

ORDINANCE NO. 2011- 014

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, AMENDING CHAPTER 155 (ZONING), SECTION 155.106 (NON-CONFORMING USES AND STRUCTURES) OF THE CODE OF ORDINANCES TO ADD ADMINISTRATIVE PROVISIONS REGARDING NON-CONFORMING USES AND STRUCTURES; AND PROVIDING FINDINGS OF FACT, A REPEALING CLAUSE, TO PROVIDE A SAVINGS AND SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Wimberley ("City Council") seeks to provide for the orderly arrangement and regulation of compatible uses within its corporate limits; and,

WHEREAS, in the course of reviewing the proposed amendments detailed in this Ordinance, the Planning and Zoning Commission and City Council have given careful consideration to the unique qualities of the City, including the demographics of its inhabitants, the City's history, geography, natural resources, existing structures, property values, workforce, education levels, commercial base, surrounding communities, public facilities and infrastructure; and,

WHEREAS, further the P&Z and Council have considered, among other things, the character of each zoning district and its peculiar suitability for the particular uses; with a view of conserving property values and encouraging the most appropriate use of land in the City; and,

WHEREAS, the regulations established by this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City; and,

WHEREAS, the following enactments are a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to Texas Local Government Code Chapters 51, 52, 211 and 213; and,

WHEREAS, the City Council finds that the provisions of this Ordinance will serve to promote the public health, safety, morals and general welfare; and,

WHEREAS, parties in interest and citizens have had an opportunity to be heard at numerous public hearings conducted by the Planning and Zoning Commission and City Council, notice of which was published in the City's official newspaper before the 15th day before the first public hearing and agendas for each hearing were posted at City Hall more than seventy-two (72) hours prior to the respective hearing.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, THAT:

Section 1. Findings. All of the above premises are hereby found to be true and correct

legislative and factual findings of the City of Wimberley and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. Amendment.

THAT the City of Wimberley Code of Ordinances, Title XV (Land Usage), Section 155.106 (Non-Conforming Uses and Structures) is hereby amended to insert the following language as subsection (C) and re-letter the remaining subsections accordingly:

“(C) Proof of status; Administrative provisions.

- (1) Evidence. The property owner or user claiming non-conforming status under this section has the burden to prove such non-conforming status by a preponderance of evidence by submission of written evidence to include but not limited to sworn affidavits, legally filed plats, sales, use, income and occupancy tax records, building and on-site sewage facility permits, construction receipts, or any other information requested by the City Administrator to prove the structure’s or use’s non-conforming status.
- (2) The applicant may appeal a decision of the City Administrator to the Board of Adjustment in accordance with the procedure set forth in section 155.108 (Board of Adjustment; Variances and Appeals).
- (3) Conditions. The Board of Adjustment may adopt any conditions it considers necessary when it issues an order concerning a nonconforming use.”

Except as expressly amended herein, the Wimberley Code of Ordinances shall remain in full force and effect.

Section 3. All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed, but only to the extent of any such conflict.

Section 4. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Ordinances as a whole.

Section 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

Section 6. Open Meetings. That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act, Capt. 551, Loc. Gov’t. Code.

PASSED AND APPROVED ON FIRST READING this 7th day of April, 2011, by a vote of 5 (Ayes) to 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

PASSED AND APPROVED ON SECOND READING this 21st day of April, 2011, by a vote of 5 (Ayes) to 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY, TEXAS

Bob Flocke

Bob Flocke, Mayor

ATTEST:

Cara McPartland

Cara McPartland, City Secretary

APPROVED AS TO FORM:

Carolyn J. Crosby

Carolyn J. Crosby, City Attorney

