracking of complaints, and subsequent complaint resolution by either Council or law enforcement.

Phil Collins felt that less than five percent of the population are having issues and proposed calling the police to tell if the complaint is valid or not, and following up with a subsequent phone call to the City. He said there needs to be less “he said, she said” situations.

Speaking from the audience, Terrie Bursiel felt this “is way over the top,” and Robbie Walker said he did not see any penalties or fines for false complaints.

Councilmember Trapp felt we are making a law that is too heavy-handed for a small number of complaints and need more “black and white” and less gray areas. She stated she would contact the owner to call the guest and deal with the problem, which she said happens most of the time.

Phil Collins said “go after all the people who are cheating today,” who are not paying state/city taxes and not watching their guests, and 95-percent of the problem would be gone.

No further public comments were heard.

Councilmember Barchfeld stated that this is a compromise arrived at by thirteen people over two months and should be put into place and tried out. He noted it can be amended in the future, if needed. Councilmember Trapp said this is Council’s first reading of the proposed ordinance as a group.

Councilmember Dussler agreed with Councilmember Barchfeld’s comments. Councilmember Trapp spoke of her previously expressed view that two complaints is “too little” to trigger enforcement procedures.

Councilmember Fore agreed with Councilmember Trapp and said not all are going to be in favor of this compromise. He also felt two complaints “is too few” and the ordinance needs to be cleaned up.

Councilmember Barchfeld said this is a compromise among all citizens and Council needs to be fair to all. He said this is an effort to put a few things in place that would give some recourse to citizens who are not benefitting financially from rental income. He said increasing the complaint

number to “3” would not be a problem for him and noted there will be subjectivity involved. He stated something needs to be in place to deal with violations.

Councilmember White agreed with Councilmember Barchfeld and likened the proposed ordinance to school rules that are needed for all due to the actions of a few. He said all sides were listened to in order to reach a compromise that tried to please everyone and acknowledged no one will be happy with the whole ordinance.

Councilmember Trapp requested consideration of specific changes to the proposed ordinance and before proceeding, Mayor McCullough sought Council’s input on the number of complaints needed to trigger enforcement. Councilmembers White, Barchfeld, and Dussler favored leaving the ordinance language, as presented, at two complaints. Councilmembers Trapp and Fore favored changing the number of complaints to three.

Councilmember Trapp recommended the following changes:

- §112.06 Enforcement Procedure (A) on page 5 (see italics): “The City shall record a *valid and unresolved* complaint from any person. . . “
- Remove the term “bed and breakfast,” as the modified language is to apply only to vacation rentals
- §112.06(C) on page 5 (see italics): “If the City Administrator receives two or more *valid and unresolved* complaints relating to. . . “
- §112.06(E) on page 5 (in italics): “In the event that the City revokes a permit under this subsection, the City shall not accept a new permit application for that property until the expiration of ~~one year~~ *six months* from the date of revocation.”
- Separation of language relating to “fire escape plan” from §155.065 Vacation Rental Lodging Requirements (E)(3) and listing as a separate numbered item
- Deletion of §112.03 Permit Application Procedures (D) ~~“Provide any additional information requested by the City Administrator.”~~

Mayor McCullough and audience members discussed the probable number of violators and vacation rental restrictions as a factor in driving business out of Wimberley.

Phil Collins offered to pay a consultant to study and confirm the number of vacation rentals in violation of the City’s CUP and HOT regulations and to send the results to the City.

Discussion included types of violations such as City/State offenses, as opposed to less serious complaints, and acceptance of Mr. Collins previously stated offer.

Discussion clarified signage requirements in §112.02(C)(3) to establish that sign distance from the “street” means from the *edge of the pavement*; and correct sign address number dimensions to read ~~four~~(4) *two* (2) inches ~~high~~ *wide* and ~~two~~(2) *four* (4) inches ~~tall~~ *high*.

City Administrator Ferguson stated that amendments, as discussed at tonight’s meeting, will be included in the second reading of the proposed ordinance, for consideration at Council’s meeting on January 19, 2017. In response to Councilmember Trapp, City Administrator Ferguson stated that changes to forms and applications will be presented to Council separately for final approval.

Councilmember White moved to approve the ordinance on first reading, including the recommended changes, as discussed. Councilmember Dussler seconded. Motion carried on a vote of 4-1. Councilmember Trapp voted against.

4. Ordinances

- A. Consider approval of an ordinance of the City of Wimberley, Texas, amending City of Wimberley Ordinance Nos. 2006-010 and 2007-005, “Code of Ethics,” to expand the class of persons who may file an ethics complaint under the City’s Ethics Ordinance; and providing for the following: findings of fact, savings, severability, repealer, effective date, and proper notice and meeting. (*Place Three Councilmember Sally Trapp*)

Deborah Koeck of 1 Spalding Circle in Woodcreek, appreciated Council’s reiteration of fairness to all parties concerned and urged approval to expand the class of persons who may file ethics complaints to include property owners, in addition to those listed in the current ordinance. She asked Council to give her a voice in Wimberley government by allowing her concerns to be heard.

Councilmember Trapp stated her support to allow property/business owners to have a voice.

City Administrator Ferguson presented the proposed underlined amendment to Ordinance 2006-010, Exhibit A (Code of Ethics), Section XI (Complaint Process), Subsection A (Filing), Subparagraph (1), as follows: “1. Any City official, City Employee, or eligible voter of the Village City, or person who owns or rents property within the city limits, who believes that there has been a violation. . . .”

Councilmember Trapp said she was shocked to find out that if you own property you are not allowed to say something.

Councilmember Dussler gave the following statement: “I am deeply concerned about this proposal. I am strongly opposed to it for these reasons: In my opinion, this is a set-up. It’s a set-up for a specific individual who is not a resident of Wimberley to file an ethics complaint against the mayor as part of a personal agenda. And Sally, I don’t know if you share this agenda or not, but my thoughts are – that if this ethics charge sticks, it may be that someone would take this to the EDA with the objective of collapsing the \$1,000,000 grant that’s been awarded to the City. This proposal in my opinion would not benefit a single resident of Wimberley. It does not pass the smell test. I’m very concerned about it and that’s why I’m strongly opposed to it.”

Councilmember Trapp said Councilmember Dussler was very creative in the plotting in that thought process and it struck her that the City has “an ordinance on the books that would have you paying property tax to the County and owning property in our City and you would not be allowed to participate in City government if you felt you were aggrieved.” Councilmember Trapp said she did not see a problem if you have done nothing wrong and noted that expanding the class opens up her and the rest of Council to complaints, as well.

Discussion addressed the history and intent of the original ordinance language.

Councilmember Fore agreed with Councilmember Trapp and said “if you haven’t done anything wrong, you’ve got nothing to worry about.” He said it makes sense to him that if you are a property owner you should be able to file a grievance against somebody if you think they are wrong.

Councilmember Barchfeld said this is a difficult decision and agreed with Councilmember Dussler that it might look like a set-up, but trusted Councilmember Trapp that she is just trying to amend this. He said did not think this was preconceived to get to the mayor.

Councilmember Trapp said if someone wanted to get to the mayor, there are other avenues to do so, besides filing an ethics complaint to be heard by the City’s Ethics Commission.

Mayor McCullough entertained a motion.

Councilmember Trapp moved to approve the ordinance amending City of Wimberley Ordinance Nos. 2006-010 and 2007-005, “Code of Ethics,” to expand the class of persons who may file an ethics complaint under the City’s Ethics Ordinance, as presented. Councilmember Fore seconded.

Mayor McCullough called for a vote as follows: Councilmember Dussler, nay; Councilmember Fore, aye; Councilmember Barchfeld, nay; Councilmember Trapp, aye; and Councilmember White, nay. Motion failed on a vote of 2-3.

- B. Consider approval of an ordinance of the City of Wimberley, Texas, ordering a General Election on May 6, 2017 for the purpose of electing Council Members for Places One, Three and Five of the City of Wimberley City Council; establishing early voting locations and polling places for the Election; making other provisions for the conduct of the Election; 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 presented details of the ordinance ordering the 2017 General Election to elect Council members for Places One, Three, and Five, and stated the City will be contracting with the Hays County Elections Administrator to conduct the election. He noted the candidate packet is available.

Councilmember Barchfeld moved to approve the ordinance ordering a General Election on May 6, 2017 for the purpose of electing Council Members for Places One, Three and Five of the City of Wimberley City Council, as presented. Councilmember Fore seconded. Motion carried on a vote of 5-0.

5. Discussion and Possible Action

- A. Discuss and consider possible action approving a proposed election services contract with the Hays County Elections Administrator to conduct the May 6, 2017 General Election for the City of Wimberley, Texas. (*City Administrator*)

City Administrator Ferguson recommended approval of the contract, which includes estimated costs for conducting the election.

Councilmember Barchfeld moved to approve the election services contract, as presented. Councilmember White seconded. Motion carried on a vote of 5-0.

- B. Discuss and consider possible action regarding a proposal to relocate the Wimberley Farmers Market to the Wimberley Community Center parking lot. (*Place Three Councilmember Sally Trapp*)

This item was heard after the Consent Agenda.

Councilmember Trapp spoke of a recent meeting with a Farmers Market representative and City Administrator Ferguson provided details about possible relocation to the more spacious asphalt parking area near the eastern edge of the Community Center adjacent to the Patsy Glenn Refuge, which would not interfere with events at the Community Center. City Administrator Ferguson advised that no fee is proposed for use of the subject portion of the parking lot. He noted that the Farmers Market would be required to provide proof of liability insurance with the City listed as an additional insured party.

Farmers Market Manager Diane Bell said she is working on acquiring the required additional insurance and asked about the need for variances to place temporary signs. City Administrator Ferguson said that no variance would be needed for placing such signage. Ms. Bell felt the proposed location provides more room, poses less traffic issues, and provides access to electricity for music events during the Market. Councilmember White suggested Ms. Bell check with her insurance company on providing the additional insurance at no charge.

Councilmember Trapp moved to approve the relocation of the Wimberley Farmers Market to the Wimberley Community Center parking lot, at no cost to the Farmers Market, including allowed temporary signage and proof of additional insurance. Councilmember White seconded. Motion carried on a vote of 5-0.

- C. Discuss and consider possible action regarding a proposal from the City of Wimberley Hotel Occupancy Tax Advisory Committee to reduce the City's Hotel Occupancy tax

rate. (Hotel Occupancy Tax Advisory Committee Chairman Mark Bursiel & Place Three Councilmember Sally Trapp)

This item was heard after Agenda Item 5A.

Hotel Occupancy Tax Advisory Committee Chairman Mark Bursiel began with an update on the final report of Wimberley Alive event, which he said got an “A” for effort; however, the Committee determined there was no increase in overnight lodging created by this event. He stated the Wimberley Alive applicants did not meet benchmarks or requirements, which prohibits them from applying for any future funding within the next calendar year. He said discussion at the last Committee meeting agreed to put the applicants on probation. He referenced a presentation given to Council and spoke of the need for a vision to guide the Committee. He said collections have by far exceeded allocations/pay-outs to date. He stated the Committee wishes to explicitly express this is not an attempt to “kill the tax,” but simply to “take it to zero at the current time.” He said we are taxing people coming to Wimberley and they are not getting the benefit from it. Chairman Bursiel advised the Committee voted 6-1 to recommend reducing the tax to zero percent (0%) effective January 31, 2017.

Robbie Walker of Hills of Texas Lodging distributed a handout to Council that included charts indicating that the HOT has driven overnight stays to areas outside the City. He noted specific lodging businesses that have been negatively impacted by the HOT and favored reducing the tax rate to 0%. He cited similar problems experienced by other cities regarding spending of HOT revenues, particularly due to the “heads in beds” requirement that must be met. He favored helping local lodging and figuring out a plan to bring more people to town.

Discussion addressed the approximate loss of 25% of vacation rentals due to the flood; estimated number of rental owners not paying State and/or City HOT; discounting of rental rates by lodging owners due to HOT collection; perception of Wimberley since the flood as not being “open for business”; perception of Wimberley as “anti-tourism”; divisiveness of the HOT; differing opinions on a recent USA Today article on Wimberley; and similar problems with HOT experienced by other cities.

Councilmember White said the City has “this pot of money sitting there and making it grow” without a vision on how to spend it. He said the more the money grows the more tempting it will be to find a reason to spend the money. He cited the City of Austin’s allocation of most HOT money to the convention bureau.

Chairman Bursiel spoke of phone calls commenting on how HOT funds should be spent, which would not meet funding requirements and the lack of an oversight mechanism for expenditures.

Councilmember Barchfeld thanked the Committee and asked Mr. Bursiel if the Committee would stay intact if the tax rate was reduced to 0% and whether the Committee would still be considering ways of spending the HOT collections. Chairman Bursiel answered affirmatively to both questions. Councilmember Barchfeld asked Chairman Bursiel his thoughts on whether revenue would go up if the HOT were reduced. Chairman Bursiel replied affirmatively, but said it will be a slow process, “because the stigma is there.” He likened the HOT as “robbing Peter to

pay Paul,” which takes discretionary income from travelers. He said the people complaining about not having tourism are the very people that rely on tourism dollars (the shop owners, artists, the players). He stated taking tourists’ money before they even get here leaves less money for them to spend while here.

Councilmember Barchfeld asked Chairman Bursiel if time collecting the tax drains his business and Mr. Bursiel replied affirmatively. Mr. Bursiel said it takes him easily six hours to prepare tax reports and detailed the process to collect and report the tax, which he said does not benefit his business. He said the amount of work is the same regardless, whether the HOT rate is 5% or 1%. Mr. Bursiel said the lodging group would not have a problem with the HOT, if there were a plan to spend the money.

Councilmember Dussler expressed his opposition to suspending the HOT while considering various issues. He said the HOT is doing exactly what we intended – building a pool of capital for Wimberley to use in promoting tourism. He stated that we are the ones who are struggling with how to deploy the capital. Councilmember Dussler felt there is no reason to needlessly penalize our efforts in building a pool of capital while we are considering the best way to deploy it. He analogized it to suspending the City’s sales tax collections while Council is working on the budget. He said at the very least, Council should hold off on any action on the HOT until Council has completed its workshop with the HOT Advisory Committee on January 31, 2017, when he hoped a clear vision and plan for Wimberley tourism could be developed.

Councilmember Fore agreed with the Committee’s recommendation and said he was not in favor of the HOT from the beginning, which was without a plan on how to spend the money.

Councilmember Barchfeld questioned whether the Committee would advocate reducing the HOT rate to 0% now, or waiting until after the upcoming Council/Committee workshop. Chairman Bursiel stated he advocates following the Committee’s recommendation. Councilmember Barchfeld recognized the divisiveness of this issue and favored reducing the HOT rate to 0%, if it will help bring everyone together as a group.

Councilmember Trapp thanked the Committee and said their decorum and professionalism was always extremely high. She did not feel the recommendation to reduce the tax rate to 0% was “giving up” (referring to former Mayor Thurber’s prior comments). She said there is a difference between giving up and being fiduciarily responsible and endorsed the Committee’s recommendation.

Mayor McCullough asked audience member Lois Mahoney if she had a comment. Ms. Mahoney stated she agreed with Mr. Bursiel and was not against the tax, but a plan was needed to spend tax revenues.

Phil Collins reiterated his previous offer to pay for a consultant who can speak to all the details on the HOT and see if there is any solution that can work for our city.

Councilmember Barchfeld questioned if there could be a consultant’s presentation at the upcoming January 31st Council/HOT Committee workshop. City Administrator Ferguson

directed Council's attention to written comments (*full text attached to these minutes*) submitted by lodging owners Shellye Arnold and Tina Sabuco, expressing opposition to the City's HOT.

Mayor McCullough entertained a motion.

Councilmember Trapp moved to approve reducing the City's Hotel Occupancy tax rate to 0%, effective January 31st, as recommended by the HOT Advisory Committee (and clarified below by Chairman Bursiel). Councilmember White seconded.

City Administrator Ferguson requested clarification on the effective date and applicability to advance registrations. Chairman Bursiel said that "we take a deposit to hold reservations, we collect money 30 days prior to their arrival date, so if this approved tonight, then we can discontinue the collection and re-adjust future reservations to reflect reduction in the tax - anything after January 31st." He clarified that no tax will be collected for any "stays" (as opposed to "reservations") after January 31st. As an example, he said if someone stays on January 31st through February 1st, tax would be collected for January 31st, but not for February 1st).

Motion carried on a vote of 4-1. Councilmember Dussler voted against.

- D. Discuss and consider possible action regarding a proposed Emergency Tourism Response Plan and the establishment of a \$5,000 reserve in the City's Hotel Occupancy Tax Fund to fund such a plan in the future, if needed. (*Hotel Occupancy Tax Advisory Committee Chairman Mark Bursiel*)

Chairman Bursiel advised that the HOT Committee considered this item at its October 6th meeting, reviewed certain portions of the Plan, and said print advertising was not found to be effective. He cited inconsistent messages sent after the flood about Wimberley being open for business. He referenced Pigeon Forge, Tennessee's budgeting of \$1,000 per \$1,000,000 in lost revenue after a wildfire, in order to bring back tourists. Using this as a benchmark, Mr. Bursiel stated that a \$5,000 fund could be used to help bring back visitors, if Wimberley lost \$5,000,000 in revenue. Mr. Bursiel noted that the Committee's recommendation is for an amount of \$5,000, but encouraged Council's matching of funds to help show the City is interested in bringing back business, just like other groups. Mr. Bursiel did not feel it fair to burden lodging people with footing the bill, when everyone is affected. He noted the Committee voted unanimously to recommend the Plan and \$5,000 reserve fund.

Mayor McCullough opened discussion.

Councilmember Trapp favored the proposed Plan and reserve fund, as recommended. Councilmember Dussler favored the proposal, as presented, but felt more funds might be needed.

Mayor McCullough entertained a motion.

Councilmember Fore moved to approve the Emergency Tourism Response Plan and the establishment of a \$5,000 reserve in the City's Hotel Occupancy Tax Fund to fund such a plan in

the future, if needed. Councilmember Trapp seconded. Discussion established that the fund will be kept in a separate account. Motion carried on a vote of 5-0.

- E. Discuss and consider possible action regarding a proposal to deobligate \$14,000 in Hotel Occupancy Tax funding previously allocated by City Council for the *2017 Paint Wimberley* event. (*City Administrator*)

Mayor McCullough entertained a motion.

Councilmember White moved to approve the deobligation of \$14,000 in Hotel Occupancy Tax funding previously allocated City Council for the *2017 Paint Wimberley* event. Councilmember Trapp seconded. Motion carried on a vote of 5-0.

- F. Discuss and consider possible action setting the date, time and place for a proposed City Council-Hotel Occupancy Tax Advisory Committee Workshop. (*Hotel Occupancy Tax Advisory Committee Chairman Mark Bursiel*)

Mayor McCullough stated the workshop is planned for Tuesday, January 31, 2017 at 5 p.m. at City Hall. Mr. Bursiel referenced the included draft of a proposed tourism vision to help facilitate the workshop discussion.

No vote was taken.

- G. Discuss and consider possible action on issues relating to financing for the Central Wimberley Wastewater Project. (*Place Three Councilmember Sally Trapp*)

Mayor McCullough asked Councilmember White to lead discussion of Agenda Items 5G-J.

Council agreed to Councilmember Trapp's request to continue Agenda Item 5G.

No vote was taken.

- H. Discuss and consider possible action setting the date, time and place for a Chapter 26 Public Hearing relating to the use of park land for the Central Wimberley Wastewater Project. (*City Administrator*)

City Administrator Ferguson recommended approval of Monday, February 13, 2017 at 6 p.m. at City Hall as the date/time/place for the subject meeting.

Mayor McCullough said he was recusing himself on these items (5G-J).

Councilmember Dussler stated he would be not be available on February 13th, but would be available on February 15, 2017.

Councilmember Trapp moved to approve Wednesday, February 15, 2017 at 6 p.m. at City Hall as the date, time, and place to hold a Chapter 26 Public Hearing relating to the use of park land

for the Central Wimberley Wastewater Project. Councilmember Barchfeld seconded. Mayor Pro-tem White called for a vote. Motion carried on a vote of 5-0.

- I. Discuss and consider possible action setting the date, time and place for a public meeting on wastewater rates relating to the Central Wimberley Wastewater Project. (*City Administrator*)

City Administrator Ferguson recommended scheduling this public meeting after City Council has held its workshop on Project options. Discussion favored continuing this item until Council has decided on an option to avoid having to possibly go back and develop another set of rates.

No vote was taken.

- J. Discuss and consider possible action setting the date, time and place for a City Council Workshop to discuss options for providing wastewater service to Central Wimberley and financing alternatives for such options. (*Place Three Councilmember Sally Trapp*)

Councilmember Trapp stated this meeting is to allow the Subcommittee to have a substantive discussion on options at the workshop.

City Administrator Ferguson recommended the week of January 23, 2017 and various dates were suggested.

Councilmember Trapp moved to schedule the City Council workshop to discuss options for providing wastewater service to Central Wimberley and financing alternatives for such options on Monday, January 23, 2017 at 6 p.m. at the Wimberley Community Center. Councilmember Barchfeld seconded. Mayor Pro-tem White called for a vote. Motion carried on a vote of 5-0.

- K. Discuss and consider possible action regarding a proposed increase in residential solid waste collection fees in the City of Wimberley. (*Texas Disposal Systems*)

Mayor McCullough resumed duties as presiding officer.

Texas Disposal Systems (TDS) representative Ray Bryant presented his company's request for a 32-cent per month increase in residential solid waste collection fees. Councilmember Fore noted that TDS has never reduced rates and truck volume through the Valley has not declined since TDS entered into its franchise agreement as sole trash service provider for the City. Discussion addressed possible solutions to the truck volume problem, which can be placed on a future agenda for consideration.

Councilmember White moved to approve the increase in residential solid waste collection fees in the City of Wimberley, as presented. Councilmember Barchfeld seconded. Motion carried on a vote of 4-1. Councilmember Fore voted against.

- L. Discuss and consider possible action relating to future use of the City of Wimberley General Fund Balance. (*City Administrator*)

Councilmember Fore said he has questions regarding previously pulled Consent Agenda Item 1D (Approval of November 2016 Financial Statements for the City of Wimberley). City Administrator Ferguson advised that questions can be forwarded to him ahead of the meeting and action to approve the November 2016 Financial Statements can be placed on a future agenda.

In response to a question asked at a previous meeting regarding the amount spent since the current Council took office, City Administrator Ferguson provided a breakdown of Fund Balance spending since June 2016 that reflects approximately \$80,000 in Fund Balance expenditures, with about \$50,000 of that amount spent in the current fiscal year. He noted that Fund Balance reporting will be modified to be read more like the City's Fund Balance Policy. He cited the City's Fund Balance of about \$1,325,000 and reviewed specific amounts earmarked for public works, grant matching, and wastewater project.

City Administrator Ferguson advised Council may want to consider establishing a minimum threshold amount for Fund Balance. He noted auditors in the past have recommended a Fund Balance sufficient to cover about four months of operating expenses, however, Council has historically maintained more than that amount. He spoke of variables such as FEMA flood money and potential unspent Planning and Development (PAD) money from the City's TWDB loan proceeds.

Councilmember Fore expressed concerns regarding depleting the Fund Balance to pay for wastewater project management (if not paid through TWDB loan proceeds) and the City's first two annual contributions for the Central Wimberley Wastewater System.

City Administrator Ferguson supported a strong Fund Balance and setting a minimum threshold as good planning practices. He stressed the City is not in dire straits financially, has a Fund Balance much larger than most similarly sized cities, and the noted the importance of prudent planning. He felt that information to the contrary needs to be corrected. Discussion addressed reasoning for maintaining a healthy Fund Balance, particularly for cities without an ad valorem tax, which have a less diversified revenue stream. City Administrator Ferguson noted Council could create a wastewater project reserve fund to address concerns regarding Fund Balance.

No vote was taken.

M. Discuss and consider possible action approving the proposed route for the 2017 Wimberley Fourth of July Parade. (*City Administrator*)

City Administrator Ferguson recommended approval of the route, which is the same as last year.

Councilmember Barchfeld moved to approve the route for the 2017 Wimberley Fourth of July Parade, as presented. Councilmember White seconded. Motion carried on a vote of 5-0.

6. City Council Reports

- Announcements
- Future Agenda Items

Mayor McCullough asked for Council input on a memorial for one of Wimberley's most loved and respected citizens, Bill Johnson, who passed away on January 1st.

Mayor McCullough stated he has purposely stayed out of sewer discussions and social media, as well as Aqua Texas meetings. He felt that the time is now to make decisions on issues related to wastewater, short-term rental CUPs, and the Hotel Occupancy Tax, and turn them into "positives." He said he can live with whatever Council decides, but urged action.

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

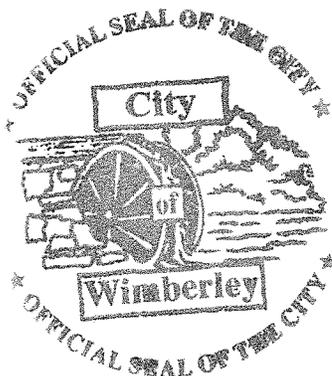
Adjournment: Council meeting adjourned at 9:26 p.m.

Recorded by:


Cara McPartland

These minutes approved on the 19th of January, 2017.

APPROVED:





Mac McCullough, Mayor

My name is Al Sander and I own commercial property and a vacation home in the City.

I have two statements and a hand out I would like to go into the record.

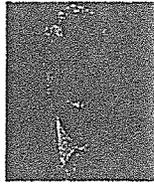
The Hotel Tax is an asset to the City. Funds for promoting Wimberley are scarce if non-existent. The hand out I have given you from the Texas Municipal League explains the use of the collected tax funds. The first element is that the use must fill beds. The second lists 9 statutory categories. Of these 9 possibilities I see many that are appropriate for Wimberley. The article states that monies can be given to the Chamber Of Commerce for use specific to the 9 criteria. This would be an opportunity for advertising our attractions and events to prospective visitors which will increase our sales tax revenues. The monies are paid by our visitors and can be put to good use by or elected officials. As a vacation property owner I feel this is an obligation of the council. Do not to kill the tax for political reasons.

A central sewer system run by the City is desperately needed. Giving up the CCN to Aqua Texas to allow them to be in charge will open the door to uncontrolled development. I own property bordered by RR 12 and Old Kyle Road near the square that is perfect for development. If the CCN is given to Aqua Texas I would only have to get approval from a for profit company that would welcome the revenue from a hotel, an amusement park or other large sewer/water using facility. I would not do this, but I can imagine that when I am long gone my heirs will sell to the highest bidder, who could then do whatever they wished.

Being the owner of both types of property one would think I would be in favor of killing the Hotel tax and having a CCN that would allow for un-bridled development. No, we must start now protecting Wimberley and planning for the inevitable growth that is already affecting other parts of Hays County. Growth will happen, but it needs to be in a controlled fashion regulated by our elected officials who can be held responsible.

Thank You

By Bennett Sandlin
TML Executive Director



The Hotel Tax “Two-Step”



In the grand scheme of things, city hotel occupancy taxes account for just a small amount of city revenue. Property taxes and sales taxes are far more important to most cities. Why does it seem, then, that hotel taxes generate so much confusion and controversy?

The answer is this: hotel taxes, unlike most other taxes, are levied on a specific category of businesses—hotels. As a result, these businesses tend to pay close attention to how cities expend these funds. Spend city sales taxes in a controversial way, and no particular category of business feels singled out enough to raise a fuss. Perceived misuses of hotel taxes, on the other hand, are a different story.

Fortunately, it's very easy for a city official to remember how to legally spend hotel taxes. A city simply needs to remind itself to always follow the “two-part test.” The key element of a two-part test is—surprise—that it has two

parts! Cities frequently remember to meet one element of the test, but then forget the other part entirely. This article will succinctly describe the two-part test, and then describe some common situations to which we can apply the test.

Part 1: Heads in Beds

The first element of the two-part test is this: Every expenditure of hotel taxes must put “heads in beds.” What this means is that every funded project must attract overnight tourists to the city's hotels and motels, thus promoting the city's hotel industry.

For example, how about a weekend-long arts and crafts show? There's a very good chance that out-of-town guests might come to visit such an event, so expenditure of hotel tax money on that event would likely qualify.

On the other hand, how about a quilting bee at a local nursing home? While a worthy cause, the quilting bee is unlikely to attract overnight tourists and, therefore, probably wouldn't qualify to receive hotel tax funds.

Part 2: The Nine Categories

Once a project has cleared the first part of the test, it's time for—you guessed it—the second part of the test. Here it is: every expenditure of hotel taxes must *also* fit into one of nine statutorily authorized categories. These are the nine categories: (1) convention and visitor centers; (2) convention registration; (3) advertising the city; (4) promotion of the arts; (5) historical restoration and preservation; (6) sporting events in a county under one million in population; (7) enhancing or upgrading existing sports facilities or sports fields (only in certain cities); (8) tourist transportation systems; and (9) signage directing the public to sights and attractions that are visited frequently by hotel guests in the city.

Thus, even if an event puts heads in beds, it cannot receive hotel tax money unless it *also* fits into one of the nine categories. For instance, what about a livestock auction that will attract attendees from surrounding counties? While that event is likely to attract overnight tourists, it doesn't fit neatly into one of the nine categories. Therefore, it's likely not a valid recipient of hotel tax money.

It's not enough to meet one of the two prongs of the two-part test. A city must meet both! The following are some real-life examples that have been the focus of inquiries received by the TML Legal Department.

Fireworks, Anyone?

The prototype hotel tax controversy is an event like a fireworks show or a parade. Cities frequently ask if they can fund a fireworks show with hotel tax money.

Let's subject a fireworks show to the two-part test. Does a fireworks show put heads in beds? The answer is “probably

not," unless it is a truly spectacular event. But let's give it the benefit of the doubt. Suppose the town of Pyrotechnic, Texas, truly does put on a fireworks extravaganza that attracts tourists from around the state. So far, so good.

But what about the second part of the test—the nine categories? Do fireworks shows fit neatly into any of the nine? Not really. Some may argue that such shows "advertise" the city, but this is likely not what that category means. Advertising the city literally means some sort of print or other media that explicitly promote the city. Otherwise, a city could simply say that any popular event "advertises" the city that holds it. Direct funding of fireworks displays and the like are, usually, not a very good fit.

Sign of the Times?

Another frequent question concerns highway signs promoting the city. May a city fund a billboard touting the city's attractions, restaurants, and hotels? Let's put it to the two-part test. Heads in beds? Well, why not? If a billboard encourages motorists to stop in town, those motorists might stay the night, whereas without the sign they would have driven on to the next city. This is exactly what the statute intends. The nine categories? How about advertising? Prior to 2009, a convincing argument could be made that because a billboard literally advertises the city it refers to, it would fit within the advertising category. All doubt was erased in 2009, when the Texas Legislature added the ninth category—signage directing the public to sights and attractions. Conclusion—travel signs are a perfect fit for hotel occupancy tax expenditures.

Chambers of Commerce?

Cities frequently wonder if they can fund the local chamber of commerce using hotel tax money. Do chambers put heads in beds? Maybe, maybe not. Chambers of commerce are typically charged with promoting economic development, not tourism. Even assuming a chamber does promote tourism, though, how about the nine categories? Funding a chamber doesn't, in itself, fall into any of the nine categories.

Fortunately, there is an easy solution. The laws governing hotel tax expenditures permit the city to delegate expenditure of hotel tax money to another entity, typically a chamber or convention and visitor bureau. As long as the chamber spends the money on projects that otherwise meet the two-part test mentioned above, it's fine to delegate some funds to them. There must be a written contract laying out the duties of the chamber, though. Also, the chamber must keep the hotel funds in an account separate from its general operating fund.

Arts Organizations

City arts organizations are a common trouble area. It seems that every arts council in the state knows that promotion of the arts is one of the nine categories on which city hotel taxes may be expended. Cities know this because these arts groups frequently come asking for the money.

The thing to remember about arts groups is this: Direct funding of the organization's operations does nothing in and of itself to put "heads in beds." Put another way, funding the operating budget of an arts council meets the second part of the test (promotion of the arts) but not necessarily the first.

The solution? The city should encourage the group to seek funding only for its festivals and shows that do, in fact, attract tourists to the city. By limiting the expenditure to such events, the city meets both parts of the test.

What Else?

There are numerous other technical details about how to legally expend hotel tax funds. In truth, by simply learning and remembering the two-part test, city officials are 99 percent of the way toward full compliance with hotel tax laws. City officials with questions about the hotel occupancy tax should call the TML Legal Department at 512-231-7400. ★



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TO: The Honorable Mayor Mac McCullough, Members of City Council, Don Ferguson
FROM: Shellye Arnold and Tina Sabuco, Abundance Retreat
DATE: January 4, 2017
SUBJECT: Negative of Wimberley's Hotel – Motel Tax on Abundance Retreat

Dear Mayor McCullough, Members of City Council and Don Ferguson,

First, thank you for your service to our town. We realize what you do is work hard in the public interest and appreciate your dedication to serving your community. —

We are writing today to ask that you repeal the Hotel – Motel Tax (HOT) tax that was adopted by the City of Wimberley in 2015. We have owned and managed Abundance Retreat at 330 Mill Race Lane for over 11 years successfully in Wimberley. We have attracted approximately 4,000 visitors to Wimberley to enjoy our fine galleries, shops, restaurants, creeks, green space and other cultural amenities. This business benefits not only owners of these venues, has a multiplier effect on the economy.

Our July – December revenue is down by 20% compared to our 2014 sales. We can compare only with 2014, because we were affected by the October 2015 floods and closed for repairs and improvements for the end of 2015 and first half of 2016.

We attribute this decline in business to 3 factors:

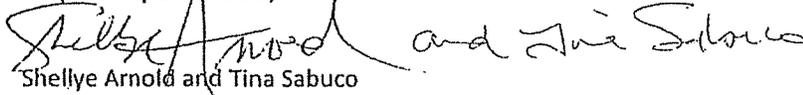
1. The flooding in Wimberley. It may be that some potential visitors avoid Wimberley because of the flooding that took place in 2015 but we do not get that sense for our property.
2. The economy. People are traveling less.
3. The HOT tax. Visitors are clearly more price sensitive than in previous years. While 5% may not appear to be a significant amount to some, we find that visitors are price shopping. The HOT tax drives them away from our business and, we believe, away from Wimberley – at least away from the City center – and we fear away from Wimberley altogether.

Further, we have seen no benefit to our business or to Wimberley of those taxes collected, including the \$4,000 that we have paid.

In the context of the recent flooding, economic challenges, customers' price sensitivity, and desire for Wimberley to remain a competitive market for tourism, we respectfully request that you repeal or at least lower the HOT tax rate to zero immediately to protect the business and public interests of Wimberley.

Thank you for your consideration. I request that Don Ferguson or someone he appoints read this letter in the next City Council meeting.

Respectfully submitted,


Shellye Arnold and Tina Sabuco

Proprietresses
Abundance Retreat
PX Box 1823
Wimberley, Texas 78676