

**City of Wimberley**  
City Hall  
221 Stillwater  
Wimberley, Texas 78676  
**Minutes of Regular Meeting of City Council**  
March 3, 2016 at 6:00 p.m.

City Council meeting called to order at 6:00 p.m. by Mayor Steve Thurber.

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

Councilmembers Present: Mayor Steve Thurber, Councilmembers Bob Dussler, Cindy Anderson, Mac McCullough, Pam Showalter, and John White.

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

### **Citizens Communications**

Wimberley resident Lila McCall expressed concerns regarding City expenditures for items such as road improvements, legal fees, salaries, and the future central wastewater system. She questioned whether the City could do all of this without a tax. She referenced the City's last loan application to the Texas Water Development Board (TWDB), which she stated included a .999 tax, and asked how that money would be allocated. She feared that the City may face bankruptcy and said candidates should not make statements about "no new taxes."

Mayor Thurber clarified the City does not collect property taxes, there is no aforementioned .999 tax, and none are included as part of the City's TWDB loan application.

Dylan Byrne spoke on his Eagle Scout project to build ten (10) bird houses placed at Blue Hole Regional Park and the Patsy Glenn Refuge. He detailed bird house features and construction and noted that some of the houses are already occupied.

City Administrator Ferguson commended Dylan Byrne and his entire family for its support of parks and expressed gratitude for all they do for the community.

### **1. Consent Agenda**

Approval of minutes of the Regular City Council meeting of February 18, 2016

Councilmember McCullough requested discussion of the Consent Agenda. Mayor Thurber pulled the item and opened discussion. Councilmember McCullough stated he was bewildered by the Annual Financial and Compliance Report (for Fiscal Year ending September 30, 2015) presented at Council's last meeting. Mayor Thurber noted that discussion of the Financial Report is not listed on tonight's agenda, but could be placed on a future agenda. Councilmember McCullough felt the Financial Report is wrong and needs to include flood-related debts incurred

by the City. Mayor Thurber advised Councilmember McCullough to request a future agenda item on this matter.

Councilmember White moved to approve the minutes, as presented. Councilmember Showalter seconded. Motion carried on a vote of 4-1. Councilmember McCullough voted against.

## 2. Presentations

- A. Presentation by representatives of the Wimberley Independent School District (the "WISD") relating to current and future capital improvement projects. (*WISD Superintendent Dwain York*)

Superintendent York briefed Council on the status of WISD's lawsuit involving Joeris Construction and referenced his Wimberley View article on that subject. He said he wanted to set the record straight and provided details on certain issues, including reasons for withholding payments to Joeris. He cited specific problems encountered throughout the project, such as lack of on-site crews, workmanship issues, lengthy time delays, and associated negative impact to students and faculty. He provided information on House Bill 5, WISD's 2016 Bond Election propositions, efforts to build a career/technical education center, savings from refinancing of debt, and needed campus/transportation improvements. Superintendent York thanked the City of Wimberley for helping WISD throughout the permitting process and facilitating the timely opening of the school year.

Councilmember McCullough spoke of his personal knowledge of problems with school buses and their ongoing maintenance and operation.

Mayor Thurber thanked Superintendent York for his presentation.

- B. Presentation by representatives of *CASA of Central Texas* regarding *CASA* activities. (*David Junkin, CASA of Central Texas*)

Court Appointed Special Advocates (CASA) representative David Junkin spoke on CASA's mission and vision to provide volunteer advocates for neglected and abused children in the court system. He distributed statistical information to Council on the need for CASA's services.

CASA volunteer advocate Bob Williams spoke on the advocate's role and responsibilities as guardian ad litem in aiding the both the judge and neglected/abused child in achieving an outcome in the best interest of the child. He said this is the most challenging job he has ever had and conveyed anecdotal information illustrative of typical issues faced by abused children in the court system. He stated that CASA and all advocates are extensively trained to fight for kids who have been dealt the worst cards in life.

CASA Development Director Tricia Schneider distributed a handout to Council on CASA, including its history, mission, vision, increasing need for services, training/support programs, gifts/contributions, and capital campaign to build a permanent training and support center. She asked for consideration of the following: a letter of support and financial contribution from the

City of Wimberley, and for financial contributions/advocate volunteers from the community-at-large.

Discussion addressed monitoring, statistics, and analysis relating to the increased number of abuse/neglect cases and CASA's caseload. Mayor Thurber thanked CASA representatives for their presentation and service.

Mayor Thurber called a brief recess at 7:06 p.m. and reconvened the meeting at 7:13 p.m.

### **3. City Administrator Report**

- Status report on the Central Wimberley Wastewater Project

City Administrator Ferguson reported that the City's loan application to the Texas Water Development Board (TWDB) is expected to be considered at the Board's March 21<sup>st</sup> meeting. He noted the projected loan amount of \$5,200,000 would be paid over a 30-year period. He stressed that this is a revenue bond and debt is committed to be repaid through system revenue from customers and purchase of system water for reuse. He said the City's website will be updated to reflect the latest information and timeframe on the proposed wastewater project. Discussion addressed possible reasons for delays, comparison of funding for the planning/design and construction phases of the project, and posting of the finalized loan application on the City's website.

- Status report on the upcoming City of Wimberley General Election on May 7, 2016

City Administrator Ferguson reported on the drawing held earlier this week to determine the ballot order of candidate names, early voting dates, and polling place at the Wimberley Community Center.

- Status report on the Merritt Starlight Senior Housing Project

City Administrator Ferguson reported that Merritt Starlight has submitted its loan application and anticipates a decision in June 2016. He advised that Merritt Starlight has also submitted a zoning application to the City to amend its existing Wimberley Planned Development District (WPDD) agreement, with public hearings tentatively scheduled for April. He noted that State Representative Jason Isaac has issued a letter in support of the project.

- Status report on 2015 Flood Recovery

City Administrator Ferguson reported that an application has been submitted for Community Development Block Grant funds to help disaster-impacted communities offset matching costs. He said that more disaster relief money has been released for the State of Texas, which will be allocated by the State and used for a wide range of disaster-related expenditures.

He reported that an event is planned to mark the one-year anniversary of the 2015 Memorial Day Weekend Flood and Mayor Thurber provided details on the event to be held Saturday, May 21, 2016 from 10 a.m. to 2 p.m. at Blue Hole Regional Park.

City Administrator Ferguson reported that this Sunday, March 6<sup>th</sup>, marks the public release of the book titled *Wimberley: Epic Flood Tests a Small Town's Strength*, at the Wimberley Village Library. He also thanked Tom Keyser of My Neighbor's Keeper for being a leader in flood recovery.

#### 4. Ordinances

- A. Consider approval of an ordinance of the City of Wimberley, Texas amending City of Wimberley Ordinance No. 2006-010, "Code of Ethics," to prohibit the disclosure of confidential information obtained during Executive Session; and providing for the following: findings of fact, savings, severability, repealer, effective date, and proper notice and meeting. (*City Administrator*)

City Administrator Ferguson provided examples of the occasional need to allow confidential discussion of matters in order to protect the interests of the City, such as pending litigation, personnel, real estate transactions, economic development, or zoning actions. He stated the ordinance would amend the City's Ethics Ordinance to prohibit City officials from disclosing confidential information discussed in executive session.

Councilmember McCullough said "this is the scariest ordinance we've ever generated" which says "a judge would have to compel me to reveal what we talked about in there." He said it is even scarier because we cannot share how decisions are developed or justified.

Mayor Thurber disagreed because discussion and action taken in open session is made available to the public in the form of audio recordings posted on the City's website and as written minutes. He stated that public disclosures of matters such as lawsuit settlements and economic development that were discussed in executive session puts negotiations in jeopardy.

Councilmember McCullough asked for examples of how the City has been materially harmed by such disclosures and said this ordinance is a leap too far that "just goes counter to anything that we locally want to know about and think we should have access to."

Discussion among Councilmembers Dussler, Anderson, and White indicated they held the perception that disclosure of confidential information was already prohibited under State law. City Administrator Ferguson clarified that officials are strongly encouraged not to disclose confidential information, but there is not a law prohibiting such disclosure. He stated that random discussions on the street could harm the City's position in the negotiation process. Councilmember Showalter felt strongly that when elected to represent the majority of the community and legal counsel advises that discussion outside of executive session might harm negotiations it is assumed that those disclosures are already prohibited. Councilmember White also said he was under the false assumption there was a State law on this issue. He felt this "is a

superfluous ordinance written for something that everyone here should know” and did not see the need for it.

Mayor Thurber felt that having a law prohibiting disclosure makes it more difficult to do so and Councilmember McCullough said that “if you have no ethics you’re going to talk anyway.”

Councilmember McCullough felt it would be hard to defend oneself before the Ethics Commission against charges that are almost invariably politically or spite-driven. He said it would be a witch hunt and made the motion to reject the ordinance with prejudice. Councilmember White seconded.

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

Councilmember McCullough moved to table this item until June in order to take it out of the political arena. Councilmember White seconded.

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

Councilmember Showalter moved to approve the ordinance, as presented. Councilmember Anderson seconded.

Mayor Thurber called for a vote as follows: Councilmember Dussler, aye; Councilmember Anderson, aye; Councilmember McCullough, nay; Councilmember Showalter, aye; and Councilmember White, nay. Motion carried on a vote of 3-2.

- B. Consider approval of an ordinance of the City of Wimberley, Texas, amending Title XV (Land Usage), Chapter 151 (Building Regulations; Construction), Section 151.100 (Temporary Structures) of the City of Wimberley Code of Ordinances to permit mobile food vendors in the Village Center Overlay; and providing for the following: findings of fact, savings, severability, repealer, effective date, and proper notice and meeting. (*City Administrator*)

City Administrator Ferguson explained current regulations for temporary commercial structures and certain provisions of the proposed ordinance, including permitting/inspection/restroom requirements and Council authorization.

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

- C. Consider approval of the second and final reading of an ordinance of the City of Wimberley, Texas, amending Title III (Administration), Section 35.01 (Fee Schedule) of the Code of Ordinances to amend Subsection (D) (Zoning Schedule of Fees) to add an

application fee to amend approved conditional use permit ordinances; 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 that the proposed ordinance, drafted per Council's previous direction, would establish a flat fee of \$100 for CUP amendments.

Councilmember Anderson moved to approve the ordinance on second and final reading, as presented. Councilmember Showalter seconded. Motion carried on a vote of 5-0.

## 5. Discussion and Possible Action

- A. Discuss and consider possible action regarding a proposed compliance policy relating to pre-existing non-conforming short term rental facilities. (*City Administrator*)

City Administrator Ferguson reported that the recent enforcement effort to identify existing short-term rental operations that are operating in violation of the City's Zoning Code has identified approximately thirty (30) properties that need to be brought into compliance. He advised most of the subject property owners have expressed willingness to cooperate and bring their operations into compliance. He noted that to obtain "grandfather" status, a property owner must present evidence (such as affidavit, receipts, etc.) that their short-term rental has been in continuous operation since before April 5, 2001. Due to the large number and age of non-compliant short-term rentals, he recommended the following policy, which would apply only to those existing short-term rental operations identified in the current enforcement effort:

*Short-term rental operations found to be non-compliant must either secure a "grandfather" designation as pre-existing non-conforming use or obtain a Conditional Use Permit (the "CUP"). The application fee for a CUP shall be \$100. To secure a "grandfather" designation from the City, a property owner must provide an affidavit indicating they have owned the subject property for at least five (5) years and the short-term rental has been in continuous use since they have owned the property. In addition, they must provide signed approval forms from the property owners within two-hundred (200) feet of the subject property indicating they do not oppose the operation of the existing short-term rental.*

Mayor Thurber agreed that five (5) years is a more reasonable option for proving grandfathered status than fifteen (15) years. He stated that requiring approval from one hundred percent (100%) of property owners within two hundred feet (200') of the subject property may be too onerous and requested Council's input.

Council discussion addressed requiring approval from property owners within 200-feet of the subject property versus requiring approval only from adjacent property owners; the limited number of complaints received on short-term rentals; and, the public hearing process for CUPs.

City Administrator Ferguson recommended addition of the following provisions to the policy: If there have been no complaints on the short-term rental operation, the property owner may seek to

secure grandfathered status in accordance with the aforementioned policy; if there have been complaint(s) on the short-term rental operation, the property owner must apply for a CUP.

Councilmember McCullough move to approve the policy, as presented, including the addition of City Administrator Ferguson's recommended provisions, as stated above. Councilmember White seconded. Motion carried on a vote of 5-0.

- B. Discuss and consider possible action approving a professional services agreement with Bury Inc. for design and construction oversight of the Hidden Valley low water crossing in Wimberley, Texas. (*City Administrator*)

City Administrator Ferguson reviewed the proposed agreement for design and construction of the Hidden Valley low water crossing for an approximate cost of \$269,000, with project completion estimated in about six (6) months. He noted that certain environmental and geotechnical issues must be addressed and that design of the one-lane crossing will be in accordance with neighborhood input. Discussion addressed details of insurance coverage for the project and the likelihood that future premiums will increase.

Councilmember McCullough moved to approve the agreement, as presented. Councilmember Anderson seconded. Motion carried on a vote of 5-0.

- C. Discuss and consider possible action regarding proposed *Fiscal Year 2016 Street Improvement Projects*. (*Mayor Steve Thurber*)

Mayor Thurber explained that \$100,000 is included in the FY 2016 City Budget for this item and noted there is an additional \$100,000 available from excess Fund Balance that may be used for street improvements. He presented the following priority street improvement projects, as recommended by the Transportation Advisory Board:

<i>Project</i>	<i>Construction</i>	<i>Design</i>	<i>Total Cost</i>
La Buena Vista	\$36,888	\$5,533	\$42,421
Stadium Drive	\$75,000	\$11,250	\$86,250
Little Ranches	\$217,356	\$32,603	\$249,959

Councilmember McCullough said he would like to wait on Stadium Drive and asked if there has been discussion of this project with WISD Superintendent Dwain York. City Administrator Ferguson replied affirmatively and stated that Superintendent York recognizes the benefit of the project, with design details to be worked out among WISD, the City's Transportation Advisory Board, and City Council before any improvements are made.

Councilmember White moved to proceed with improvements for La Buena Vista and Little Ranches. Councilmember Anderson seconded. Motion carried on a vote of 5-0.

Councilmember White moved to proceed with planning efforts for Stadium Drive, including discussions with WISD. Councilmember McCullough seconded. Motion carried on a vote of 5-0.

Brief discussion addressed drainage issues in specific areas and possible budgeting for a drainage study.

- D. Discuss and consider possible action regarding a request to operate a food service trailer at 14306 Ranch Road 12 in Wimberley, Texas. (*City Administrator*)

City Administrator Ferguson presented a request by Robert Evers to operate a food service trailer serving barbecue and beverages at the “Y” shopping center location at 14306 Ranch Road 12.

Councilmember White moved to approve the request, as presented. Councilmember Showalter seconded.

Discussion established that adequate restroom facilities exist for the proposed food service operation.

Motion carried on a vote of 5-0.

- E. Discuss and consider possible action approving plans for an upcoming food and music festival on Saturday, April 2, 2016 at 111 Old Kyle Road in Wimberley, Texas. (*City Administrator*)

City Administrator Ferguson provided details on event date/time and activities, including food trucks and acoustic performances by local musicians. To meet restroom needs, organizers will rent a restroom trailer and park it on the property. He noted it is possible a local brewery will provide craft beer samples as part of the event, which would require the organizers to provide on-site security and insurance. He recommended approval of the plans and advised that the property owner, Buck Baccus, is present to answer any questions.

Mr. Baccus spoke on specific vendors and events, including yard games and music. He hoped the event will increase area business activity.

Councilmember Showalter moved to approve the plans, as presented. Councilmember Anderson seconded. Motion carried on a vote of 5-0.

## **6. City Council Reports**

- Announcements
- Future Agenda Items

Councilmember McCullough requested clarification on reasons for delays in the TCEQ permitting process and asked to see the TWDB revenue bond documents, which are being finalized. City Administrator Ferguson advised that he can forward draft documents. Councilmember McCullough also asked for verification of cost estimates and whether or not those estimates contain an engineer’s seal.

As a future agenda item, Councilmember McCullough requested review of the City’s FY 2015 Annual Financial and Compliance Report due to concerns regarding the reflection of the City’s

flood-related debt. City Administrator Ferguson clarified that this issue was discussed with the auditors and there is not a known value at this time on what the debt could potentially be. Mayor Thurber provided information on disclosing contingent liabilities, but stressed the amount of liability is not yet known. Councilmember Showalter requested that this matter be placed on a future agenda so that Council may discuss it before the public and Councilmember Anderson expressed agreement.

Councilmember Showalter requested a letter of support for CASA (*see Agenda Item 2B above*) as a future agenda item.

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

**Adjournment:** Council meeting adjourned at 8:32 p.m.

Recorded by:

  
Cara McPartland

These minutes approved on the 17<sup>th</sup> of March, 2016.

**APPROVED:**

  
Steve Thurber, Mayor

