

ORDINANCE NO. 2011- 015

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, AMENDING CHAPTER 155 (ZONING), SECTION 155.092 (PROTECTED WATERWAY OVERLAY DISTRICT; PW) OF THE CODE OF ORDINANCES TO ALLOW FOR THE UPGRADE OR REPLACEMENT OF EXISTING NON-CONFORMING COMMERCIAL SEPTIC SYSTEMS; AND REQUIRE THE SUBMISSION AND APPROVAL OF A SITE DEVELOPMENT PERMIT PRIOR TO CONSTRUCTION OR DEVELOPMENT ON PROPERTY WITHIN THE PW OVERLAY DISTRICT; 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, it is the interest of the City's public health and safety to ensure septic tanks and systems are properly functioning and operational, and septic systems that fail can pose a health and environmental risks to property and waterways within the overlay area; and,

WHEREAS, currently there is no public sanitary system for property owners to connect to; 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.

- A. **THAT** the City of Wimberley Code of Ordinances, Title XV (Land Usage), Section 155.092(D) (Protected Waterway Overlay District; PW) is hereby amended to add subsection (7) to read as follows:

“(D)(7) Non-conforming commercial septic systems. A non-conforming commercial septic system is defined as a commercial septic system (including septic tanks and appurtenances to the system) located on real property within the PW Overlay, regardless of zoning of such property that was in use prior to April 1, 2001 and since such date. Notwithstanding the provisions of section 155.106 (Non-conforming Uses and Structures), a non-conforming commercial septic system may be upgraded or replaced in its entirety, only if the following conditions are met:

- (a) A certified inspector has determined that the non-conforming commercial septic system must be upgraded or replaced due to the system failing, constitutes a health hazard and can no longer be repaired in a feasible manner; and,
- (b) All state and local laws and regulations are complied with, including application for a permit and inspection of the new septic system; and,
- (c) Expansion of capacity of the septic system is not permitted to allow for excess capacity of the existing non-conforming commercial system attributable to additional uses on the property after the septic system became non-conforming.
- (d) A public wastewater system does not exist. If a public system exists then connection to the public system shall be required in accordance with applicable city ordinances, and a non-conforming commercial septic system may not be upgraded or replaced.”

- B. **THAT** the City of Wimberley Code of Ordinances, Title XV (Land Usage), Section 155.092(D) (Protected Waterway Overlay District; PW) is hereby amended to add subsection (8) to read as follows:

“(D)(8) Prior to commencement of any construction permitted by this subsection, or commencement of development as defined in section 156.010 of the Water Quality Protection Ordinance, as may be amended from time to time, the property owner shall apply for and obtain the approval of a site development permit. The requirements and process for approval for a site

development shall be the same as set forth in section 155.077 (Development Plan Review).”

C. **THAT** the City of Wimberley Code of Ordinances, Title XV (Land Usage), Section 155.092(E)(2) (Protected Waterway Overlay District; PW) is hereby amended to read as follows:

“(E)(2) *Septic tanks.* Except as expressly provided for under division (D)(4) and (D)(7) of this section, septic tanks and septic tank drainfields are prohibited within the PW district;”

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.

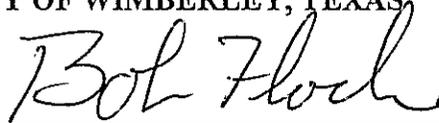
Section 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

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, Mayor

ATTEST:

Cara McPartland
Cara McPartland, City Secretary

APPROVED AS TO FORM:

Carolyn J. Crosby
Carolyn J. Crosby, City Attorney

