

**City of Wimberley**  
City Hall  
221 Stillwater  
Wimberley, Texas 78676  
**Minutes of Regular Meeting of City Council**  
March 19, 2015 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 Tom Talcott, Cindy Anderson, Matt Meeks, and John White. Councilmember Pam Showalter was absent.

Staff Present: City Administrator Don Ferguson and City Attorney Brad Young

### **Citizens Communications**

No citizen comments were heard.

#### **1. Consent Agenda**

- A. Approval of minutes of the Regular City Council meeting of March 5, 2015
- B. Approval of minutes of the Special City Council meeting of March 12, 2015
- C. Approval of the February 2015 Financial Statements for the City of Wimberley

Councilmember White moved to approve all Consent Agenda Items, as presented. Councilmember Meeks seconded. Motion carried on a vote of 4-0.

#### **2. City Administrator Report**

- Status report on the Central Wimberley Wastewater Project

City Administrator Ferguson thanked Council for attending the March 12<sup>th</sup> public meeting held by Texas Commission on Environmental Quality (TCEQ) and reported that TCEQ is wrapping up its documentation of comments from the meeting.

- Status report on the Cypress Creek gravel removal project

City Administrator Ferguson reported on the timeframe and location for completion of remaining removal work, subject to weather conditions.

- Status report on the operation of the Blue Hole Regional Park

City Administrator Ferguson reported on preparations for the upcoming summer season, including the Concert in the Park Series to be held every Friday night in April. He advised that hiring is underway for seasonal park staff and anticipated increased wedding rental activity. He stated that “Plant the Park Day” is scheduled for this weekend, weather permitting. It was noted that discussions are underway on the possible formation of a “friends of the trail” organization to help maintain the regional hike and bike trail.

- Status report on the Transportation Advisory Board’s Community Outreach Program regarding street improvements

City Administrator Ferguson anticipated that the next neighborhood meeting for the northwest side of Wimberley will be held during the last week of this month.

- Status report on the implementation of the Hands-Free Ordinance

City Administrator Ferguson reported that sign locations are being identified and a community outreach effort will be launched to inform and educate the public on the ordinance. He noted that enforcement will begin on June 1<sup>st</sup>.

In addition, City Administrator Ferguson reported on the resignation of City Marshal James Loving and the promotion of City Secretary Cara McPartland to the position of Assistant City Administrator. It was noted that Ms. McPartland will continue to serve as City Secretary.

Mayor Thurber thanked Council members for attending TCEQ’s March 12<sup>th</sup> public meeting.

### **3. Ordinance**

Consider approval of an ordinance of the City of Wimberley, Texas providing for daily discharge standards for the City’s proposed wastewater treatment plant; and providing for the following: findings of fact, savings, severability, repealer, effective date, and proper notice and meeting. *(Mayor Steve Thurber)*

This item was heard after Agenda Item 4B.

Mayor Thurber favored the ordinance as a good faith effort to inform the public of Council’s commitment to previously stated discharge standards. City Administrator Ferguson noted a key provision of the ordinance requiring that the parameters for “discharge as a last resort” language also be included in any third-party operating agreement for the treatment plant, which would contractually bind the contractor to adhere to requirements as set forth in the ordinance.

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

Councilmember Talcott requested review of the ordinance and City Administrator Ferguson read Section II (Daily Discharge Standards) of the ordinance, as presented in Council’s packet.

Councilmember Talcott stated “I don’t believe we should be dumping at all and there should be some other way that we should take care of it, even though this is an interim ordinance.”

Hearing no further discussion, Mayor Thurber called for a vote.

Motion carried on a vote of 3-1, with Councilmember Talcott voting against.

#### **4. Discussion and Possible Action**

This item was heard after Agenda Item 2.

- A. Discuss and consider possible action authorizing the City Administrator to enter into a professional services agreement with the law firm of *Bickerstaff Heath Delgado Acosta, LLP* to provide legal representation for the City of Wimberley in matters relating to TPDES Permit No. WQ0013321001. (*City Administrator*)

City Administrator Ferguson reported that due to multiple requests for a contested case hearing, the City will require specialized legal representation to be provided by Emily Rogers of *Bickerstaff Heath Delgado Acosta, LLP*. He estimated that the cost of litigation to the City may range from \$60,000 up to \$170,000, dependent upon certain criteria. He advised that additional costs may be incurred for expert witness testimony. City Administrator Ferguson noted that City Attorney Brad Young is present at tonight’s meeting and recommended approval of the agreement. Mayor Thurber stated that Emily Rogers will endeavor to minimize costs by delegating duties whenever possible.

Councilmember Talcott requested that Council further discuss the permitting process, including discussion of a land use permit, before committing money for legal representation. He felt that changing the kind of permit would avoid the need for contested case hearings and satisfy those who spoke against the draft permit at the TCEQ public meeting.

Mayor Thurber favored engaging legal counsel and noted the City will only incur costs for services rendered, should there be resolution of issues without protracted litigation.

City Administrator Ferguson explained the draft permit review process, challenges to the permit by those who have requested contested case hearings, and possible costs of litigation to all parties. He noted that Council may hold further discussions, as requested earlier by Councilmember Talcott, but cautioned Council to heed legal advice on the parameters of those discussions, given that the City has been noticed on the requests for contested case hearings and faces pending litigation.

Councilmember Talcott announced that he will be recusing himself from any executive sessions on this matter, since he has an expressed an “opposite stance.”

Mayor Thurber directed Council to address the agenda item at hand regarding approval of a professional services agreement with *Bickerstaff Heath Delgado Acosta, LLP* and advised that an executive session will be called for the next agenda item (Item 4B).

Councilmember White asked for clarification on the City's responsibility for legal costs incurred by those opposing the draft permit, should the City's permit be denied. City Attorney Brad Young replied that he would follow up with an answer to City Administrator Ferguson.

Hearing no further discussion, Mayor Thurber entertained a motion.

Councilmember White moved to approve authorizing the City Administrator to enter into a professional services agreement with the law firm of *Bickerstaff Heath Delgado Acosta, LLP* to provide legal representation for the City of Wimberley in matters relating to TPDES Permit No. WQ0013321001. Councilmember Anderson seconded. Motion carried on a vote of 4-0.

- B. Discuss and consider possible action regarding advice from the City's legal counsel on matters relating to TPDES Permit No. WQ0013321001. (*City Administrator*)

Mayor Thurber adjourned Open Session and convened Executive Session at 6:18 p.m. pursuant to §551.071 of the Texas Government Code for consultation with legal counsel.

Councilmember Talcott recused himself from Executive Session for the abovementioned reason expressed in Agenda Item 4A.

Mayor Thurber adjourned Executive Session and reconvened Open Session at 6:50 p.m.

No action was taken in Executive Session.

Councilmember Anderson moved to authorize staff to work with legal counsel, as discussed in Executive Session. Councilmember White seconded. Motion carried on a vote of 3-0-1. Councilmember Talcott abstained.

- C. Discuss and consider possible action regarding a proposed registration program for pre-existing, non-conforming off-premise signage located in the corporate limits and E-T-J of the City of Wimberley. (*Place Four Councilmember Pam Showalter*)

This item was heard after Agenda Item 3.

Mayor Thurber requested that action on this item be continued until Councilmember Showalter is in attendance.

Councilmember Meeks moved to continue the item, as requested.

City Administrator Ferguson recommended that Council consider this item for discussion only, since Councilmember Showalter is not present.

City Administrator Ferguson provided background information on the history of billboard signs Ranch Road 12, associated complaints about those signs, and their pre-existing, non-conforming (or "grandfathered") status. He explained that the faces/messages of grandfathered signs can be changed; however, the signs cannot be relocated, reconstructed, or made larger. As the majority

of the signs are within city limits, most are subject to City, rather than State regulations. He explained current laws requiring compensation to sign owners for signs that are removed by the City. Another approach would propose that the subject grandfathered signage be registered with the City and meet specific criteria providing proof of grandfathered status or face possible removal. He felt this approach gives sign owners adequate opportunity to justify the non-conforming sign's existence, while addressing numerous concerns received on a regular basis about the signs. City Attorney Brad Young recommended that the City conduct a complete and current inventory of non-conforming signs as part of an overall effective enforcement plan.

Discussion addressed documentation of signage to include photos, affidavits, or other evidence confirming or not confirming grandfathered status. City Administrator Ferguson explained there will be a process in place for those wishing to appeal a sign removal determination. City Attorney Brad Young favored allowing flexibility for sign owners to submit different types of proof of grandfathered status.

Councilmember Talcott asked which party has the burden of proof and City Attorney Young replied that the sign owner, not the renter, is responsible for providing such proof.

No action was taken on this item.

- D. Discuss and consider possible action regarding the future response of the City of Wimberley to the plans of Electro Purification (EP) to drill wells and export 5.3 million gallons of groundwater each day from the Middle Trinity Aquifer, northeast of Wimberley, in Hays County. *(Place One Councilmember Tom Talcott)*

Before speaking on this agenda item, Councilmember Talcott stated: "The reason I recused myself is because I voted against the current permit and because I don't want really to have effluent being pumped into the creeks. I just wanted to clarify that."

Councilmember Talcott recognized Wimberley's active voice in opposition to EP's drilling of wells, but noted that State Representative Jason Isaac rented the Wimberley Community Center for a public meeting on this issue, without any formal notification or invitation to the City.

Councilmember Talcott presented information on the following:

- EP's well field location
- EP's potential customers
- Actions taken by State Representative Isaac to date to help prevent EP's planned drilling and export of groundwater
- Negative effects on private residential wells, aquifer levels, and local water features such as Jacob's Well, Cypress Creek, and possibly lowering of the water level at Blue Hole
- Although Wimberley residents could be negatively affected, elected bodies at the local, county, and state levels are currently unable to regulate EP's proposed drilling and pumping operation

- Possible solution to incorporate the currently unincorporated area affected by the well field as a municipality, in order to gain land use and development authority over the subject area
- In the interim, the City could extend its borders to the point where its E-T-J reaches the area of the well field and thereby restrict or make it difficult for EP to carry out its plan, as proposed
- Details on voluntary annexation procedures, including Council action needed for each of properties affected
- Plans for various suits against EP and legislative bills filed to date

Councilmember Anderson questioned whether annexation, if accomplished, could prevent EP from finding another unregulated area nearby and proceeding with its plan. City Administrator Ferguson stated that property owners in the well field area can start a petition to hold an election to incorporate, which if approved by voters, would provide zoning control and permitting/franchising authority. He explained current condemnation powers of municipalities/municipal utility districts (MUDs) and proposed legislation to limit certain jurisdictions' condemnation capabilities. Multiple annexation case scenarios were explained that would extend the City's boundaries/E-T-J far enough to reach the proposed well field area, as well as possible modifications to existing regulations that would address EP's planned groundwater drilling and pumping.

Discussion addressed studies and analyses of data on groundwater to better gauge the impact of pumping from the aquifer; annexation procedures, including strip annexations; ability of subject property owners to incorporate; timeframe for incorporation process; possible legal actions against EP; interest in property owners to either petition for annexation into the City or to initiate steps to incorporate as a municipality; and the City's authority within its E-T-J.

Councilmember Talcott moved to invite property owners between the City of Wimberley and Ranch Road 150 to an informational meeting for the purpose of discussing the possibility of voluntary annexation to help protect our water. Councilmember Anderson seconded. Motion carried on a vote of 4-0.

- E. Discuss and consider possible action approving the 2014-2015 Health Insurance Benefit Package from the Texas Municipal League Intergovernmental Employee Benefits Pool.  
(*City Administrator*)

City Administrator Ferguson cited a three percent (3%) increase in the City's cost for employee medical insurance and a seventeen percent (17%) for employee dental insurance coverage. Similar rate adjustments are called for in employees' costs for dependents' coverage, which are not incurred by the City.

Brief discussion established that this is the first rate increase the City has experienced since joining the benefits pool two (2) years ago and that the proposed rate increase applies only to the 2014-2015 Health Insurance Benefit Package.

Councilmember Talcott moved to approve the 2014-2015 Health Insurance Benefit Package from the Texas Municipal League Intergovernmental Employee Benefits Pool, as presented. Councilmember Meeks seconded. Motion carried on a vote of 4-0.

- F. Discuss and consider possible action regarding the proposed development and use of an email notification system to provide information to the public regarding meetings, projects and other information relating to the City of Wimberley. (*Place Two Councilmember Cindy Anderson*)

Councilmember Anderson proposed the use of an email notification system for the purpose of informing the public of City- or community-wide events of interest. Noting previously expressed concerns regarding an electronic community message board, Councilmember Anderson stated that such an email notification system is an effective, inexpensive option to communicate with residents and provided details on the sign-up process, options to subscribe/unsubscribe, and estimated monthly costs. She felt that the system would be appropriate for notification of events such as elections, town hall/public meetings, and school closures. She did not recommend use of the system for messages related to special interest groups.

Discussion addressed use of the proposed email notification system in conjunction with the City's current notification system; possible mail-out of postcards to all residents on initial sign-up option; importance of electronic communications to enhance existing public information efforts; social media such as Facebook and Twitter; adoption of a policy on the proposed email notification system; examples of appropriate types of messages; and ability of email recipients to unsubscribe at any time. Mayor Thurber advised that Councilmember Anderson and staff may work on policy development and implementation and present to Council for future action.

## 5. City Council Reports

- Announcements
- Future Agenda Items

Mayor Thurber wished former City Council member Dick Larson a speedy recovery.

City Administrator Ferguson reported on anticipated rainfall of at least two to five inches over the next few days.

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

**Adjournment:** Council meeting adjourned at 7:38 p.m.

Recorded by:

  
Cara McPartland

These minutes approved on the 2<sup>nd</sup> of April, 2015.

**APPROVED:**

  
**Steve Thurber, Mayor**

