

ORDINANCE NO. 2012-003

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS AMENDING CHAPTER 155 (ZONING) OF THE CODE OF ORDINANCES, SECTION 155.005 (DEFINITIONS) TO ADD THE DEFINITION OF “PERSONAL CARE HOME”; AND AMENDING SUBSECTION (C) OF THE FOLLOWING SECTIONS: § 155.035 RESIDENTIAL ACREAGE (RA); § 155.036 RURAL RESIDENTIAL 1 (R-1); § 155.037 SINGLE-FAMILY RESIDENTIAL 2 (R-2); § 155.038 SINGLE-FAMILY RESIDENTIAL 3 (R-3); § 155.039 SINGLE-FAMILY RESIDENTIAL 4 (R-4); § 155.040 TWO-FAMILY RESIDENTIAL (DUPLEX) (R-5); § 155.041 MULTI-FAMILY RESIDENTIAL 1 (TRIPLEX/QUADRIplex/APARTMENTS) (MF-1); § 155.042 MULTI-FAMILY RESIDENTIAL 2 (APARTMENTS) (MF-2); § 155.045 OFFICE-LOW IMPACT (O-1); §155.047 COMMERCIAL – LOW IMPACT(C-1); §155.048 COMMERCIAL-MODERATE IMPACT (C-2); §155.049 COMMERCIAL - HIGH IMPACT (C-3); §155.061 NEIGHBORHOOD SERVICES (NS); §155.094 SCENIC CORRIDOR (SC); AND §155.060 PUBLIC FACILITIES (PF); TO PERMIT PERSONAL CARE HOMES AS A CONDITIONAL USE IN EACH ZONING DISTRICT SPECIFIED HEREIN; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; REPEALER; SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

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, not all medical or health facilities are licensed by the State of Texas; and allowing such uses in residential areas should be allowed only upon certain conditions, including application and approval of a conditional use permit; 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 and 211; 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 several 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 15<sup>th</sup> 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, COUNTY OF HAYS, STATE OF TEXAS:**

### **I. FINDINGS OF FACT**

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.

### **II. AMENDMENTS**

- A. THAT the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), section 155.005 (Definitions), is amended to add the following definition alphabetically:

“Personal Care Home” means an establishment that:

- a. a homeowner furnishes in their home or on their residential property lodging to three or less persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and
- b. provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication and/or provision of home health, hospice, or other personal assistance services; and
- c. at least one (1) caretaker is present at all times; and
- d. the owner must reside in and occupy the property, and apply for and receive a conditional use permit prior to use of the property as a personal care home.”

- B. THAT the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), is hereby amended to add section 155.066 (Personal Care Home) to read as follows:

#### **155.066 PERSONAL CARE HOME REQUIREMENTS**

- (A) *Purpose.* The requirements listed below are intended to promote the orderly development and use of property as a personal care home in order to promote the public health and safety of the community. Personal care homes are permitted in certain residential and commercial zoning districts and as such the regulations herein are the minimal necessary to mitigate any possible impact of such uses on the surrounding neighborhood while allowing property owners to reasonably use

their property. The residential feel and character of a personal care home shall be maintained and not unnecessarily intrude upon the adjacent neighbors.

By requiring the presence of the owner while the home is utilized as a personal care home will help ensure that the impact of traffic, noise or other nuisance does not occur or is immediately stopped to avoid any adverse effects on the surrounding neighborhood.

- (B) An approved Conditional Use Permit (CUP) shall be required for a personal care home.
- (C) All approved CUPs shall comply with any conditions imposed as part of the CUP application process, this section 155.066, and any other applicable ordinance, law or regulation.
- (D) The review for CUP approval of a personal care home shall consider the impact of the use on the surrounding properties, the neighborhood and environment, and other factors as the Commission deems appropriate. Factors for review of a CUP application shall include but not be limited to consideration of the following:
  - (1) Permitted uses in the applicable zoning district;
  - (2) The proposed occupancy and size of the property, and whether a smaller occupancy level is appropriate;
  - (3) Setbacks and proximity to other dwellings;
  - (4) Vehicle access and on-site parking and the number of parking spaces available;
  - (5) Compliance with all state, county and city ordinances, laws, rules, and regulations, including the Building Code, Health & Sanitation Code, and Fire Code; and
  - (6) Adequacy of wastewater treatment systems.
- (E) In addition to any conditions imposed as part of the approved CUP, the following regulations shall be applicable to a personal care home:
  - (1) An approved Conditional Use Permit (CUP) shall be required.
  - (2) The property shall be subject to inspection, at any time, by designated City representatives to make an inspection, survey, or to investigate to ensure the residents' health, safety, comfort, and protection from fire hazard.
  - (3) The CUP shall terminate and be considered abandoned if and when there is evidence of no activity authorized in the CUP for a period of nine (9) consecutive months. The burden is on the property owner to prove that the use of the property has been in continuous use.
  - (4) One (1) smoke alarm shall be provided in each room of the home along with a fire extinguisher visible and accessible to all occupants. A fire escape plan shall be developed and graphically displayed in each bedroom. A second exit from the home shall be provided.
  - (5) No exterior signage identifying the home is allowed.

- (6) A State license and taxpayer number for reporting any Texas tax, if applicable, shall be provided to the City no later than thirty (30) days following the approval of the CUP.
- (7) If there is a change in ownership of the property, the City shall be notified of any change in property ownership within thirty (30) days of such change.
- (8) At the time of application, the on-site sewage facility shall be inspected and shall be sufficient to provide adequate capacity for the maximum occupancy permitted. The City may request that written proof of capacity be provided at any time.
- (9) Occupancy by the owner is required at all times whenever the property is being used to provide care.
- (10) On-street parking is prohibited. At least two (2) off-street parking spaces are required. Required off-street parking shall be provided on the same site as the use it is to serve. Parking areas shall be clearly identified on the property and adequate maneuvering space shall be provided for vehicle ingress and egress. In Planning Areas I and II, all vehicle parking shall be on a suitable parking surface as determined by the City. In all other Planning Areas, all off-street parking shall be surfaced in accordance with the parking lot surfacing requirements in the City's ordinances. In such areas, no parking shall be permitted on grass, within landscaped areas, or on other unimproved surfaces.
- (11) No more than three (3) persons with disabilities or elderly persons, who are unrelated to the owner of the establishment by blood or marriage, may be taken care of for a fee at any given time in the personal care home.
- (12) At least one (1) caretaker must be present in the home when ever the home is being used to provide care.
- (13) The maximum occupancy allowed in a personal care home shall be reviewed and determined in each individual CUP application based on number of rooms, beds, parking, neighborhood input, septic system capacity and any other factor determined to be relevant by the Commission and/or Council.
- (14) The City shall have access to the books, records, and other documents maintained by or on behalf of a personal care home to enforce the standards adopted by the City.
- (15) Upon request by the City, copies of all federal, state and local licenses issued for all caretakers providing care at the personal care home shall be provided to the City.
- (16) Any person, including, but not limited to, a personal care home owner, operator, or care provider in such a home, who has cause to believe that an individual being cared for in the home is being or has been abused, neglected, or exploited shall report the abuse, neglect, or exploitation to the Texas Department of Family and Protective Services for investigation by that agency.
- (17) The personal care home owner, operator, care providers and those living in the home but not receiving care shall be required to sign a statement that the individual acknowledges that they may be

criminally liable under Section 48.052, Texas Human Resources Code, for failure to report abuse, neglect, or exploitation.

- (18) Only the owner of the personal care home, individuals related to the home owner by blood or marriage, and those persons with disabilities or elderly persons, who are unrelated to the owner of the establishment by blood or marriage, for which care is being provided for a fee, are allowed to reside in a personal care home. Individuals related to the home owner by blood or marriage may not be paid or charged rent to reside in the home.

- C. THAT subsections (C) of sections §155.035 Residential Acreage; (RA); §155.036 Rural Residential 1 (R-1); §155.037 Single-Family Residential 2 (R-2); §155.038 Single-Family Residential 3 (R-3); §155.039 Single-Family Residential 4 (R-4); §155.040 Two-Family Residential-Duplex (R-5); §155.041 Multi-Family Residential 1 (Triplex/Quadriplex/Apartments) (MF-1); §155.042 Multi-Family Residential 2 (Apartments) (MF-2); §155.045 Office-Low Impact (O-1); §155.047 Commercial-Low Impact (C-1); §155.048 Commercial-Moderate Impact (C-2); §155.049 Commercial-High Impact (C-3); §155.061 Neighborhood Services (NS); §155.094 Scenic Corridor (SC); and §155.060 Public Facilities (PF) of the City of Wimberley Code of Ordinances, Chapter 155 (Zoning) are each hereby amended to add "Personal Care Home" as a conditional use.

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

### **III. REPEALER**

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

### **IV. SEVERABILITY**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, and the remainder of this Ordinance shall be enforced as written.

### **V. EFFECTIVE DATE**

This Ordinance shall take effect immediately upon its passage and publication as may be required by governing law.

### **VI. PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was

given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

**PASSED AND APPROVED ON FIRST READING** this 19<sup>th</sup> day of January, 2012, by a 4 (Ayes) 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

**PASSED AND APPROVED ON SECOND READING** this 2<sup>nd</sup> day of February, 2012, by a 5 (Ayes) 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

**CITY OF WIMBERLEY**

By: Bob Floche  
Bob Floche, Mayor

**ATTEST:**

Cara McPartland  
Cara McPartland, City Secretary

(SEAL)

**APPROVED AS TO FORM:**

Crosby  
C. Crosby, City Attorney

