

# City of Wimberley

221 Stillwater, P.O. Box 2027, Wimberley, Texas, 78676

## REGULAR PLANNING & ZONING MEETING

WIMBERLEY CITY HALL-CITY COUNCIL CHAMBERS

221 STILLWATER, WIMBERLEY, TEXAS

SEPTEMBER 8, 2016 - 6:00 P.M.

### AGENDA

CALL TO ORDER:                    SEPTEMBER 8, 2016 @ 6:00 P.M.

CALL OF ROLL:                    CITY SECRETARY

#### CITIZENS COMMUNICATIONS:

*THE PLANNING & ZONING COMMISSION WELCOMES COMMENTS FROM CITIZENS ON ISSUES AND ITEMS OF CONCERN, NOT ON THIS AGENDA. THOSE WISHING TO SPEAK MUST SIGN IN BEFORE THE MEETING BEGINS AND OBSERVE A THREE-MINUTE TIME LIMIT WHEN ADDRESSING THE COMMISSION. SPEAKERS WILL HAVE ONE OPPORTUNITY TO SPEAK DURING THE TIME PERIOD. SPEAKERS DESIRING TO SPEAK ON AN AGENDA ITEM WILL BE ALLOWED TO SPEAK WHEN THE AGENDA ITEM IS CALLED. INQUIRIES ABOUT MATTERS NOT LISTED ON THE AGENDA WILL EITHER BE DIRECTED TO STAFF OR PLACED ON A FUTURE AGENDA FOR COMMISSION CONSIDERATION.*

1.    ASSIGNMENT OF TERMS FOR MEMBERS OF THE PLANNING AND ZONING COMMISSION
  
2.    ELECTION OF OFFICERS
  
3.    CONSENT AGENDA

*THE FOLLOWING ITEMS MAY BE ACTED UPON IN ONE MOTION. NO SEPARATE DISCUSSION OR ACTION IS NECESSARY UNLESS REQUESTED BY A COMMISSION*

MEMBER OR CITIZEN, IN WHICH EVENT THOSE ITEMS WILL BE PULLED FROM THE CONSENT AGENDA FOR SEPARATE CONSIDERATION.

APPROVAL OF MINUTES OF THE REGULAR PLANNING & ZONING COMMISSION MEETING ON AUGUST 25, 2016.

4. PUBLIC HEARING AND POSSIBLE ACTION

HOLD A PUBLIC HEARING AND CONSIDER MAKING A RECOMMENDATION TO CITY COUNCIL REGARDING AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, AUTHORIZING A MORATORIUM ON THE ISSUANCE OF BUILDING PERMITS, BUSINESS LICENSES, CONDITIONAL USE PERMITS, AND CERTIFICATES OF OCCUPANCY TO BE USED FOR THE CONSTRUCTION OR OPERATION OF BED AND BREAKFAST LODGINGS AND VACATION RENTALS WITHIN ANY RESIDENTIALLY ZONED AREA WITHIN THE CITY LIMITS OF WIMBERLEY; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, SAVINGS, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING. (CITY ADMINISTRATOR)

5. STAFF AND COMMISSION REPORTS

- ANNOUNCEMENTS
- FUTURE AGENDA ITEMS

ADJOURNMENT

THE COMMISSION MAY RETIRE TO EXECUTIVE SESSION ANY TIME BETWEEN THE MEETING'S OPENING AND ADJOURNMENT FOR THE PURPOSE OF DISCUSSION ABOUT HOMELAND SECURITY PURSUANT TO CHAPTER 418.183 OF THE TEXAS LOCAL GOVERNMENT CODE; CONSULTATION WITH LEGAL COUNSEL PURSUANT TO CHAPTER 551.071 OF THE TEXAS GOVERNMENT CODE; DISCUSSION ABOUT REAL ESTATE ACQUISITION PURSUANT TO CHAPTER 551.072 OF THE TEXAS GOVERNMENT CODE; DISCUSSION OF PERSONNEL MATTERS PURSUANT TO CHAPTER 551.074 OF THE TEXAS GOVERNMENT CODE; DELIBERATIONS ABOUT GIFTS AND DONATIONS PURSUANT TO CHAPTER 551.076 OF THE TEXAS LOCAL GOVERNMENT CODE; DISCUSSION OF ECONOMIC DEVELOPMENT PURSUANT TO CHAPTER 551.087. ACTION, IF ANY, WILL BE TAKEN IN OPEN SESSION.

**CERTIFICATION**

I hereby certify the above Notice of Meeting was posted on the Bulletin Board at the Wimberley City Hall on September 2, 2016 at 6:00 p.m.

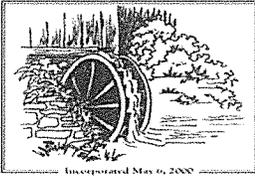


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CARA MCPARTLAND, CITY SECRETARY

The City of Wimberley is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please contact Don Ferguson, City Administrator, at (512) 847-0025 for information. Hearing-impaired or speech-disabled persons equipped with telecommunication devices for the deaf may call (512) 272-9116 or may utilize the stateside Relay Texas Program at 1-800-735-2988.

# P&Z Commission Agenda Form



Date Submitted: September 2, 2016

Agenda Date Requested: September 8, 2016

**Project/Proposal Title:** DRAWING FOR THE LENGTH OF TERMS FOR THE CURRENT MEMBERS OF THE PLANNING AND ZONING COMMISSION

**Commission Action Requested:**

- Ordinance
- Resolution
- Motion
- Discussion

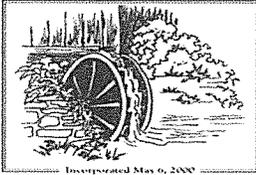
**Project/Proposal Summary:**

The Wimberley City Council recently adopted an ordinance increasing the term length for members of the Planning and Zoning Commission from two (2) years to three (3) years. The three (3) year terms are to be staggered to eliminate creating a situation where the city faces a wholesale change of the Commissioners when future appointments are made by the City Council.

To stagger the terms, there is a need for the current Commissioners to draw for the length of their initial terms. Two (2) members will draw one (1) year terms (to be succeeded by a normal three (3) year term), two (2) members will draw two (2) year terms (to be succeeded by a normal three (3) year term), and three (3) members will draw three (3) year terms.

The item was placed on the agenda to allow Commissioners to draw for the lengths of their initial term.

# P&Z Commission Agenda Form



Date Submitted: September 2, 2016

Agenda Date Requested: September 8, 2016

Project/Proposal Title: ELECTION OF OFFICERS

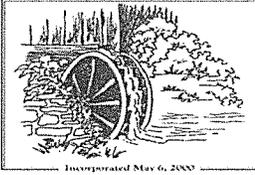
Commission Action Requested:

- Ordinance
- Resolution
- Motion
- Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow the Commission to elect a Chairman and Vice-Chairman.

# P & Z Commission Agenda Form



Date Submitted: September 2, 2016

Agenda Date Requested: September 8, 2016

**Project/Proposal Title:** APPROVAL OF MINUTES  
OF THE REGULAR PLANNING & ZONING  
COMMISSION MEETING ON AUGUST 25, 2016

**Funds Required:**  
**Funds Available:**

**Commission Action Requested:**

- Ordinance
- Resolution
- Motion
- Discussion

**Project/Proposal Summary:**

Attached are the minutes of the Regular Planning & Zoning Commission meeting on August 25, 2016 for review and consideration.

**City of Wimberley**  
City Hall, 221 Stillwater  
Wimberley, Texas 78676  
**Planning & Zoning Commission**  
Minutes of Regular Meeting  
August 25, 2016 at 6:00 p.m.

Meeting called to order at 6:00 p.m. by Chair Charles Savino. Present were Commissioners John Urban, Natalie Meeks, Rebecca McCullough, and John Espinoza. Commissioners Austin Weeks and Gail Pigg were absent.

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

**Citizen Communications:**

Craig Reitz spoke on a recent letter to the editor of the Wimberley View which he felt unfairly criticized the Commission. He said it is important to have turnover in the Commission to have fresh views for the future of our city. He stated the source for the claim the Commission is untrained and uninformed comes from the lodging industry, which he said "believes that P & Z should rubber stamp every request for a vacation rental." He referenced previous remarks attributed to the lodging industry indicating that Wimberley needs "heads in beds." Mr. Reitz felt this is false, because Wimberley needs "cars in lots." He said the City can be financially successful with day visitors and cited a demographic study that suggested Wimberley would have a large influx of tourists visiting on a daily basis, once infrastructure is updated to handle the flow of tourists. Mr. Reitz stated that at a recent meeting merchants and a Hotel Occupancy Tax presentation confirmed that Wimberley is overcrowded and our summer season has gotten out of control. He said locals and regulars are needed to support businesses year-round, but right now locals and regulars avoid the City's center due to overcrowding and lack of parking. Mr. Reitz cited reasons that CUP applications from absentee property owners who want to change their residences into vacation rental businesses are ill-conceived. He proposed making it incumbent on the applicant to generate at least fifty percent (50%) of favorable responses to the CUP request, and without meeting such a test, he said CUP applications should be denied. He also felt vacation rental CUPs should be renewed every one to two years, with the same test of approval from adjoining property owners. Mr. Reitz did not believe that vacation rental CUPs should pass on in perpetuity to the next owner and said this changes our neighborhoods from residential to commercial.

Hills of Texas Lodging's Robbie Walker disputed Mr. Reitz's claim that the lodging industry said anything about the Commission and recognized the tough job the Commission has to do. He said Wimberley has to decide whether it wants to be a unique experience as we are now and let tourism drive how our City operates or become a "me, too" city that will bring in commercial development such as hotels and Wal-marts and have ad valorem taxes as the main driver of City revenues. He felt if this animosity continues, the very people who do not want short-term rental CUPs are going

to be the ones complaining if an ad valorem tax will be needed to replace lost revenues from those who come here to stay in vacation rentals.

1. **Assignment of Terms for Members of the Planning and Zoning Commission**
2. **Election of Officers**

Chairman Savino advised that Agenda Items 1 and 2 will be continued until a future meeting date when all Commission members are present. No action was taken.

3. **Consent Agenda**

Approval of minutes of the Regular Planning & Zoning Commission meeting on August 11, 2016.

Chairman Urban moved to approve the minutes, as presented. Commissioner McCullough seconded. Motion carried on a vote of 5-0.

4. **Public Hearing and Possible Action**

Hold a public hearing and consider making a recommendation to City Council regarding Case CUP-16-020, an application for a Conditional Use Permit to allow for the operation of a vacation rental facility on property zoned Single Family Residential 2 (R-2), located at 140 Malone Drive, Wimberley, Hays County, Texas. (*Carlton D. Bass, Applicant*)

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning and uses, and existing 2½-bedroom, 2-bath residence. He advised the applicant is proposing to use the residence as a vacation rental facility with a maximum occupancy of six (6) people. He noted the residence is served by a properly permitted and functioning on-site septic system.

Based on a review of the system and proposed use, the City Sanitarian has indicated that no more than four (4) people shall occupy the vacation rental facility. Guests would be required to park on the subject property. City Administrator Ferguson read a list of conditions to be made part of the requested Conditional Use Permit (CUP), and recommended an additional condition requiring that marketing of the vacation rental shall not be for occupancy of more than four (4) people, should the Commission desire to recommend approval. It was noted that one (1) written response was received in opposition to the CUP request and one (1) verbal inquiry seeking information.

Commissioner Urban asked if the applicant can re-apply in the future, if his CUP application is denied, and favored denial until the Commission has a clear path on this issue. City Administrator Ferguson replied affirmatively that the applicant may re-apply.

Commissioner Meeks asked if there are any more short-term rental CUP applications pending and City Administrator Ferguson replied there are not any at this time. He reminded that Council has not yet approved the proposed moratorium and noted that any applications submitted before a moratorium is approved would be processed.

Commissioner McCullough agreed with previous comments, noted that one neighbor has vehemently opposed this CUP application, and recognized the current state of flux on this issue. She said denial of this one CUP would not negatively impact the City's tourism. Commissioner Urban noted that the applicant may re-apply.

Commissioner Espinoza said he did not have clear direction or criteria to make a decision, which he felt would be helpful to both the Commission and the applicants. He said there needs to be open discussion on possible changes to the City's current ordinance.

Chairman Savino opened the public hearing.

The applicant's representative Terrie Bursiel asked if the so-called "Twenty-percent Rule" has been triggered. City Administrator Ferguson replied that this rule does not apply to Planning and Zoning Commission recommendations. Ms. Bursiel felt it was highly inappropriate for the Commission to change the rules mid-stream before this case goes before Council. Commissioners McCullough and Urban said the rules are not being changed, but they are "pausing" this time. Ms. Bursiel said she thought everything has been approved for this case to pass. City Administrator Ferguson clarified the options before the Commission and Council for approving zoning cases on a case-by-case basis. Commissioner McCullough stated that although certain paperwork has been approved (such as septic permitting) that does not mean the Commission approves, as the Commission looks at additional criteria such as neighbors' comments and other issues. Ms. Bursiel stated the applicant, Clayton Bass, has talked to the neighbor who expressed written opposition in order to address his concerns, and felt "that everything will be okay."

Robbie Walker of Hills of Texas Lodging spoke on the subject area as a good area for vacation rentals and favored the proposed moratorium as a way to figure out a plan to that will work for everyone. Mr. Walker pointed out that the applicant paid a \$400 CUP application fee and asked that any future applicable CUP fee be waived, should the applicant need to re-submit his application. Commissioner Urban said that is something that Council should consider.

Place Three City Councilmember Sally Trapp sympathized with both sides and felt the current ordinance has issues that need to be clarified. She asked City Administrator Ferguson if the City can legally suspend or refund the applicant's \$400 CUP fee, if applicant withdrew his application before City Council meets on September 1, 2016. City Administrator Ferguson noted that the City has incurred costs for public notices in the newspaper and for staff/legal review time and typically CUP fees are not refundable.

Hearing no further comments, Chairman Urban closed the public hearing.

Discussion established that it is Council's role to make decisions and develop policy on payment, reduction, or refunding of fees. Chairman Savino asked if the Commission had the option to delay action on this case and City Administrator Ferguson replied affirmatively, but reminded that delays can trigger re-publication requirements to ensure adequate public notice. Chairman Savino felt there is a need to set up conditions and qualifications for vacation rentals as expeditiously as possible and did not agree that one property owner in opposition constitutes a reason for denial, as the size of the subject property and impact on adjacent properties, and all other issues that would adversely affect neighbors, should be considered.

Chairman Savino entertained a motion. Commissioner Urban moved to recommend denial of the requested CUP and request that Council allow the applicant to re-apply at no cost after the moratorium process, if a moratorium is approved. Commissioner McCullough seconded. Motion carried on a vote of 5-0.

#### **5. Staff and Commission Reports**

- Announcements
- Future Agenda Items

City Administrator Ferguson reported on short-term rental CUP moratorium procedures and timeframe, including public meetings/notification and input, in order to listen to all parties. He anticipated scheduling of joint City Council/Planning and Zoning Commission meetings.

Discussion addressed the need to educate the public on options available to short-term rentals' neighbors who have complaints, such as contacting the short-term rental's management company/property owner or law enforcement, as neighbors may be hesitant to register complaints. City Administrator Ferguson felt the next legislative session may attempt to address regulation of short-term rental operations, as many cities are dealing with similar issues.

Hearing no further comments, Chairman Savino called the meeting adjourned.

**Adjourn at 6:45 p.m.**

Recorded by:

Cara McPartland

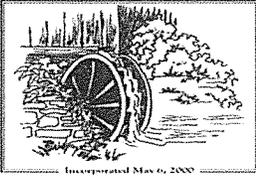
**These minutes approved the \_\_\_\_ of September, 2016.**

**APPROVED:**

**Charles Savino, Chair**

**DRAFT**

# P & Z Commission Agenda Form



Date Submitted: September 2, 2016

Agenda Date Requested: September 8, 2016

**Project/Proposal Title:** PUBLIC HEARING AND CONSIDER MAKING A RECOMMENDATION TO CITY COUNCIL REGARDING A PROPOSED MORATORIUM ORDINANCE RELATING TO SHORT-TERM RENTALS

**Commission Action Requested:**

- Ordinance
- Resolution
- Motion
- Discussion

**Project/Proposal Summary:**

This item was placed on the agenda to allow the Planning and Zoning Commission to hold a public hearing and consider making a recommendation to City Council regarding a proposed ordinance declaring a 90-day moratorium on the approval of any permit for vacation rentals and bed and breakfasts.

ORDINANCE NO. \_\_\_\_

**“Moratorium on Bed and Breakfast Lodgings and Vacation Rentals”**

**AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, AUTHORIZING A MORATORIUM ON THE ISSUANCE OF BUILDING PERMITS, BUSINESS LICENSES, CONDITIONAL USE PERMITS, AND CERTIFICATES OF OCCUPANCY TO BE USED FOR THE CONSTRUCTION OR OPERATION OF BED AND BREAKFAST LODGINGS AND VACATION RENTALS WITHIN ANY RESIDENTIALLY ZONED AREA WITHIN THE CITY LIMITS OF WIMBERLEY; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, SAVINGS, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING**

**WHEREAS**, the City of Wimberley, Texas is a Type A General-Law City as described in and defined in Sections 1.005 and 5.001 of the Texas Local Government Code; and

**WHEREAS**, sections 51.072 and Chapters 211 and 212 of the Texas Local Government Code authorize the City Council (Council) to adopt the provisions of this Ordinance; and

**WHEREAS**, the City recently has seen a proliferation of applications for Conditional Use Permits to allow the operation of bed and breakfast lodgings and vacation rentals within residentially zoned areas; and

**WHEREAS**, the City also has recognized a number of bed and breakfast lodgings and vacation rentals in residentially zoned areas that qualify as pre-existing, nonconforming uses; and

**WHEREAS**, an overabundance of bed and breakfast lodgings and vacation rentals in residentially zoned areas has the potential to permanently change the character of a residential neighborhood from residential to primarily commercial; and

**WHEREAS**, while many property owners of these types of businesses are conscientious, issues that arise from these types of businesses include nuisance and safety-related items such as parking, noise, excess occupancy in relation to septic facilities, trash, littering, disorderly conduct, and other public nuisances; and

**WHEREAS**, it has become apparent to the Council that the City’s current regulations are insufficient to address the effects of this type of activity in residential neighborhoods; and

**WHEREAS**, if this moratorium is not adopted, the increase in commercial activity and the related increase in crime and public nuisances will irreversibly change the neighborhood character of residentially zoned areas and thereby damage the public health, safety, and welfare; and

**WHEREAS**, the Council desires to minimize and to control these adverse effects and thereby protect the health, safety, and welfare of the citizens, protect the citizens from increased crime, preserve quality of life, and preserve the property values and character of surrounding

**WHEREAS**, the Council finds that the harms described above to public health, safety, and welfare will occur if a moratorium is not adopted; and

**WHEREAS**, the moratorium will apply throughout the city limits of the City of Wimberley; and

**WHEREAS**, when residentially zoned properties are used legally for the purposes of operating a bed and breakfast lodging or vacation rental, such properties are “commercial properties” within the meaning of sections 212.131 and 212.1352 of the Texas Local Government Code because they become authorized for use other than single-family use; and

**WHEREAS**, the moratorium will apply to all types of residentially zoned property within the City of Wimberley; and

**WHEREAS**, the goal of adopting new ordinances or regulations or amending existing ordinances or regulations during the period the moratorium is in effect is to protect the public health, safety, and welfare from the negative effects of bread and breakfast lodgings and vacation rentals in residentially zoned areas; and

**WHEREAS**, the Council finds that the City’s existing land use ordinances and regulations and other applicable laws are inadequate;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, AS FOLLOWS:**

**SECTION 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.

**SECTION II  
MORATORIUM**

The City of Wimberley hereby places a moratorium on the issuance of all building permits, business licenses, certificates of occupancy, conditional use permits, or any other permits and licenses for the development or use of any land within a residentially zoned area as a bed and breakfast lodging or vacation rental for 90 days from the date of the first reading of this Ordinance.

**SECTION III  
SAVINGS**

Any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

**SECTION IV  
SEVERABILITY**

If any provision, section, sentence, clause or phrase of this ordinance, or the application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council of the City of Wimberley in adopting, and of the Mayor in approving this ordinance, that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any portion, provision or regulation.

**SECTION V  
REPEALER**

The provisions of this ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance.

**SECTION VI  
EFFECTIVE DATE**

This ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

**SECTION VII  
PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meetings at which this Ordinance was considered and adopted were open to the public and that public notice of the time, place and purpose of said meetings was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**FIRST READING: PASSED and APPROVED** on this the 1st day of September, 2016.

**SECOND AND FINAL READING: PASSED, APPROVED, and ADOPTED** on this the 5th day of September, 2016.

By: \_\_\_\_\_  
Mayor

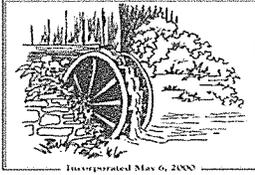
ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

# P & Z Commission Agenda Form



Date Submitted: September 2, 2016

Agenda Date Requested: September 8, 2016

Project/Proposal Title: STAFF & COMMISSION REPORTS

Funds Required:  
Funds Available:

Commission Action Requested:

- Ordinance
- Resolution
- Motion
- Discussion

**Project/Proposal Summary:**

This item was placed on the agenda to allow for reports to be presented by Commission members and for future agenda item requests.