

ORDINANCE NO. 2014-006

**AN ORDINANCE AMENDING TITLE XI (BUSINESS REGULATIONS) OF THE CITY OF WIMBERLEY CODE OF ORDINANCES AND CREATING A NEW CHAPTER 112 (REGULATION OF VACATION RENTALS AND BED AND BREAKFAST LODGINGS); AND PROVIDING FINDINGS OF FACT, A REPEALING CLAUSE, A SAVINGS AND SEVERABILITY CLAUSE, AN EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.**

WHEREAS, the City Council of the City of Wimberley, Texas (the “City”) seeks to provide for the health, safety and welfare of its citizens; and

WHEREAS, sections 215.033 and 215.034 of the Texas Local Government Code provide the City with the authority to issue licenses for businesses to be operated within the City; and

WHEREAS, the City’s Code of Ordinances provides that the use of property for new bed and breakfast lodgings or vacation rental facilities requires the property owner to obtain a Conditional Use Permit (CUP); and

WHEREAS, the Council finds that persons have knowingly facilitated the use of property for the purposes of a bed and breakfast lodging or vacation rental despite the fact that such properties lacked the required CUP or were not otherwise authorized by the City’s Code of Ordinances;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, HAYS COUNTY, TEXAS**

**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 Title XI (Business Regulations), is hereby amended to create a new Chapter 112 as follows:

**“CHAPTER 112: REGULATION OF VACATION RENTALS  
AND BED AND BREAKFAST LODGINGS**

**§ 112.01 DEFINITIONS**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

***BED AND BREAKFAST LODGING.*** A “bed and breakfast lodging” as defined by section 155.005 of the City of Wimberley Code of Ordinances.

***BED AND BREAKFAST BOOKING AGENCY.*** A person or entity that provides reservation services, billing services, or other related services on behalf of the owner of a bed and breakfast lodging.

***VACATION RENTAL AGENCY.*** A person or entity that provides reservation services, billing services, or other related services on behalf of the owner of a vacation rental.

***VACATION RENTAL.*** A “vacation rental” as defined by section 155.005 of the City of Wimberley Code or Ordinances.

## **§ 112.02 PERMIT REQUIRED**

A person commits an offense if the person owns or operates a bed and breakfast lodging or a vacation rental without a valid permit issued by the City.

## **§ 112.03 PERMIT APPLICATION PROCEDURES**

A person required by section 112.02 to have a permit shall do the following:

- (A) Complete and file a permit application on a form prescribed by the City Administrator;
- (B) Submit with the application proof of ownership of the property;
- (C) Submit with the application the name and primary contact information of the person or entity who will operate the bed and breakfast lodging or vacation rental. For purposes of this subsection, the contact information must identify a person or person(s) who can respond to communications from the City regarding the property in the event of an emergency;
- (D) Provide any additional information requested by the City Administrator.

## **§ 112.04 ISSUANCE AND DISPLAY OF PERMIT.**

(A) The City Administrator may issue a permit after the applicant pays all applicable fees and satisfies all of the requirements of this Code, including, if applicable, obtaining a Conditional Use Permit (CUP).

(B) A permit shall be valid for one (1) year from the date of its issuance, unless suspended or revoked.

(C) A permit shall not be transferable.

(D) The City Council shall set a permit fee for each registered bed and breakfast lodging or vacation rental.

(E) The permit holder shall cause a copy of the permit to be posted in a conspicuous location on the premises of the bed and breakfast lodging or vacation rental.

**§ 112.05 MARKETING OF UN-PERMITTED PROPERTY FOR USE AS VACATION RENTAL OR BED AND BREAKFAST LODGING**

(A) It shall be unlawful for any person, including, but not limited to, a bed and breakfast booking agency, to facilitate a reservation between the owner of a bed and breakfast lodging and a third party when the bed and breakfast booking agency has actual or constructive knowledge that the bed and breakfast lodging does not comply with the requirements of section 155.064 of this Code (Bed and Breakfast Lodging Requirements), including, but limited to, the requirement that a bed and breakfast lodging obtain an approved CUP.

(B) It shall be unlawful for any person, including, but not limited to, a vacation rental agency, to facilitate a reservation between the owner of a vacation rental and a third party when the vacation rental agency has actual or constructive knowledge that the vacation rental does not comply with the requirements of section 155.065 of this Code (Vacation Rental Requirements), including, but limited to, the requirement that a vacation rental obtain an approved CUP.

(C) It shall be unlawful for any person to list or otherwise market a property for sale as a new vacation rental or new bed and breakfast lodging without disclosing to the buyer that such property may not be used for the purpose of a vacation rental or bed and breakfast lodging without an approved CUP. It shall constitute a defense to prosecution under this subsection (C) that the defendant provided the buyer with a written notice that reads, in bold-faced type: "THIS PROPERTY HAS NOT BEEN APPROVED BY THE CITY OF WIMBERLEY FOR USE AS A BED AND BREAKFAST LODGING OR VACATION RENTAL."

**Section 3.** Except as expressly amended herein, the Wimberley Code of Ordinances shall remain in full force and effect.

**Section 4.** 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 5.** 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 6.** 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 7. 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.

**FIRST READING PASSED AND APPROVED** this 16<sup>th</sup> day of January, 2014, by a vote of 5 (Ayes) to 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

**SECOND READING PASSED AND APPROVED** this 20<sup>th</sup> day of February, 2014, 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:**

*Catherine B. Fryer*

City Attorney

Catherine B. Fryer

