

City of Wimberley
City Hall, 221 Stillwater
Wimberley, Texas 78676
Planning & Zoning Commission
Minutes of Regular Meeting
October 27, 2011 at 6:30 p.m.

Meeting called to order by Chair Tracey Dean. Present were Commissioners Beth Mitchell, Jean Ross, Steve Klepfer, Tom Haley, and Rick Burleson. Commissioner Charles Lancaster was absent.

Staff Present: City Administrator Don Ferguson and City Secretary Cara McPartland

Citizen Communications:

No citizen comments were heard.

1. Consent Agenda

Approval of minutes of the Regular Planning & Zoning Commission meeting on October 13, 2011.

After discussion on motions/voting requirements relating to Item 2 brought up by Commissioner Klepfer, Commissioner Haley moved to approve the minutes as presented. Commissioner Ross seconded. Motion carried on a vote of 4-0. Chairman Dean and Commissioner Klepfer abstained.

2. Discuss and Consider Action

- A. Discuss and consider possible action regarding a proposal to amend the City of Wimberley Zoning Code to allow, as a conditional use, home health facilities in residentially zoned areas. (*City Administrator*)

City Administrator Ferguson explained that this proposal stems from the recent discovery of an adult care home in a residentially zoned area on the City's north side and stressed that tonight's discussion must focus on the agenda item, not on any specific property. He highlighted key elements of the draft ordinance (attached to these minutes), which would allow "home health facility" as a conditional use in certain zoning districts and the issue of home health care in general.

Chairman Dean invited public comment.

Wray Walker of 5 Palo Pinto Path opposed businesses in residential areas and stated that property owners' by-laws prohibit non-residential uses. He felt that allowing assisted living facilities to operate in private homes would open a "Pandora's box" of

issues. He distributed printed material excerpted from Title 40 of the Texas Administrative Code and cautioned against taking this issue lightly, as it deals with health care responsibilities. Mr. Walker objected to placing the burden on established residents to oppose permit applications for facilities that he feared would proliferate as a way for people to obtain a supplemental source of income. He expressed concerns about the City's ability to monitor and enforce home health facilities.

James Lane of 39 La Toya Trail spoke on the characterization of his home as a "facility" and felt that normal residential uses would place more of a burden on neighbors than caring for two elderly residents. Mr. Lane was cautioned against speaking about his property specifically and asked to comment generally on the proposed ordinance. He went on to provide examples of activities and their respective impacts on neighboring properties. Mr. Lane commented on the training/licensing requirements for health care workers and stated that two elderly home owners taking care of two other elderly people has much less impact on neighbors than a family with teen-aged boys.

Monta Lane of 39 La Toya Trail spoke of her professional background, licensing, and former experience running two adult health care facilities in Alaska. Mrs. Lane stated that her home is not a "facility" and was cautioned against commenting specifically on her own property. She started to read a letter from a medical provider supporting the care she provides in her home, and was again asked to not comment on her specific property. After asking for a conditional use permit (CUP) for her home, Mrs. Lane was again advised that tonight's agenda item is for consideration of the proposed ordinance and is not meant to address her property specifically. Mrs. Lane closed by stating that visitors to Mount Baldy have more of an impact on her neighborhood than her home health care operation.

Craig Norris of 59 Cypress Point spoke of his personal experience as primary caregiver for his own mother, who has been diagnosed with Alzheimer's disease. He stated that she needs the kind of care addressed in the proposed ordinance and supported allowing home health care in residential areas as an option, in contrast to more institutional hospital-type settings.

Eagle Rock resident Clint Frankmann felt that no commercial activities should be allowed in residential areas with deed restrictions against such uses. He suggested allowing home health facilities in mixed/multi-use areas, not in deed-restricted single family residential areas. He stated that homeowners associations (HOAs) do not have the resources for costly litigation to enforce deed restrictions. He read the City of Woodcreek's Zoning Ordinance No. 0065 relating to personal care facilities and distributed copies to Commission members.

In response to Mr. Frankmann's recitation of certain state licensing requirements, Ruth Mince clarified that facilities caring for no more than two people are not subject to such requirements.

Discussion addressed:

- Applicability of HOA deed restrictions and City ordinances (the stricter of the two applies)
- City ordinances do not recognize deed restrictions, which are enforced by HOAs
- Complaint-based enforcement of City zoning violations
- Clarification on the City's role in regulating home health facilities versus enforcement of state regulations
- CUP public notification/hearing requirements and procedures
- Ability of HOAs to seek enforcement of deed restrictions in civil courts
- Clarification of "homeowners" as "caregivers" in draft ordinance language
- Allowing homeowners to bring additional outside employees into their home health facilities
- Impact of those visiting the home health facility (whether medical service providers or family members) on neighbors
- One-to-one ratio of patient to caretaker
- Clarification of primary versus secondary caregivers
- Commercial activity in residential areas and effect on property values
- Concerns relating to the City's ability to monitor home health facilities and the state's regulatory authority
- Ability of City to revoke CUP, if facility is in violation of CUP conditions
- Opportunity for neighborhood to voice concerns during CUP public hearing process
- Compatibility of home health facilities in residential areas with the City's Comprehensive Plan and Economic Development Plan
- Possible additional requirement that homeowner caregivers have some type of medical training (such as CPR) and food handler's certification, including annual City inspections of kitchens
- Consideration of issues such as density, neighborhood input, traffic, and access when deliberating CUP applications
- Clarification of the term "community meals" in draft ordinance language
- Possible CUP requirement that *current* septic permitting standards are met
- Distinction between CUP as zoning/land use action versus home health regulatory/permitting mechanism

Commissioner Klepfer moved to direct staff to include input from tonight's discussion into the draft ordinance for further consideration at the Commission's next meeting. Commissioner Ross seconded. Motion carried on a vote of 6-0.

- B. Discuss and consider possible action regarding an action plan for the Commission's upcoming review of the City's Subdivision and Zoning Codes. (*City Administrator*)

City Administrator Ferguson explained the process/timeframe for overall review of the City's Code of Ordinances and the recodification process in general, with Commission recommendations to Council expected to be made on an incremental basis. He advised that the Commission will undertake its review as part of its regular meeting schedule.

Clint Frankmann spoke in support of revamping the City's Code and encouraged as much public input as possible. He felt that many of the City's initial regulations were intended to stop growth and development.

3. Staff and Commission Reports

- Announcements
- Future Agenda Items

Hearing no announcements or future agenda items, Commissioner Ross moved to adjourn. Commissioner Mitchell seconded. Motion carried on a vote of 6-0.

Adjourn at 8:00 p.m.

Recorded by:



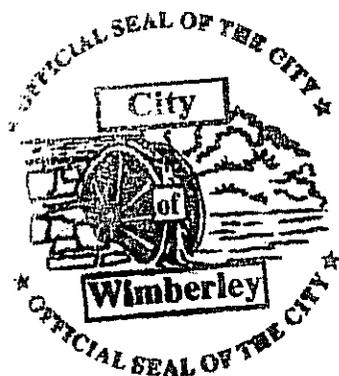
Cara McPartland

These minutes approved the 10th of November, 2011.

APPROVED:



Tracey Dean, Chair



ORDINANCE NO. 2011-_____

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 "HOME HEALTH FACILITY"; 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); § 155.060 PUBLIC FACILITIES (PF); AND § 155.061 NEIGHBORHOOD SERVICES DISTRICT (NS) TO PERMIT HOME HEALTH FACILITY AS A CONDITIONAL USE IN EACH ZONING DISTRICT SPECIFIED HEREIN; AND PROVIDING FOR THE FOLLOWING: PENALTY; 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 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, 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:

"Home Health Facility" means an establishment that:

a. a homeowner furnishes in their home or on their residential property lodging for pay to two 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. the ratio of patient to caretaker shall be one to one; and

d. the owner must reside and occupy the property, and apply and receive a conditional use permit prior to use of the property as a home health facility."

- B. THAT the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), is hereby amended to add "Home Health Facility" as a conditional use, and to require a Home Health Facility to comply with the requirements listed in this section as well as may be applicable throughout the Code.

In addition to any conditions imposed as part of the approved CUP, the following regulations shall be applicable to a Home Health Facility:

1. An approved Conditional Use Permit (CUP) shall be required.
2. Property shall be subject to inspection, at any time, by designated City representatives to inspect, survey, or 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 facility 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 facility shall be provided.
5. No exterior signage identifying the facility 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, the City shall be notified of any change in property ownership within thirty (30) days of such change.
8. 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-site 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 two (2) persons with disabilities or elderly persons, who are unrelated to the owner of the establishment by blood or marriage, may be cared for at any given time in the Home Health Facility.
12. The ratio of patient to caretaker shall be one to one.
13. The maximum occupancy allowed 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 or Council.
14. The City shall have access to the books, records, and other documents maintained by or on behalf of a Home Health Facility to enforce the standards adopted by the City.
15. Copies of all local, State and Federal licenses issued for all medical personnel providing care at the Home Health Facility shall be provided to the City prior to said individuals providing any care at the Facility.
16. A person, including an owner, operator, or employee of a properly permitted Home Health Facility who has cause to believe that a resident who is an elderly person or a person with a disability 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 owner along with health care providers and those individuals living in the facility and 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.

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 this ___th day of _____, 2011, by a ___ (Ayes) ___ (Nays) ___ (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY

By: _____
Bob Flocke, Mayor

ATTEST:

Cara McPartland, City Secretary

(SEAL)

APPROVED AS TO FORM:

C. Crosby, City Attorney

DRAFT