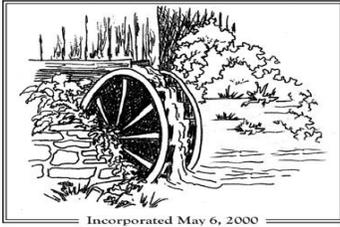


**REGULAR CITY
COUNCIL MEETING
PACKET**

Thursday, May 2, 2019

5:30 p.m.



City of Wimberley

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

REGULAR CITY COUNCIL MEETING
WIMBERLEY CITY HALL – CITY COUNCIL CHAMBERS
221 STILLWATER, WIMBERLEY, TEXAS 78676
THURSDAY, MAY 2, 2019 – 5:30 P.M.

AGENDA

1. **CALL TO ORDER** May 2, 2019 at 5:30 p.m.
2. **CALL OF ROLL** City Secretary
3. **INVOCATION**
4. **PLEDGE OF ALLEGIANCE/SALUTE TO THE TEXAS FLAG**
5. **CITIZENS COMMUNICATIONS**
The City Council welcomes comments from citizens who have a direct stake in the business of the city, such as a landowner, resident, vendor or business owner 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 Council. 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 Council consideration. Comments from speakers should not be directed towards any specific member of City Council or City staff. Comments should not be accusatory, derogatory or threatening in nature.
6. **PRESENTATIONS AND POSSIBLE ACTION**
 - A. Presentation and consider possible action to approve the Blues and BBQ Cook Off on Saturday, May 18, 2019. (*Wimberley Merchants Association President Craig Calley*)
 - B. Presentation and consider possible action to approve the City of Wimberley's Quarterly Investment Report for the second quarter of Fiscal Year 2019. (*City Administrator Shawn Cox*)
7. **CONSENT AGENDA.**
 - A. Approval of minutes from the Regular City Council Meeting held April 18, 2019.
 - B. Approval of the February 2019 Financial Statements for the City of Wimberley.

8. CITY ADMINISTRATOR REPORT

Update regarding the status of the Central Wimberley Wastewater Project (*City Administrator Shawn Cox*)

9. PUBLIC HEARINGS AND POSSIBLE ACTION

Hold a public hearing and consider approval of the second and final reading of Ordinance No. 2019-08, amending Chapter 9, Planning and Development Regulations, Article 9.03, Zoning, of the City of Wimberley Code of Ordinances related to bed and breakfast and vacation rental lodging requirements; requiring an annual conditional use permit renewal; amending certain regulations; providing for a penalty not to exceed two thousand dollars (\$2,000.00); providing for a forfeiture of conditional use permit for failure to renew; providing findings of fact; a repealing clause; a savings and severability clause; an effective date; and proper notice of meeting.

10. DISCUSSION AND POSSIBLE ACTION

- A. Discuss and consider possible action regarding the fee structure and amount for administrative renewal of conditional use permits. (*Short-Term Rental Review Committee Members Phil Collins and Tomas Palm*)

- B. Discuss and consider possible action regarding an ordinance adding Article 4.12, Landscaping and Tree Preservation to Chapter 4, Building Regulations of the City of Wimberley Code of Ordinances. (*City Administrator Shawn Cox*)

- C. Discuss and consider possible action to support the completion of Friends of Blue Hole’s playscape shade canopy project. (*City Administrator Shawn Cox and Parks Director Rebecca Manning*)

- D. Discuss and consider possible action regarding the removal of Bickerstaff Heath Delgado Acosta LLP as legal counsel for the City of Wimberley. (*Place Five Council Member Erik Wollam*)

- E. Discuss and consider possible action to engage Denton Navarro Rocha Bernal and Zech, P.C. to handle all on-going litigation for the City of Wimberley. (*Place Five Council Member Erik Wollam*)

- F. Discuss and consider possible action to authorize the expenditure of \$3,500 with Byrn and Associates to complete the General Land Office survey requirements (*City Administrator Shawn Cox*)

- G. Discuss and consider possible action to approve Ordinance No. 2019-12, extending the timeframe for existing and new businesses to pump, haul and properly dispose of wastewater effluent prior to the installation of a sanitary sewer system. (*City Administrator Shawn Cox*)

- H. Discuss and consider possible action to approve Resolution No. 06-2019, authorizing the Mayor to sign a Franchise Agreement with Wimberley Water Supply Corporation for a non-exclusive franchise to construct, operate and maintain a retail water utility system within the rights-of-way of the City of Wimberley for a term of ten years. (*City Administrator Shawn Cox*)

- I. Discuss and consider possible action to approve Resolution No. 07-2019, authorizing the Mayor to sign a Franchise Agreement with Aqua Utilities, Inc. DBA Aqua Texas, Inc. for a non-exclusive franchise to construct, operate and maintain a retail wastewater utility system within the rights-of-way of the City of Wimberley for a term of ten years. *(City Administrator Shawn Cox)*
- J. Discuss and consider possible action regarding the City's contribution of \$6,017.32 for the construction of a new sign at the Wimberley Community Center. *(City Administrator Shawn Cox)*
- K. Discuss and consider possible action to approve \$4,800 for a new air conditioning unit at the Wimberley Community Center. *(City Administrator Shawn Cox)*
- L. Discuss and consider possible action regarding the Golden-cheeked Warbler assessment provided by Zara Environmental, LLC. *(City Administrator Shawn Cox)*
- M. Discuss and consider possible action to reschedule the first Regular City Council Meeting in July. *(City Administrator Shawn Cox)*

11. CITY COUNCIL REPORTS

- A. Announcements
- B. Future agenda items

12. ADJOURNMENT

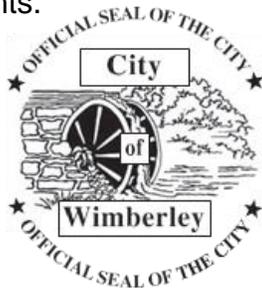
The City Council may retire into Executive Session at any time between the meeting's opening and adjournment for the purpose of discussing any matters listed on the agenda as authorized by the Texas Government Code including, but not limited to, homeland security pursuant to Chapter 418.183 of the Texas 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 Government Code; discussion of economic development pursuant to Chapter 551.087 of the Texas Government Code; 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 Wimberley City Hall, a place convenient and readily accessible to the general public at all times, and to the City's website, www.cityofwimberley.com, in compliance with Chapter 551, Texas Government Code, on Monday, April 29, 2019, by 5:30 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Shawn Cox
City Administrator

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 City Secretary Laura Calcote at (512) 847-0025 two business days in advance of the meeting for appropriate arrangements.



WIMBERLEY MERCHANTS ASSOCIATION

P O BOX 272, WIMBERLEY, TEXAS

To: The City of Wimberley

Fr: Wimberley Merchants Association

Re: Blues and BBQ Cook Off

2019 will mark our 6th year to have a BBQ cook off around the shopping district of Wimberley. We are doing some things different this year, those things include sanctioned as an IBCA (International BBQ Cookers Association) cook off. This qualifies the winner of each category an opportunity to compete at the state championship level. We are having musicians located throughout town from 11 to 4, culminating with Mike Cross, Peace, Love and Blues Band playing from 4-7 in the main parking lot on the Square. Activities for this event include shopping, entertainment, music, spirits and BBQ. This year's event will take place on Saturday, May 18th, 2019 from 11am till 7 pm.

Our Plans Include;

- Advertising extensively locally and regionally to bring people to our town.
- Closing portions of the street and parking to secure a pedestrian friendly and safe environment.
- Live music located on seven different stages throughout town till 7pm.
- BBQ cookers positioned throughout town from Friday night through Saturday evening.
- Directional signage, an information booth, and shuttles.
- T-shirt and beverage sales.
- Handicap accessible restroom.

We would request the City's ongoing support of the merchants in providing the following:

- Barricades to secure the parking lots for pedestrian safety.
- That all restrooms are left open for Friday evening set-up and they are cleaned and restocked prior to the Saturday event.
- A dumpster for event clean up and cookers trash.

I would like to thank you for your support of this locally attended event.

Sincerely,

Craig Calley

President, Wimberley Merchants Association



AGENDA ITEM: Quarterly Investment Report
SUBMITTED BY: Shawn Cox, City Administrator
DATE SUBMITTED: April 30, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

The City’s Investment Policy, most recently adopted on February 7, 2019, requires a Quarterly Investment Report be provided to the City Council.

For presentation and Consideration is the Quarterly Investment Report for the 2nd Quarter for FY 2019.

REQUESTED ACTION

- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

Budgeted Item	<input type="checkbox"/>	Original Estimate/Budget:	\$
Non-budgeted Item	<input type="checkbox"/>	Current Estimate:	\$
Not Applicable	<input checked="" type="checkbox"/>	Amount Under/Over Budget:	\$

STAFF RECOMMENDATION

The City Administrator recommends approval of the Quarterly Investment Report for the 2nd Quarter for FY 2019.

ATTACHMENTS:

- Quarterly Investment Report FY 2019 – 2nd Quarter

City of Wimberley Quarterly Investment Report

Second Quarter of FY 2019

	Fund	Investment Portfolio Summary					Cash Summary			TexPool Summary			CD Summary		
		Cash in Bank	TexPool	CD	Total	% of Total Investment	Yield Rate	MTD Interest Earned	YTD Interest Earned	Average Monthly Rate	MTD Interest Earned	YTD Interest Earned	Annual % Yield	MTD Interest Earned	YTD Interest Earned
January 2019	General Fund	867,145.23	183,017.34	229,104.29	1,279,266.86	50%	0.05%	39.11	161.46	2.39%	370.60	1,384.88	0.10%	18.83	75.31
	Blue Hole Operating	433,910.15			433,910.15	17%	0.05%	20.85	88.83	Total	370.60	1,384.88	Total	18.83	75.31
	Blue Hole Development	18,764.48			18,764.48	1%	0.15%	2.39	9.48						
	Municipal Court Bond Fees	76.00			76.00	0%									
	Municipal Court Fees	5,236.74			5,236.74	0%	0.15%	0.69	2.49						
	Wastewater Operations	70,624.72			70,624.72	3%	0.05%	0.58	9.57						
	Wastewater ISF	153,016.99			153,016.99	6%	0.05%	5.65	22.33						
	Wastewater Const.	470,365.14			470,365.14	18%	0.25%	101.09	531.36						
	Sidewalk	5,025.40			5,025.40	0%	0.05%	0.21	0.84						
	Hotel Occupancy Tax	142,200.16			142,200.16	6%	0.05%	6.04	24.08						
	Total	2,166,365.01	183,017.34	229,104.29	2,578,486.64			176.61	850.44						
	Portfolio Diversification Ratio	84%	7%	9%											
February 2019	General Fund	906,907.81	183,353.87	229,123.12	1,319,384.80	53%	0.05%	35.53	196.99	2.40%	336.53	1,721.41	0.10%	18.83	94.14
	Blue Hole Operating	413,272.80			413,272.80	17%	0.05%	16.25	105.08	Total	336.53	1,721.41	Total	18.83	94.14
	Blue Hole Development	18,766.64			18,766.64	1%	0.15%	2.16	11.64						
	Municipal Court Bond Fees	76.00			76.00	0%									
	Municipal Court Fees	5,503.37			5,503.37	0%	0.15%	0.63	3.12						
	Wastewater Operations	35,112.06			35,112.06	1%	0.05%	1.85	11.42						
	Wastewater ISF	153,022.86			153,022.86	6%	0.05%	5.87	28.20						
	Wastewater Const.	405,889.74			405,889.74	16%	0.25%	88.44	619.80						
	Sidewalk	5,025.59			5,025.59	0%	0.05%	0.19	1.03						
	Hotel Occupancy Tax	142,205.61			142,205.61	6%	0.05%	5.45	29.53						
	Total	2,085,782.48	183,353.87	229,123.12	2,498,259.47			156.37	1,006.81						
	Portfolio Diversification Ratio	83%	7%	9%											
March 2019	General Fund	890,697.77	183,730.16	229,141.95	1,303,569.88	50%	0.05%	39.86	236.85	2.42%	376.29	2,097.70	0.10%	18.83	112.97
	Blue Hole Operating	398,094.05			398,094.05	15%	0.05%	17.22	122.30	Total	376.29	2,097.70	Total	18.83	112.97
	Blue Hole Development	18,769.03			18,769.03	1%	0.15%	2.39	14.03						
	Municipal Court Bond Fees	76.00			76.00	0%									
	Municipal Court Fees	6,044.21			6,044.21	0%	0.15%	0.74	3.86						
	Wastewater Operations	47,037.75			47,037.75	2%	0.05%	1.72	13.14						
	Wastewater ISF	153,029.36			153,029.36	6%	0.05%	6.50	34.70						
	Wastewater Const.	531,882.98			531,882.98	20%	0.25%	110.32	730.12						
	Sidewalk	5,025.80			5,025.80	0%	0.05%	0.21	1.24						
	Hotel Occupancy Tax	142,211.65			142,211.65	5%	0.05%	6.04	35.57						
	Total	2,192,868.60	183,730.16	229,141.95	2,605,740.71			185.00	1,191.81						
	Portfolio Diversification Ratio	84%	7%	9%											

The attached information comprises the *Quarterly Investment Report* for the City of Wimberley, Texas for the quarter ended March 31, 2019. The undersigned acknowledges that the City's investment portfolio has been and is in compliance with the policies and strategies as contained in the City's Investment Policy and in compliance with the Public Funds Investment Act of the State of Texas. The annual review of the City's Investment Policy was approved by City Council on February 7, 2019.



Shawn Cox
City Administrator



AGENDA ITEM: Consent Agenda
SUBMITTED BY: Laura Calcote, City Secretary
DATE SUBMITTED: April 29, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

- A. Approval of minutes from the Regular City Council Meeting held April 18, 2019.
- B. Approval of the February 2019 Financial Statements for the City of Wimberley.

REQUESTED ACTION

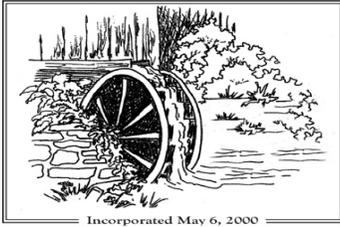
- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

- | | | | |
|-------------------|-------------------------------------|---------------------------|----|
| Budgeted Item | <input type="checkbox"/> | Original Estimate/Budget: | \$ |
| Non-budgeted Item | <input type="checkbox"/> | Current Estimate: | \$ |
| Not Applicable | <input checked="" type="checkbox"/> | Amount Under/Over Budget: | \$ |

STAFF RECOMMENDATION

Approval of Items A and B



City of Wimberley

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

REGULAR CITY COUNCIL MEETING
WIMBERLEY CITY HALL – CITY COUNCIL CHAMBERS
221 STILLWATER, WIMBERLEY, TEXAS 78676
THURSDAY, APRIL 18, 2019 – 5:30 P.M.

MINUTES

CALL TO ORDER

Mayor Susan Jagggers called the meeting to order at 5:35 p.m.

CALL OF ROLL

Council Members Present:	Susan Jagggers	Mayor
	Mike McCullough	Place One
	Craig Fore	Place Two
	Gary Barchfeld	Place Four
	Erik Wollam	Place Five
Council Members Absent:	Allison Davis	Place Three
City Staff Present:	Shawn Cox	City Administrator
	Laura Calcote	City Secretary
	Charlie Zech	City Attorney
	Rebecca Manning	Parks Director

INVOCATION

Council Member Gary Barchfeld gave the invocation.

PLEDGE OF ALLEGIANCE/SALUTE TO THE TEXAS FLAG

Mayor Susan Jagggers led the pledges to the United States and Texas flags.

CITIZENS COMMUNICATIONS

There were no citizen’s comments.

(Motion to move Item No. 12.D. – PEC Fence Variance to the next item on the agenda was made by Council Member Gary Barchfeld. Motion was seconded by Council Member Craig Fore. Motion carried unanimously (4-0).

Discuss and consider possible action regarding a fence variance for Pedernales Electric Cooperative (PEC) for the PEC Wimberley Substation. *(City Administrator Shawn Cox)*
Motion to approve a fence variance for Pedernales Electric Cooperative for the PEC Wimberley Substation was made by Council Member Craig Fore. Motion was seconded by Council Member Gary Barchfeld. Motion carried unanimously (4-0).

PRESENTATION AND POSSIBLE ACTION

There were two citizen's comments. They were as follows:

1. Merry Gibson spoke regarding the potential special meeting that was to be held for adjacent property owners to the Cypress Creek Nature Trail and Preserve and asked to know when the meeting would be scheduled.
2. Ashley Gibson addressed Council regarding the draft Preserve Master Plan and requested protection for the Preserve due to signage removal in the area. She asked Council to take temporary measures to protect the area until a plan had been approved.

Wimberley Valley Watershed Association Executive Director David Baker presented an update regarding the draft Cypress Creek Nature Trail and Preserve Master Plan. Mr. Baker had sent Council a memo earlier in the day regarding the status of the planning efforts underway, including the need to extend the planning period to comply with the public engagement process. Mr. Baker stated the draft master plan was not ready and requested an additional 30 days to complete and submit to Council for review. There was discussion among Council members and Mr. Baker regarding the riparian area and habitat, as well as the Conservation Easement. City Council requested a riparian expert be brought in to assist in the planning process. No formal action was taken.

EXECUTIVE SESSION

City Council adjourned into Executive Session at 6:02 p.m. in accordance with Texas Government Code, Chapter 551, Subchapter D for the following purposes:

- A. Section 551.071 (Consultation with Attorney) to receive legal advice regarding an Aqua Texas contract.
- B. Section 551.071 (Consultation with Attorney) to receive legal advice regarding the issuance of City of Wimberley Series 2019 bonds.
- C. Section 551.071 (Consultation with Attorney) to receive legal advice regarding the short-term rental/conditional use permit ordinance.

OPEN SESSION

Regular Session reconvened at 6:22 p.m.

Bond Counsel Attorney Stephanie Leibe advised Council regarding their options to adopt an ordinance exchanging the current revenue bonds for the Texas Water Development Board (TWDB) to exchange refunding bonds or to adopt a resolution for plan to finance the new bonds. The revenue bonds would need to be exchanged as part of the four conditions set forth by the TWDB for the approval of the change in scope to the Central Wimberley Wastewater Project. The resolution would support the issuance of the exchange refunding bonds but not authorize them, as the ordinance would. Additionally, Ms. Leibe advised on the stipulations for exchange refunding bonds, which are secured by a combination of revenues and ad valorem tax. The original revenue bonds were issued for Project design. No election would be required for the exchange refunding bonds. In conclusion, the resolution would be a lesser action of Council, until the other conditions could be met before reissuance of bonds. There was discussion among Council members regarding the bonds and the subsequent action that should be taken during this timeframe.

Motion to adopt a resolution approving the City's plan of finance pertaining to obligations to be designated as "City of Wimberley, Texas exchange refunding bonds, Series 2019"; and authorizing other matters related to the foregoing was made by Council Member Gary

Barchfeld. Motion was seconded by Council Member Craig Fore. Motion carried unanimously (4-0).

CONSENT AGENDA

Motion to approve the Consent Agenda was made by Council Member Craig Fore. Motion was seconded by Council Member Mike McCullough. Motion carried unanimously (4-0).

A. Approval of minutes from the Regular City Council Meeting held March 21, 2019.

B. Approval of minutes from the Regular City Council Meeting held April 4, 2019.

CITY ADMINISTRATOR REPORT

City Administrator Shawn Cox updated Council regarding the Central Wimberley Wastewater Project. The City was actively working to adhere to the four conditions set forth by the Texas Water Development Board for the approval of the change in scope for the Project. Additionally, Mr. Cox noted the City's sales tax had increased nine percent from the same time last year. Lastly, the quote for the new Wimberley Community Center sign had come in higher than anticipated, and the increased cost would need to be brought back to City Council for consideration and approval at the next meeting.

PUBLIC HEARINGS AND POSSIBLE ACTION

A. Hold a public hearing and consider approval regarding case CUP-19-001, an application for a Conditional Use Permit to allow for the operation of a vacation rental on property zoned Single-Family Residential 2 (R-2) for property located at 13301 Ranch Road 12, Wimberley, Hays County, Texas; and providing for the following: delineation on zoning map; findings of fact; severability; effective date and proper notice and meeting. (*Mystic Hill, LLC, Applicant*)

Applicant Sibyl Burrows addressed Council regarding her request to operate a short-term/vacation rental on her property. The Planning and Zoning Commission had unanimously voted to approve the application, with one abstention, at their April 11th meeting.

Mayor Susan Jagers opened the public hearing at 7:06 p.m.

There were no public comments.

Mayor Susan Jagers closed the public hearing at 7:06 p.m.

Motion to approve the Conditional Use Permit was made by Council Member Gary Barchfeld. Motion was seconded by Council Member Craig Fore. Motion carried unanimously (4-0).

B. Hold a public hearing and consider approval regarding case ZA-19-002, an application to change the zoning from Single-Family Residential 2 (R-2) to Commercial-Moderate Impact (C-2) for property located at 151 Oldham Street, Wimberley, Hays County, Texas; and providing for the following: delineation on zoning map; findings of fact; severability; effective date and proper notice and meeting. (*Mike Oldmixon, Applicant*)

Mayor Susan Jagers opened the public hearing at 7:07 p.m.

There were no public comments.

Mayor Susan Jagers closed the public hearing at 7:07 p.m.

The Planning and Zoning Commission had voted to unanimously approve the application, with one abstention, at their April 11th meeting. Council Member Erik Wollam recused himself from the discussion. Applicant Mike Oldmixon addressed Council regarding the zoning change request. He stated once the sewer system was operational, it would allow for new development in the area, which was why he was requesting the zoning change. Mr. Oldmixon

was not sure what the property would be utilized for in the future, but the zoning change would allow for more flexibility. There was discussion among Council members pertaining to impervious cover and new commercial development. Council agreed details surrounding impervious cover in the City's zoning districts needed to be discussed further before approving the change.

Motion to postpone the item until the second Regular City Council Meeting in June was made by Council Member Craig Fore. Motion was seconded by Council Member Gary Barchfeld. Motion carried unanimously (3-0).

There was a recess at 7:19 p.m.

Mayor Susan Jagers left the meeting at 7:19 p.m. due to an emergency.

Regular Session reconvened at 7:27 p.m. with Mayor Pro Tem Gary Barchfeld presiding.

- C. Hold a public hearing and consider approval of the first reading of Ordinance No. 2019-08 of the City of Wimberley, Texas amending Chapter 9 (Planning & Development Regulations) Article 9.03 (Zoning), Division 4, (Use Requirements and Restrictions) Section 9.03.141 (Bed and Breakfast Lodging Requirements) of the City of Wimberley Code of Ordinances; and providing for the following: findings of fact, a savings clause, a repealing clause, a severability clause, effective date, and proper notice and meeting.

Mayor Pro Tem Gary Barchfeld opened the public hearing at 7:28 p.m.

There were three public comments. They were as follows:

1. Suzanne Davis, a Short-Term Rental Review Committee member, disagreed with the Planning and Zoning Commission's recommendation to remove the annual renewal fee for short-term rentals. Additionally, Ms. Davis called for a balance to be struck between short-term rental owners and residents of the community and noted the renewal process is important to those property owners who live by or near a short-term rental property.

2. Jenni Marino, a Short-Term Rental Review Committee member, also spoke on the importance of the annual renewal process, which the Planning and Zoning Commission had struck from the ordinance.

3. Phil Collins, a Short-Term Rental Review Committee member, addressed Council regarding the background of the short-term rental topic and the number of short-term rentals in Wimberley. He urged Council to reconsider the academic renewal process and not to cut the fees out of the ordinance, as the Planning and Zoning Commission had recommended. He stated the fees could be reduced, instead of eliminated.

City Attorney Charlie Zech advised the renewal fee was not a part of the current ordinance.

Mayor Pro Tem Gary Barchfeld closed the public hearing at 7:38 p.m.

There was lengthy discussion among Council members, the three STR Review Committee members and a couple of Planning and Zoning Commissioners regarding the renewal fees and process. Planning and Zoning Commissioner Rebecca Minnick addressed Council regarding the renewal fee for conditional use permits (CUPs). Ms. Minnick stated that this fee would only apply to short-term rental conditional use permits and no other CUPs. It appeared to set an unfair precedence for short-term rental operators. Tim Dodson, a Planning and Zoning Commissioner and Short-Term Rental Review Committee member, also addressed Council pertaining to short-term rental CUPs, and the STR software locating illegal operators within the City. Council Member Erik Wollam asked why the two groups were in opposition when it came to the renewal fee/process. Both groups advised regarding their standpoint on the issue. City Council discussed short-term rental compliance and the annual renewal cost. City Attorney Charlie Zech advised the ordinance being presented was not needed to make current illegal operators come into compliance.

Motion to approve of the first reading of Ordinance No. 2019-08 of the City of Wimberley, Texas amending Chapter 9 (Planning & Development Regulations) Article 9.03 (Zoning), Division 4, (Use Requirements and Restrictions) Section 9.03.141 (Bed and Breakfast Lodging Requirements) of the City of Wimberley Code of Ordinances; and providing for the following: findings of fact, a savings clause, a repealing clause, a severability clause, effective date, and proper notice and meeting, and furthermore to include the Short-Term Rental Review Committee's recommendation of an annual administrative renewal process was made by Council Member Gary Barchfeld. Motion was seconded by Council Member Mike McCullough. Motion carried unanimously (4-0).

DISCUSSION AND POSSIBLE ACTION

- A. Discuss and consider possible action to utilize Specialized Public Finance, Inc. as financial advisors for the City of Wimberley. *(City Administrator Shawn Cox)*

The City had utilized Specialized Public Finance, Inc. previously for the issuance of the City's Combination Tax and Surplus Revenue Anticipation Notes, Series 2013, and Sewer System Revenue Bonds, Series 2017. As a condition of the Texas Water Development Board (TWDB) approved change in scope for the Central Wimberley Wastewater Project, the City must exchange the City's Sewer System Revenue Bonds, Series 2017 for Exchange Refunding Bonds, Series 2019.

Motion to utilize Specialized Public Finance, Inc. as financial advisors for the City of Wimberley was made by Council Member Mike McCullough. Motion was seconded by Council Member Craig Fore. Motion carried unanimously (4-0).

- B. Discuss and consider possible action to declare the items in the storage unit for surplus. *(City Administrator Shawn Cox)*

There was discussion among Council members regarding what items were in the storage unit. **Motion to declare the items in the storage unit for surplus, with the exception of the generators, was made by Council Member Craig Fore. Motion was seconded by Council Member Mike McCullough. Motion carried unanimously (4-0).**

- C. Discuss and consider possible action to approve Hays County's estimate in the amount of \$36,337 for the paving of and the replacement of a drainage culvert at Rocky Springs Road. *(City Administrator Shawn Cox)*

Motion to approve Hays County's estimate in the amount of \$36,337 for the paving of and the replacement of a drainage culvert at Rocky Springs Road as made by Council Member Craig Fore. Motion was seconded by Council Member Mike McCullough. Motion carried unanimously (4-0).

- D. Discuss and consider possible action to approve authorization of payment in the amount of \$13,380 to BEFCO for the Hazard Mitigation Grant Program (HMGP) surveys. *(City Administrator Shawn Cox)*

In September 2018, Council approved spending \$4,250 to have the required surveys completed for five properties affected by the 2015 Memorial Day Flood. The surveys had been completed, but the City was required by the HMGP project to pay the full invoice of \$13,380 to BEFCO. After payment, the City could seek reimbursement for seventy-five percent (75%) of the costs, equaling \$10,035.

Motion to approve authorization of payment in the amount of \$13,380 to BEFCO for the Hazard Mitigation Grant Program (HMGP) surveys and for the City to be reimbursed \$10,035 before the end of Fiscal Year 2019 was made by Council Member Gary

Barchfeld. Motion was seconded by Council Member Craig Fore. Motion carried unanimously (4-0).

- E. Discuss and consider possible action to authorize an expenditure to the Texas General Land Office of an amount not to exceed \$2,350 for the application for and use of a State Miscellaneous Easement/Right-of-Way. *(Place Four Council Member Gary Barchfeld)*
The City was in the process of completing the General Land Office Application for State Land Use Lease. The filing fee for the application was \$2,350. The completion of this application is one of the conditions for a Favorable Finding from the Texas Water Development Board's Environmental Review for the Central Wimberley Wastewater Project. The application is for a ten-year easement/lease for the installation of the wastewater line under Cypress Creek.
Motion to authorize the expenditure to the Texas General Land Office of an amount not exceed \$2,350 for the application for State Land Use Lease was made by Council Member Gary Barchfeld. Motion was seconded by Council Member Craig Fore. Motion carried unanimously (4-0).
- F. Discuss and consider possible action regarding an ordinance adding Article 4.12, Landscaping and Tree Preservation to Chapter 4, Building Regulations of the City of Wimberley Code of Ordinances. *(City Administrator Shawn Cox)*
There was discussion among Council members pertaining to the requirements for removal of trees for commercial properties. Council Member Craig Fore noted the ordinance would be more for development and the permitting process for site plan approval. City Council members agreed the ordinance needed to be revised once more, and members would provide feedback for the document.
Motion to postpone this item until the May 2nd City Council Meeting to allow time for feedback and editing of the ordinance was made by Council Member Gary Barchfeld. Motion was seconded by Council Member Craig Fore. Motion carried unanimously (4-0).
- G. Discuss and consider possible action to support the completion of Friends of Blue Hole's playscape shade canopy project. *(City Administrator Shawn Cox and Parks Director Rebecca Manning)*
Motion to postpone this item until the May 2nd City Council Meeting was made by Council Member Gary Barchfeld. Motion was seconded by Council Member Craig Fore. Motion carried unanimously (4-0).
- H. Discuss and consider possible action to approve Ordinance No. 2019-10, disannexing an area of approximately 90 acres contiguous to the City Limits, generally known as 801 Wayside Drive, and providing for the following: findings of fact, savings, severability, repealer, effective date, and proper notice and meeting. *(City Administrator Shawn Cox)*
Motion to postpone this item until the May 2nd City Council Meeting was made by Council Member Gary Barchfeld. Motion was seconded by Council Member Craig Fore. Motion carried unanimously (4-0).

CITY COUNCIL REPORTS

- A. Announcements – Council Member Mike McCullough commended the Wimberley High School athletic teams for a great spring season, especially the baseball team.

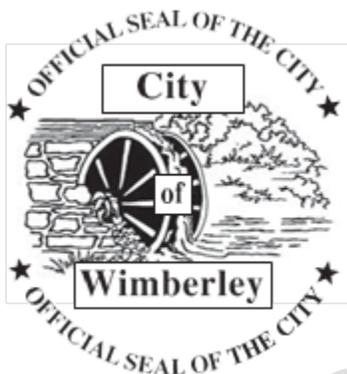
B. Future agenda items – Council Member Craig Fore requested to add the topic of impervious cover to all zoning areas. Council Member Gary Barchfeld requested funding for the General Land Office requirements be placed on the next agenda. Council Member Erik Wollam requested the removal of Bickerstaff Heath Delgado Acosta LLP as legal counsel for all on-going litigation for The City.

ADJOURNMENT

Mayor Pro Tem Gary Barchfeld adjourned the meeting at 8:56 p.m., without objection.

RECORDED BY:

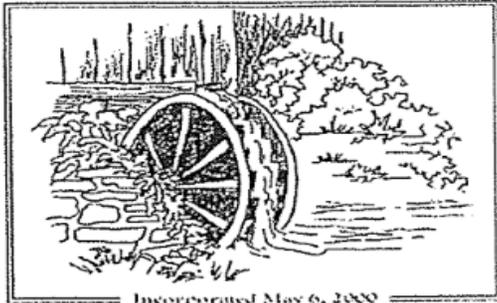
Laura J. Calcote, City Secretary



APPROVED BY:

Susan Jagers, Mayor

DRAFT



CITY OF WIMBERLEY

Summary Financial Statements

Five Months Ended February 28, 2019

City of Wimberley
Balance Sheets
February 28, 2019

	Major Funds					Nonmajor Funds		
	General	Blue Hole	HOT	Wastewater Utility	Wastewater Construction	Municipal Court	BHP Development	FM 2325 Sidwalks
Cash and investments	\$ 1,268,697	402,738	152,297	28,458	2,721,361	5,579	18,767	5,026
Receivables and other	145,147	-	-	10,516	-	-	-	-
Construction, sinking funds and restricted cash	-	-	-	197,776	405,890	-	-	-
Net investment in fixed assets	-	-	-	816,913	2,021,785	-	-	-
Total Assets	\$ 1,413,844	402,738	152,297	1,053,663	5,149,036	5,579	18,767	5,026
Payables	\$ 70,138	4,131	-	44,394	398,382	861	-	-
Debt (old)	-	-	-	219,431	21,385	-	-	-
Debt - TWDB (new)	-	-	-	-	5,498,005	-	-	-
Total Liabilities	<u>70,138</u>	<u>4,131</u>	<u>-</u>	<u>263,825</u>	<u>5,917,772</u>	<u>861</u>	<u>-</u>	<u>-</u>
Fund Balance	<u>1,343,706</u>	<u>398,607</u>	<u>152,297</u>	<u>789,838</u>	<u>(768,736)</u>	<u>4,718</u>	<u>18,767</u>	<u>5,026</u>
Total Liabilities and Fund Balance	\$ 1,413,844	402,738	152,297	1,053,663	5,149,036	5,579	18,767	5,026

Note:

Wastewater Funds considered "proprietary funds", and thus includes investment in fixed assets, while other funds do not.

City of Wimberley
Revenues and Expenditures - General Fund

Five Months Ended February 28, 2019

	2/28/2019	YTD	2019 Budget	YTD % Budget 42%
Revenues				
Sales taxes	\$ 75,584	395,509	860,000	46%
Mixed beverage tax	\$ -	3,583	9,500	38%
Franchise tax	\$ 38,965	80,533	278,250	29%
Permit fees	\$ 5,715	32,096	55,750	58%
Grant funds	\$ -	-	-	-
Service fees	\$ 5,374	21,266	50,700	42%
Community Center rental fees	\$ 4,838	23,733	55,000	43%
Other income	\$ 1,030	9,391	4,000	235%
Total Revenues	\$ 131,506	566,110	1,313,200	43%
Expenditures				
Administration	24,892	281,202	806,047	35%
Administration - Legal	3,139	53,900	200,000	27%
Council/Board	16,725	24,725	65,575	38%
Building	3,495	17,933	39,000	46%
Public Safety	2,935	37,579	105,254	36%
Municipal Court	1,000	7,396	-	-
Public Works	10,818	55,290	161,131	34%
Roads	17,104	77,767	253,500	31%
Waste/Wastewater	1,122	13,386	34,000	39%
Community Center	9,064	45,552	136,819	33%
Nature Trail	151	6,815	10,300	66%
Total Expenditures	90,444	621,546	1,811,626	34%
Excess Revenues Over Expenditures	41,062	(55,436)	(498,426)	
	\$ 41,062	(55,436)	(498,426)	

City of Wimberley
Revenues and Expenditures - Blue Hole

Five Months Ended February 28, 2019

	2/28/2019	YTD	2019 Budget	YTD % Budget 42%
<u>Revenues</u>				
Gate fees	\$ 64	34	341,680	0%
Other fees	5,060	10,140	51,500	20%
Miscellaneous	60	2,019	4,650	43%
Total Revenues	5,184	12,193	397,830	3%
<u>Expenditures</u>				
Wages and benefits	18,252	85,019	276,127	31%
Contract services	1,364	8,637	18,200	47%
Other	11,712	27,457	83,303	33%
Purchase under reclaimed water agreement	-	-	-	-
Capital Outlay	-	-	20,000	0%
Operating Transfer Out	-	50,000	200,000	25%
Total Expenditures	31,327	171,113	597,630	29%
Excess Revenues Over Expenditures	\$ (26,144)	(158,919)	(199,800)	
Transfer in from General Fund	-	-	101,572	
Net Change in Fund Balance	\$ (26,144)	(158,919)	(98,228)	

City of Wimberley

Revenues and Expenditures - Hotel Occupancy Tax

Five Months Ended February 28, 2019

	2/28/2019	YTD	2019 Budget	YTD % Budget 42%
Revenues				
Hotel Occupancy Tax	\$ -	-	-	-
Interest income	5	30	-	-
Miscellaneous	-	-	-	-
Total Revenues	5	30	-	-
Expenditures				
Wages & Bennisfits	-	-	-	-
Other	-	-	-	-
Contract Services	-	2,054	-	-
HOT Disbursements	-	-	-	-
General Operating Supplies	-	-	-	-
Capital Outlay	-	-	-	-
Total Expenditures	-	2,054	-	-
Excess Revenues Over Expenditures	\$ 5	(2,024)	-	
Transfer in from General Fund	-	-	-	
Net Change in Fund Balance	\$ 5	(2,024)	-	

City of Wimberley

Revenues and Expenditures - Wastewater Utility Fund

Five Months Ended February 28, 2019

	2/28/2019	YTD	2019 Budget	YTD % Budget 42%
Revenues				
Charges for utility services	\$ 9,898	50,108	117,286	43%
Reclaimed water revenues	-	-	-	
Interest	8	44	-	-
Total Revenues	9,906	50,152	117,286	43%
Expenditures				
Contract Services	3,783	112,143	268,020	42%
Utilities	748	3,365	7,500	45%
Project Manager	-	45,590	90,000	51%
Other Expenses	-	292	675	43%
Capital Outlay (debt repayment)	-	41,100	31,250	132%
Wastewater Debt Service - Principal	-	-	216,734	0%
Wastewater Debt Service - Interest	-	45,153	89,606	50%
Total Expenditures	4,531	247,644	703,785	35%
Excess Revenues Over Expenditures	5,375	(197,492)	(586,499)	
Transfer In	-	147,050	501,131	29%
Net Change in Fund Balance	\$ 5,375	(50,442)	(85,368)	

City of Wimberley

Revenues and Expenditures - Wastewater Collection and Treatment Plant

Five Months Ended February 28, 2019

	2/28/2019	YTD	2019 Budget	YTD % Budget 42%
Revenues				
Interest revenues	\$ 88	620	-	-
Investment income	4,638	22,872	-	-
WW Bond Reserve Funds	-	-	-	-
Total Revenues	4,727	23,492	-	-
Expenditures				
Records management	-	(67,354)	-	-
Capital outlay	64,564	718,159	-	-
Other expenses	-	-	-	-
Total Expenditures	64,564	650,806	-	-
Excess Revenues Over Expenditures	(59,837)	(627,314)	-	-
Transfer in from General Fund	-	-	-	-
Net Change in Fund Balance	\$ (59,837)	(627,314)	-	-

City of Wimberley
Revenues and Expenditures - Nonmajor Funds

Five Months Ended February 28, 2019

	Municipal Court			BHP Development			FM 2325 Sidewalk		
	2/28/2019	YTD	2019 Budget	2/28/2019	YTD	2019 Budget	2/28/2019	YTD	2019 Budget
Total Revenues	\$ 13	1,297	-	\$ 2	12	18	\$ 0	1	2
Total Expenditures	-	-	-	-	-	-	-	-	-
Excess Revenues Over Expenditures	\$ 13	1,297	-	\$ 2	12	18	\$ 0	1	2
Fund Transfers	-	-	-	-	-	-	-	-	-
Net Change in Fund Balance	\$ 13	1,297	-	\$ 2	12	18	\$ 0	1	2



AGENDA ITEM: City Administrator's Report
SUBMITTED BY: Shawn Cox, City Administrator
DATE SUBMITTED: April 30, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

The City Administrator will provide an update to Council on the progress of the Central Wimberley Wastewater Project, including construction progress, expenditures to date, and other updates related to the project.

REQUESTED ACTION

- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

- | | | | |
|-------------------|-------------------------------------|---------------------------|----|
| Budgeted Item | <input type="checkbox"/> | Original Estimate/Budget: | \$ |
| Non-budgeted Item | <input type="checkbox"/> | Current Estimate: | \$ |
| Not Applicable | <input checked="" type="checkbox"/> | Amount Under/Over Budget: | \$ |

STAFF RECOMMENDATION

ORDINANCE NO. 2019-08

AN ORDINANCE AMENDING CHAPTER 9, PLANNING AND DEVELOPMENT REGULATIONS, ARTICLE 9.03, ZONING, OF THE CITY OF WIMBERLEY CODE OF ORDINANCES RELATED TO BED AND BREAKFAST AND VACATION RENTAL LODGING REQUIREMENTS; REQUIRING AN ANNUAL CONDITIONAL USE PERMIT RENEWAL; AMENDING CERTAIN REGULATIONS; PROVIDING FOR A PENALTY NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00); PROVIDING FOR A FORFEITURE OF CONDITIONAL USE PERMIT FOR FAILURE TO RENEW; PROVIDING FINDINGS OF FACT; A REPEALING CLAUSE; A SAVINGS AND SEVERABILITY CLAUSE; AN EFFECTIVE DATE; AND PROPER NOTICE OF MEETING.

WHEREAS, the City of Wimberley's is a General Law Type A City under the statutes of the State of Texas; and

WHEREAS, the Texas Local Government Code authorizes a municipality to adopt zoning regulations designed to accomplish the goals as delineated in Section 211.004 of the Texas Local Government Code and for the purpose of regulating those issues as delineated in Section 211.003 of the Texas Local Government Code; and

WHEREAS, the City of Wimberley's City Council appointed a committee to review the City's regulations regarding short term rentals and said committee has met for numerous months regarding the City's short term rental regulations; and

WHEREAS, the committee presented its proposed amendments to the City's zoning regulations to the Planning and Zoning Commission; and

WHEREAS, the Planning and Zoning Commission debated proposed amendments and held a public hearing regarding the proposed amendments on the 11th day of April 2019 at which all persons were given an opportunity to appear and express their opinion concerning the proposed amendments; and

WHEREAS, the Planning and Zoning Commission provided a preliminary report regarding the proposed amendments and recommended approval to the City Council; and

WHEREAS, a public hearing was held by the City Council on the 18th day of April 2019, on such preliminary report and recommendation at which all persons were given an opportunity to appear and express their opinion concerning the proposed amendments; and

WHEREAS, the City Council of the City of Wimberley has determined it to be in the public interest to adopt to the proposed amendments which in its best judgment are intended to promote the orderly development, use, and ongoing management of short term rental properties in order to promote the public health and safety of the community and promote a positive transient lodging experience.

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

Section 1. 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. The City of Wimberley Code of Ordinances Chapter 9, Article 9.03 is hereby amended as follows with a strike through being a deletion from the Code and an underline being an addition to the Code:

General Amendments:

Except where specifically provided otherwise in this Ordinance:

The phrases “Bed and Breakfast Lodging” and “Bed and Breakfast” shall be replaced throughout the code with the phrase “STR1”

The phrases “Vacation Rental Lodging” and “Vacation Rental” shall be replaced throughout the Code with the phrase “STR2”

Amendment Section 9.03.005 Definitions

~~Bed and breakfast lodging. A residential facility, otherwise permitted in a zoning district authorized by this code as a conditional use permit, that is offered for rental and the owner or the owner's designated non-renting representative occupies a facility located on the property at the time the residential facility is being rented. All residential facilities of this type located on or within the property or properties identified in the conditional use permit shall be considered as constituting a single bed and breakfast lodging. All bed and breakfast lodging shall comply with section 9.03.141 (bed and breakfast lodging requirements), and all applicable laws and regulations.~~

~~Vacation rental. A residential facility otherwise permitted in a zoning district authorized by the approval of a conditional use permit that is offered for rental for a period not to exceed thirty (30) days. The owner or the owner's designated representative shall not be required to occupy the facility at the time the facility is being rented. All residential facilities of this type located on or within the property or properties identified in the conditional use permit shall be considered as constituting a single vacation rental. All vacation rentals shall comply with section 9.03.142 (vacation rental lodging requirements), and all applicable laws and regulations.~~

Short Term Rental One (STR1), formerly known as a “Bed and Breakfast”, is an owner occupied, owner present property used for transient lodging for stays of 30 consecutive days or less.

Short Term Rental Two (STR2), formerly known as a “Vacation Rental”, is an owner non-occupied, owner not-resident property used for transient lodging for stays of 30 consecutive days or less.

STR, either and STR1 or an STR2

Transient lodging is defined as a property use which has paying guests, tenants, and/or renters of a STR property who stay 30 or less consecutive days in the subject property.

Amendment Division 3. District Regulations

Section 9.03.070 Residential Use Prohibitions

Except as otherwise provided for in this Code rental of a residence or residential structure of 30 days or less is prohibited in RA, R-1, R-2, R-3, R-4, R-5, MF-1, MF-2 and MH.

Section 9.03.141 is hereby deleted in its entirety and replaced with the following:

Section 9.03.141 Short Term Rentals

(a) Purpose. The requirements of these regulations are designed and intended to promote the orderly development, use, and ongoing management of STR1 and STR2 properties, collectively referred to within this Code as “STR”, to promote the public health and safety of the community and promote a positive transient lodging experience. In addition, because short term rentals are permitted in and near residential zoning districts these regulations are determined to be the minimum necessary to mitigate any possible negative impact of such uses on any residential areas.

(b) For an STR located in a residentially zoned area the residential look, feel, and character of STR properties shall be maintained and the STR owners are prohibited from negatively intruding upon the adjacent neighbors and community atmosphere.

(c) A conditional use permit (CUP), legislatively approved pursuant to Section 9.03.255 and this Section, shall be required for all transient lodging approved after the enactment of these regulations, shall be valid for a period of one year from approval and shall run with the land. The date of approval shall be specifically provided for in the enacting ordinance.

(d) The renewal of a previously legislatively approved CUP, whether the CUP was approved before or after the enactment of these regulations, may be approved administratively for additional one-year periods pursuant to subsection (i) of this Section. All ordinances legislatively approving a CUP shall include language authorizing administrative renewal upon compliance with subsection (k) of this Section.

[(e) All currently existing legal nonconforming transient lodging uses are hereby required to comply with the administrative approval process pursuant to subsection (i) of this Section by the deadline established in subsection (k) of this Section. Compliance

therewith shall result in the issuance of an administrative CUP which shall be valid for a period of one year from the date of issuance. Failure to comply with this subsection shall result in the revocation of any existing nonconforming rights to use a property as transient lodging.]

(f) Refund of application fees. An applicant for an initial STR CUP who withdraws his/her application prior to presentation at the Planning and Zoning commission is entitled to a refund of all but one half of the applicant's application fee. No fees shall be refunded if the CUP application is withdrawn after presentation to the Planning and Zoning commission.

(g) In addition to the CUP considerations provided for in Section 9.03.251(b) the Planning and Zoning Commission and the City Council shall consider the following in the approval of a STR:

(1) Owner requested versus permitted Planning and Zoning uses in the applicable zoning district;

(2) The impact of potential transient lodging activity on any surrounding residential properties;

(3) The area and the impact of STR lodging activities on the area;

(4) The incremental environmental impact of the STR;

(5) The proposed property occupancy relative to the size of the property;

(6) Setbacks, encroachments, and proximity to any abutting residential structures;

(7) Privacy fencing, landscaping, and natural noise barriers on the STR property that are appropriate for the protection of any abutting uses;

(8) Impact analysis and plan of occupant access to waterways and other environmentally sensitive areas;

(9) Vehicle access, on-site parking, and the number of parking spaces available relative to maximum acceptable occupancy; and

(10) Any other factors in the City's Comprehensive Plan deemed appropriate and consistent with the City's zoning authority.

(h) In addition to any conditions imposed as part of the approved CUP the following regulations shall be applicable to an STR lodging facilities and shall be incorporated into any legislatively approved CUP:

(1) The STR CUP shall terminate and be considered abandoned if and when there is evidence of no transient lodging rental activity, based in part on the state occupancy tax reports, for a period of nine (9) consecutive months. The burden is on the property owner to prove the property has been in continuous use.

(2) For STR1 property, the owner or the owner's designated representative shall occupy the property when the property is rented and in use as a transient lodging facility.

(3) Parking shall comply with the base zoning district except as provided in this subsection. On-street parking is prohibited in RA, R-1, R-2, R-3, R-4, R-5, MF-1, MF-2 and MH zoning districts and parking in said zoning districts shall be subject to the following requirements:

(1) STR 1. Two (2) 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 regulations. No parking shall be permitted on grass, within landscaped areas, or on other unimproved surfaces.

(2) STR 2. One (1) parking space is 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 approved 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 regulations. No parking shall be permitted on grass, within landscaped areas, or on other unimproved surfaces.

(i) Administrative Renewal of CUP

(1) The City Administrator shall renew a CUP upon application, payment of any applicable fee and evidence of compliance with the following:

- a. For STR1 property, attestation that the owner or the owner's designated representative occupies the property when the property is rented and in use as a transient lodging facility.
- b. Attestation that any applicable parking requirements are satisfied.

- c. Attestation of compliance with all conditions provided for in any ordinance approving the original CUP.
- d. Attestation of compliance with all applicable base zoning district regulations.

(2) Should any CUP, whether approved legislatively or administratively, fail to be renewed pursuant to this subsection prior to thirty (30) days after its date of termination the CUP shall be considered revoked and the property owner shall be required to apply for a new CUP through the legislative process.

(3) City Staff shall develop an application form, permit and timeline for processing administrative renewals of CUPs and existing legal nonconforming transient lodging.

(j) The Council recognizes orderly and accurate recordkeeping of STR activity is essential to the successful enforcement of this ordinance and requires the following:

(1) City Staff is directed to add a GIS layer through the City's electronic mapping software that identifies the locations of all approved CUP STR locations and unapproved CUP STR locations for which the City has information.

(2) City Staff is directed to create a database for recording all complaints received by the City that allege a violation of state and/or local law and/or violation of a CUP by the owner, operator, or renter of an STR within the City limits. Each entry in the complaint database should include, at a minimum, the following information:

(A) The location of the STR;

(B) The nature of the alleged violation;

(C) The date of the alleged violation;

(D) A notation indicating how the complaint was resolved.

(3) The GIS layer and the complaint database described by this section should be updated as necessary and shall be made available to members of the public as required by the Texas Public Information Act.

(4) Members of the public, including individuals who reside adjacent to or in the vicinity of an STR, are encouraged to promptly report complaints to the City.

(k) All currently existing legal nonconforming transient lodging uses, and existing CUPs shall apply for the appropriate STR use designation through the

administrative renewal process as provided for under subsection (i) of this Section by June 30, 2020 and shall be required to annually renew their CUPs pursuant to these regulations.

Section 9.03.142 is deleted in its entirety.

Section 3. The penalty provision of the City Code of Ordinances Chapter 1, Section 1.01.009 shall be applicable to any violation of this Ordinance.

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 of 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 as provided by law.

Section 7. It is hereby officially found and determined that the meeting at which this Ordinance was 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 Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED First Reading this 18th day of April, 2019, by a vote of 4 (Ayes) to 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

PASSED AND APPROVED Second Reading this _____ day of _____, 2019, by a vote of (Ayes) to (Nays) (Abstain) vote of the City Council of the City of Wimberley, Texas.

Susan B. Jagers, Mayor

ATTEST:

Laura J. Calcote, City Secretary

APPROVED AS TO FORM:

City Attorney





AGENDA ITEM: STR Administrative Renewal
SUBMITTED BY: Laura Calcote, City Secretary
DATE SUBMITTED: April 29, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

Discuss and consider possible action regarding the fee structure and amount for administrative renewal of conditional use permits. *(Short-Term Rental Review Committee Members Phil Collins and Tomas Palm)*

The Short-Term Rental Review Committee’s renewal fee structure options and recommendation are attached.

REQUESTED ACTION

- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

- | | | | |
|-------------------|--------------------------|---------------------------|----|
| Budgeted Item | <input type="checkbox"/> | Original Estimate/Budget: | \$ |
| Non-budgeted Item | <input type="checkbox"/> | Current Estimate: | \$ |
| Not Applicable | <input type="checkbox"/> | Amount Under/Over Budget: | \$ |

STAFF RECOMMENDATION

STR Program: Administrative Renewal Fee Structure Options and Recommendation

Background

- The City currently charges \$650 per CUP Application.
- Currently, no renewal fees are charged as there is no active renewal process.
- The adopted ordinance amendments do require administrative renewal of CUP.
- The renewal costs for the City are driven by: 1) administrative labor costs during monitoring, renewal, and enforcement, 2) advertising costs for public notices at time of application, 3) Host-Compliance monitoring service costs of \$15,000 annually, and 4) postage for administrative renewals and compliance enforcement.
- Total annual City cost are estimated at \$20k annually.

Options

1. City absorbs the cost of administrative renewals, advertising, postage, monitoring service, and compliance enforcement.
 - a. Advantages
 - i. No fee concerns for STR Owners.
 - ii. No Action required by Council.
 - b. Disadvantages
 - i. STR Program dependent on City Priorities and available funds.
 - ii. Potential to lose monitoring service preventing ongoing compliance as City Councils change over time.
2. City passes on the STR program costs through an administrative renewal fee of \$50 per occupant not to exceed \$500 paid annually by the STR Owner. Average STR owner will pay \$300 annually. This fee can be adjusted after year one. It will be easier to adjust down, than up.
 - a. Advantages
 - i. STR Program NOT dependent on City Priorities and available funds.
 - ii. City can adjust fee, up or down, depending on actual cost.
 - iii. Those benefiting from the STR program, pay for the program.
 - b. Disadvantages
 - i. Resistance to change.
 - ii. Perception by compliant STRs that they are paying for the non-compliant STRs.
 - iii. Requires City Council action.
3. City passes on a subset of the total STR program costs and subsidizes the rest.
 - a. Advantages
 - i. Reduced fee concerns for STR Owners.
 - b. Disadvantages
 - i. STR Program dependent on City Priorities and available funds.
 - ii. Potential to lose monitoring service preventing ongoing compliance.

4. City front loads the STR program costs into the CUP application fee but does not charge for the annual renewal. CUP fee would go up from \$650 to \$950.
 - a. Advantages
 - i. Places cost of the program primarily on all non-compliant STRs.
 - b. Disadvantages
 - i. Will be perceived as punishment by non-compliant STRs.
 - ii. May discourage compliance efforts.
 - iii. May result in more STRs closures than forecasted because of the higher upfront costs.
 - iv. The CUP application fee is a one-time cost, so the City will see all the revenue upfront and no revenues in the years after – cashflow issue.
 - v. No guarantee the upfront collections will be allocated to recurring STR Program costs past year one potentially jeopardizing the monitoring program.

STR Advisory Committee Recommendation - The STR Committee recommends Option 2

Set a renewal fee of \$50 per occupant not to exceed \$500, paid annually by the STR Owner at the time of renewal. Note any STR receiving a CUP for the first time does not pay the renewal fee until the renewal period – i.e. on the anniversary of the CUP. The renewal fee:

- makes the administration and monitoring services cost neutral.
- allows the City to have an STR program that pays for itself every year and guarantees continuity in monitoring service as a critical compliance tool.
- provides the City latitude to raise or lower the fee based on actual STR Program costs incurred.
- can be adjusted up or down after year one based on the actual costs of administering the STR Program.
- on average will be \$300 annually. This fee represents at most 1% of the 25k in annual revenue generated by the average STR – i.e. No STR owner will go out of business.
- of \$300 is a minimal price to pay to ensure all STRs are compliant and that compliant STR operators are not undermined by non-compliant operators – i.e. level playing field.
- based on our STR attrition projection, the average compliant STR will see an increase in room nights, which at the average rate will exceed the fee – i.e. positive return on investment.

**STR Program Communication and Implementation Schedule
(As of 5-2-2019)**

Deliverable	Due Date	Responsibility	Status
City Council Review STR Program	3/12/2019	STR Team	Complete
Public Notice for City Council	3/28/2019	City Council & Shawn	Complete
Final Draft Ordinance Completed	4/4/2019	Charlie & Shawn	Complete
Program implementation readiness review	4/9/2019	Shawn, Vendor, STR Team	Complete
P&Z Vote – Accept; Deny	4/11/2019	P&Z & Shawn	Complete
First reading – STR CUP ordinance	4/18/2019	Barchfeld, McCullough	Complete
Final Discovery Report Completed	4/24/2019	Vendor & Shawn	In Process
Second reading – STR CUP ordinance	5/2/2019	Barchfeld, McCullough	In Process
STR Website goes live	5/3/2019	Shawn & City Staff	
STR Press Release – Wimberley View	5/8/2019	Shawn	
Stakeholder Education sessions	5/4-31/2019	Shawn & City Staff	
STR Owner Notification period begins	6/1/2019	City Staff	



AGENDA ITEM: Tree Ordinance
SUBMITTED BY: Shawn Cox, City Administrator
DATE SUBMITTED: April 30, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

At the November 15, 2018 Council Meeting, Council directed staff to draft a tree ordinance and have it ready for review in March 2019. A draft of the proposed ordinance was originally presented to Council on March 21, 2019 and again on April 18, 2019. The item was postponed at the April 18th meeting to allow time for feedback on the draft ordinance.

REQUESTED ACTION

- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

- | | | | |
|-------------------|-------------------------------------|---------------------------|----|
| Budgeted Item | <input type="checkbox"/> | Original Estimate/Budget: | \$ |
| Non-budgeted Item | <input type="checkbox"/> | Current Estimate: | \$ |
| Not Applicable | <input checked="" type="checkbox"/> | Amount Under/Over Budget: | \$ |

STAFF RECOMMENDATION

The City Administrator is requesting input on recommended changes to the draft ordinance.

ATTACHMENTS:

- Ordinance No. 2019-07

ARTICLE 4.12 LANDSCAPING AND TREE PRESERVATION

Division 1. Generally

Sec. 4.12.001 Title

This article shall be commonly cited as the landscape ordinance.

Sec. 4.12.002 Purpose

- (a) Generally. The purpose of this article is to provide for the preservation of native trees, prevent the clear-cutting of land, and provide for minimum landscaping and screening requirements, in recognition that trees, landscaping, screening, and buffering protect the health and welfare of the community, while addressing the water conservation and drainage issues particular to the Hill Country region. The purpose of this article is also to enhance the community's ecological, environmental, and aesthetic qualities.
- (b) Health, welfare, and general well-being. Preserving and improving the natural environment, and maintaining a working ecological balance, are of increasing concern to the city. The fact that the proper use of landscape elements can contribute to the processes of air purification, oxygen regeneration, water absorption, water purification, and noise, glare, and heat abatement as well as the preservation of the community's aesthetic qualities indicates that the use of landscape elements is of benefit to the health, welfare, and general well-being of the community, and therefore it is proper that the appropriate use of such elements be required.
- (c) Water conservation and drainage. The city experiences frequent droughts and is characterized by thin-soiled rock formations; therefore, it is the purpose of this article to encourage the use of drought-resistant vegetation and landscaping that minimizes runoff and erosion.

Sec. 4.12.003 Scope

This article applies to all commercial property within the incorporated municipal boundaries (i.e., city limits) for which site plan approval by the city is required under the city's Code of Ordinances. This article applies to actions taken after the date of enactment.

Sec. 04.12.004 Definitions

- (a) Rules of interpretation. Words and phrases used in this article shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense, words in the plural number shall include the singular number (and vice versa), and words in the masculine

gender shall include the feminine gender (and vice versa). The word “shall” is always mandatory, while the word “may” is merely directory. Headings and captions are for reference purposes only.

(b) Specific definitions.

City administrator. The chief administrative officer of the city. The term shall also include the deputy city administrator.

City council. The governing body of the city.

City of Austin Environmental Criteria Manual. The document promulgated by the City of Austin, which is commonly used throughout the region and is widely regarded as the standard in the development community, as may be amended.

City of Austin Grow Green Guide. The document promulgated in part by the City of Austin, entitled “Native and Adapted Landscape Plants: An Earthwise Guide for Central Texas,” as may be amended.

City permit. A city license, certificate, approval, registration, consent, permit, or other form of authorization required by a city ordinance, regulation, or rule in order to develop, construct, and operate the improvements on the property.

Code. The Code of Ordinances enacted by the city, as may be amended from time to time.

DBH (diameter at breast height). The tree trunk diameter of an existing tree measured in inches at a height of 4.5 feet above the ground. If a tree splits into multiple trunks below 4.5 feet, the trunk is measured at its most narrow point beneath the split.

Designated tree. Any of the following:

1. A hardwood tree having a trunk of eight (8) inches in caliper or greater measured at DBH;
2. A multi-trunked hardwood tree having a total trunk DBH of thirty (30) inches or more (not counting trunks less than eight (8) inches in diameter); or
3. A cluster of hardwood trees within a ten-foot radius circle having a total trunk DBH of forty (40) inches or more (not counting trunks less than eight (8) inches in diameter).

Escrow. A deposit of a cash bond with the city in accordance with this article.

Extreme drought classification. A D3 classification of drought intensity provided by the National Drought Mitigation Center, with D1 being the least intense and D4 being the most intense. D3 classification, extreme drought areas, result in major crop/pasture losses and widespread water shortages or restrictions. The National Drought Mitigation Center must be consulted to determine the classification for the region.

Heritage Tree. A “Heritage Tree” means a tree that has a diameter of twenty-four (24) inches or more, measured four and one-half (4 ½) feet above natural grade.

Impervious cover. Roads, parking areas, buildings, swimming pools, rooftop landscapes, and other construction limiting the absorption of water by covering the natural land surface; this shall include, but not be limited to, all streets and pavement within the development.

Landscape architect. One whose profession is the decorative and functional alteration and planting of grounds, especially at or around a building site.

Landscaping. Consists of introduced vegetation, as well as related improvements to a lot, including, but not limited to, forming and berming, irrigation systems, landscape subsurface drainage systems, site furnishings, and nonstructural retaining walls.

Natural area. An area where the naturally grown landscaping is left primarily undisturbed, except for the removal of poison ivy, greenbrier, and similar vegetation, oak wilt removal and/or prevention measures, and allowing for maintenance of the trees to maintain vigorous growth.

Owner. A person with legal control over property in question.

Person. A human individual, corporation, agency, unincorporated association, partnership, or sole proprietorship, or other legal entity.

TCEQ. The state commission on environmental quality, or its successor agency.

Sec. 4.12.004 Applicability

This article applies to all new commercial development requiring site plan approval subject to zoning requirements. All properties going through redevelopment through extension, reconstruction, resurfacing, or structural alteration must come into compliance. Site plan approval shall be conditioned on compliance with this article.

~~Sec. xxx Landscaping fund~~

~~A fund is hereby created in which any cash-in-lieu paid to the city pursuant to the mandates of this article shall be deposited. The fund may be drawn upon by the city to implement landscaping improvements on city land and city controlled rights-of-way.~~

Sec. 4.12.005 Damaging or removing trees

No person shall damage or remove trees in violation of this article.

Sec. 4.12.006 Violations

It shall be unlawful for any person to violate this article.

Sec. 4.12.007 Enforcement; penalties

- (a) Compliance. Violators of this article will be required to come into compliance within sixty (60) days, unless a variance has been approved by the city. Compliance with this article may be grounds for withholding of other related pending permits for the project by the city.
- (b) Enforcement. The city shall have the power to administer and enforce the provisions of this article as may be required by governing law. Any person violating any provision of this article is subject to a stop work order, suit for injunctive relief, and/or prosecution for criminal violations. Any violation of this article is hereby declared to be a nuisance. Any violation of this article may serve as grounds to withhold or delay issuance of other permits and revocation of a certificate of occupancy.
- (c) Criminal penalty. Any person violating any provision of this article shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00) to be deposited in the landscaping fund. Each day that a provision of this article is violated shall constitute a separate offense. An offense under this article is a misdemeanor.
- (d) Civil remedies. Nothing in this article shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this article and to seek remedies as allowed by law, including but not limited to the following:
 - 1. Injunctive relief. Injunctive relief to prevent specific conduct that violates this article or to require specific conduct that is necessary for compliance with this article;
 - 2. Civil penalty. A civil penalty up to five hundred dollars (\$500.00) a day to be deposited in the landscaping fund, when it is shown that the defendant was actually notified of the provisions of this article and after receiving notice committed acts in violation of this article or failed to take action necessary for compliance with this article, and other available relief; and
 - 3. Stop work order. In the event work is not being performed in accordance with this article, the city shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect.

Division 2. Standards

Sec. 4.12.008 Street trees

- (a) Nonresidential street tree requirements. At least one (1) required tree, shall be planted adjacent to or near the street right-of-way for each twenty-five (25) feet, or fraction thereof, of linear street frontage. Trees shall be planted between the street right-of-way and any horizontal and vertical improvements. The required number of trees need not be placed uniformly, but may be clustered in groups.
- (b) Trees planted shall be a minimum four (4) inch DBH, staked, and wrapped. Small trees/large shrubs trees shall be a minimum two (2) inch DBH, staked, and wrapped.

- (c) Trees with deep roots may be planted in the area between the sidewalk and road if approved by the city administrator, or designee. Trees of species whose roots are known to cause damage to public roadways or other public works are prohibited.

Sec. 4.12.009 Landscape buffers

(a) Landscape buffer planting requirements.

1. All plant material shall be of native or adapted species.
2. All new proposed shade trees shall be a minimum of 4 inches in diameter.
3. All proposed ornamental trees shall be a minimum of 2 inches in diameter.
4. All large shrubs shall be a minimum of 5-gallon container size and small shrubs/groundcovers a minimum of 1-gallon container size.

(b) Landscape buffer spacing requirements. The following landscape buffer spacing requirements shall apply to all designated landscape buffers:

1. Shade trees (such as Live Oak or Cedar Elm). One per 50' of buffer frontage.
2. Ornamental trees (such as Crape Myrtle or Desert Willow). One per 25' of buffer frontage.
3. Large shrubs, five-gallon (such as Wax Myrtle, DW Yaupon, or Agarita). One per 6' of buffer frontage.
4. Small shrubs/groundcovers, one-gallon (such as Lantana or Liriope). One per 3' of buffer frontage.

(c) Landscape buffer widths. The following landscape buffer width requirements shall apply to all designated landscape buffers and shall be measured from the edge of the right-of-way:

	At Arterial Roadways	At Collector Roadways
O1-O2	Twenty-five feet (25')	Twenty-five feet (25')
C1-C3	Twenty-five feet (25')	Twenty-five feet (25')
HC	Fifty feet (50')	Fifty feet (50')
I1-I2	Fifty feet (50')	Fifty feet (50')
AS/S	Twenty-five feet (25')	Twenty-five feet (25')
L1-L2	Twenty-five feet (25')	Twenty-five feet (25')
IP	Fifty feet (50')	Fifty feet (50')
PPU	Fifty feet (50')	Fifty feet (50')

PR1-PR2	Twenty-five feet (25')	Twenty-five feet (25')
PF	Fifty feet (50')	Fifty feet (50')
NS	Twenty-five feet (25')	Twenty-five feet (25')
WPDD	Varies	Varies
RR-1	Twenty-five feet (25')	Twenty-five feet (25')
VI	Twenty-five feet (25')	Twenty-five feet (25')
SC	Twenty-five feet (25')	Twenty-five feet (25')
MF1-MF2	Twenty-five feet (25')	Twenty-five feet (25')

(d) Landscape buffer vegetation. The following landscape buffer vegetation requirements shall apply to all designated landscape buffers:

This buffer area shall contain either native vegetation in the form of trees and bushes left in their natural, undisturbed condition, or, if no such native vegetation exists, shall consist of landscaping in conformance with this article. If the area consists of landscaped plantings, maintenance of such plantings shall be the sole responsibility of the developer.

Sec. 4.12.010 Landscape material

All trees, plants, and vegetation shall comply with the City of Austin “Grow Green” recommended plant guide. Invasive plants in this guide are specifically prohibited.

Sec. 4.12.011 Landscape plan and tree survey submittal

A landscape plan and tree survey shall be submitted to the city with the proposed site plan. The landscape plan shall comply with the landscape requirements. The landscape plan shall be signed and sealed by a landscape architect licensed by the state. The existing tree survey should be signed and sealed by a surveyor licensed by the state.

Sec. 4.12.012 Parking area landscaping

(a) Parking lots and all vehicular parking and maneuvering areas, excluding driveways behind buildings, shall contain areas constructed, planted, and maintained as landscaped islands, peninsulas, or medians.

- (b) The minimum total area in landscaped islands, peninsulas, or medians in the parking lots in front of buildings shall be ninety (90) square feet for each twelve (12) parking spaces.
- (c) One tree is required for every six (6) parking spaces. Tree preservation is encouraged, thus one (1) existing tree that is at four (4) inches DBH shall count for two (2) new trees.
- (d) No parking space shall be located further than fifty (50) feet from a landscaped island, peninsula, median, or tree. They shall be located evenly through the parking areas; however, the location of landscaped islands, peninsulas, and medians may be adjusted to accommodate existing trees or other natural features.
- (e) Landscape terminal islands (end islands) shall be located at the end of all parking modules in a configuration to allow for turning radii of intersecting aisles to protect parked vehicles, provide for visibility, confine moving traffic to aisles and driveways, and provide space for landscaping. Medium and tall shrubs are prohibited on internal islands to maintain visibility.
- (f) All landscaped islands shall have curbs except when utilizing low impact development techniques to capture and utilize runoff for irrigation purposes.
- (g) Paving over the critical root zone is discouraged and must be approved by the city administrator, or designee. All approved paving shall be porous pavement to allow water and air exchange.

Sec. 4.12.013 Screening of dumpsters and building service equipment

- (a) For outdoor condensers, utility huts, and other building service equipment (other than a rooftop), such equipment shall be reasonably screened from view on all sides using a masonry wall and vegetative screen using at least two (2) varieties of plant material from the “grow green” plant guide, that, at maturity, are at least the height of the equipment to be screened.
- (b) All refuse and/or recycling containers shall be reasonably screened with landscaping from public view and the view of adjoining properties.
- (c) The opening for removal of the dumpster for collection shall be a minimum of twelve (12) feet to allow proper service access. An additional ten (10) feet in width is required for every additional dumpster.
- (d) All durable materials used in constructing the dumpster screening masonry wall system shall be consistent with and complement the primary structure.
- (e) The orientation of the dumpster opening shall not face the street or public sidewalk unless approved by the city administrator, or designee.

Sec. 4.12.014 Maintenance requirements

The owner shall be responsible for (unless otherwise specified herein):

- (a) Regular maintenance of all required landscaped areas and plant materials in a vigorous and healthy condition, free from diseases, pests, weeds, and litter. This maintenance shall

- include weeding, watering, fertilization, pruning, mowing, edging, mulching, or other necessary maintenance in accordance with generally accepted horticultural practice;
- (b) The repair or replacement of required landscape structures (walls, fences, etc.) to a structurally sound condition;
 - (c) The regular maintenance, repair, or replacement, where necessary, of any screening or buffering;
 - (d) Replacing planted trees if they die or become diseased beyond repair within five (5) years after planting; and
 - (e) Repairing damage to landscaped areas, structures, screening, buffering, or trees as a result of ingress or egress from site easements by authorized or unauthorized parties.

Sec. 4.12.015 Integrated pest management

Air integrated pest management plan (IPM) shall be submitted with the site plan. The IPM shall include the fertilizer ratios, brands, and types of fertilization application methods to be used. Fertilizers must be phosphate-free.

Sec. 4.12.016 Tree preservation

- (a) A grading and tree survey shall be submitted with the site plan.
- (b) The tree survey shall include all existing, live, healthy trees with an eight-inch DBH in diameter and larger. The survey shall indicate the size (DBH) and species of tree. Trees observed to be distressed will be indicated with an asterisk on the tree list. Trees shall be represented by circles using the formula of one (1) foot of radius for every one inch of trunk diameter. Unbroken circles indicate trees that are to remain. Dashed circles indicate trees that are to be removed (including trees identified to be distressed).
- (c) Healthy designated trees (as defined by the City of Austin Environmental Criteria Manual, Appendix F) that require removal to accommodate the development shall be replaced at a ratio of 1:1. ~~or cash-in-lieu may be paid to the city, the amount equal to the cost of nursery stock required to replace the caliper amounts lost and the cost of installation on a per unit basis, not to exceed one hundred dollars (\$100.00) per caliper inch or six thousand dollars (\$6,000.00) per acre (prorated for sites of more or less than one acre) for the entire site.~~ Trees identified as distressed shall not be included in tree preservation requirements evaluation.
- (d) Removal of a heritage tree is prohibited unless a variance is granted by City Council with the following finding that the heritage tree is either: (1) dead; (2) is an imminent hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree; or (3) is diseased and restoration to sound condition is not practicable or the disease may be transmitted to other trees and endanger their health.
- (e) Pre- and post-construction fertilization is required for existing trees that will be or have been disturbed by construction activities, including disturbance of the critical root zone. Fertilizers must be phosphate-free.

- (f) The planting, preserving, and maintaining of trees which are contagiously diseased trees, or the storage of cut oak unless first determined by a certified arborist to be devoid of oak wilt or properly treated, shall be deemed a public nuisance and is prohibited.
- (g) During construction, take measures to protect trees, including rigid fencing, shielding, and signage, as necessary. Rigid fencing shall be placed with a radius of at least ten (10) feet from the trunk or at the critical root zone, whichever is greater, unless property lines or other features prohibit a complete radius. Rigid fencing shall consist of chainlink or wood fencing not less than four (4) feet high at the drip line of the tree. Stakes shall be no more than six (6) feet apart and at least one and one-half (1-1/2) deep into the ground. Rigid fencing shall be at least three (3) feet in height.
- (h) The city administrator or designee shall inspect and approve installed tree protection before issuance of any permit to commence with any construction activity.
- (i) Tree protection shall remain in place until final landscaping installation as approved by the city administrator or designee.
- (j) Parking or storing of vehicles, equipment or materials allowed within the critical root zone is prohibited.

Sec. 4.12.017 Irrigation requirements

- (a) An irrigation plan is required as part of the site plan and will be prepared by a licensed irrigator (i.e., licensed landscape architect or engineer). The plan should include rain/freeze sensors on all controllers. The irrigation plan should provide drip irrigation in shrub beds where appropriate and bubblers on all trees.
- (b) Turf grass plantings may be Buffalo, Zoysia, or Bermuda. St. Augustine is expressly prohibited.
- (c) Landscaped areas must be mulched to reduce evaporation and preserve water.

Sec. 4.12.018 Drought conditions

- (a) During extreme drought classifications for this region as determined by the National Drought Mitigation Center, the city administrator, or designee, may accept a fiscal deposit of the amount equal to the cost of purchasing and installing the trees and other required landscaping into the city's drought tree fund in lieu of the installation of trees and other landscaping required by this chapter for the issuance of a certificate of occupancy permit, or the city administrator or designee may accept an escrow equal to the cost of purchasing and installing the trees and other required landscaping. The city shall only accept the fiscal deposit or escrow if an erosion control plan consistent with section xxx of this code has been reviewed and accepted by the city administrator or designee. Failure to maintain and adhere to an approved erosion control plan during periods of extreme drought classification shall be deemed a violation and the fines and penalties under section xxx of this article shall apply.

- (b) Persons requesting that the city accept a fiscal deposit in lieu shall provide the city with written documentation from an entity that sells trees and landscaping the cost of purchasing and installing the trees and other landscaping required by this chapter.
- (c) If no cost for the installation of trees and landscaping required by this chapter is provided to the city, the city shall require sixty-six (66) percent of the cost of the trees and landscaping to be paid as the installation cost in addition to the cost to purchase the trees and landscaping.
- (d) Any fiscal deposits for trees and landscaping paid to the city pursuant to this section shall be held in escrow. The escrow may be drawn upon by the city to implement tree and landscaping requirements for the depositing property owner, or the funds shall be released to the depositing property owner to implement tree and landscaping requirements within thirty (30) days when the drought mitigation center determines that this region is no longer in an extreme drought condition or higher classification. Failure to implement the tree and landscaping requirements within thirty (30) days of release of the fiscal deposit to the depositing property owner shall be deemed a violation and the fines and penalties under section xxx of this article shall apply.
- (e) Whenever necessary to enforce any provision of this article or implement tree and landscaping requirements on the depositing property owner's property, city staff, or the city's contractor, may enter upon depositing property owner's property at any reasonable time to inspect or perform any duty imposed by this article during an extreme drought classification for this region. If entry is refused, the city shall have recourse to every remedy provided by law and equity to gain entry.
- (f) The city is the custodian of any cash funds or bonds on deposit in the property owner's escrow account. The city has a fiduciary duty to the depositing property owner and may dispose of the escrowed funds only in accordance with this section.



AGENDA ITEM: Friends of Blue Hole’s Playscape Shade Canopy Project
SUBMITTED BY: Rebecca Manning
DATE SUBMITTED: April 15, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

Friends of Blue Hole has completed raising funds for the canopy over the Blue Hole Regional Park playscape. In July 2017, Council voted unanimously to support of this FOBH project. FOBH is asking for support to use their raised funds to complete the project. This support would include waiving all City permit fees and accepting contractor, design, and project proposal from FOBH. All contractors met on site with FOBH Executive Director Susan Nenny and Parks Director Rebecca Manning. Completion of this project will be done with City staff oversight.

REQUESTED ACTION

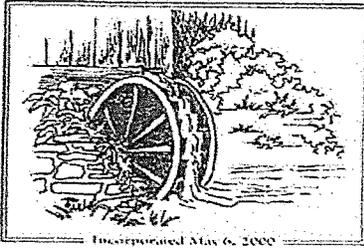
- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

- | | | | |
|-------------------|-------------------------------------|---------------------------|----|
| Budgeted Item | <input type="checkbox"/> | Original Estimate/Budget: | \$ |
| Non-budgeted Item | <input type="checkbox"/> | Current Estimate: | \$ |
| Not Applicable | <input checked="" type="checkbox"/> | Amount Under/Over Budget: | \$ |

STAFF RECOMMENDATION

Staff recommends to approve this item.



City of Wimberley

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

Phone: (512) 847-0025 - Fax: (512) 847-0422

www.cityofwimberley.com

Mac McCullough, Mayor - Steve Thurber, Mayor Pro-Tem
Council Members - Craig Fore, Allison Davis, Gary Barchfeld & Roberta Holland

July 17, 2017

Susan Nenney
Executive Director
Friends of Blue Hole
P.O. Box 1601
Wimberley, TX 78676

To the Board of Friends of Blue Hole,

It is our understanding that Friends of Blue Hole is interested in raising the capital to construct a shade structure over the playscape at Blue Hole Regional Park, as well as shading two picnic tables.

We understand you have the unanimous endorsement of the Parks and Recreation Advisory Board.

The community and the council have an interest in this opportunity to increase the year-round usability of this park feature for parents, kids and grandkids.

We absolutely endorse this project.

Sincerely,

Herschel P. "Mac" McCullough
Mayor



April 1, 2019

Shawn Cox
City Administrator
City of Wimberley

Dear Shawn,

The exciting news is that the community fundraising campaign for the play area project at the Blue Hole Park playscape has been a success. Thanks to many local donors, we now have the funds for the main playscape shade canopy. We have applied for a grant and may receive funds this spring to slightly expand the project.

Attached is a contract from T.F. Harper for the main canopy, a project approved by the previous city council and the Parks Board.

As Mr. Harper notes, once the contract is approved, it takes about 10 weeks to get all materials ordered and received.

Please let me know what are next steps and how we can proceed to get this shade canopy installed as soon as possible this summer. Lots of families and kids will be happy to see it.

Thanks for your help. I'm happy to provide more information as you need.

Susan Nenney
Executive Director

Chair Andrew Weber | Founding Director Peter Way
David Berman | Jim Braniff | Sheryl Davis | Bob Dussler | Tevis Grinstead | Mel Hildebrandt
Stephen Klepfer | Suzanne McCord | Andy Sansom | Steve Thurber | Marilee Wood
Executive Director Susan Nenney



PROPOSAL

103 Red Bird Lane
Austin, Texas
78745-3122

TO: City of Wimberley - Friends of Blue Hole
Attn: Shawn Cox - Susan Nenny
Address: Wimberley, Texas
Install Site: Blue Hole Park
Phone: 512-289-8166
Email: scox@cityofwimberley.cm
snenney@gmail.com

BUYBOARD CONTRACT #512-16

PLEASE FAX YOUR PO & SIGNED QUOTE TO
BUYBOARD & T.F. HARPER & ASSOCIATES LP TO
INSURE COMPLIANCE & RECEIPT OF YOUR
ORDER.

PROPOSAL# 040119-tfh-111
DATE: April 1, 2019

Shade Options - Blue Hole Park

Item	DESCRIPTION OF EQUIPMENT	PROPOSAL
I	Modern Shade Windmill 36' x 36', 14' eave	\$22,205.00
	At Playground Area	
	Installation	\$8,995.00
	Freight	\$350.00
	Buyboard Discount	(\$888.00)
	Total	\$30,662.00
	Sealed Engineered Drawings for Shade Canopies if Required \$750.00 Each	
NOTE:	Permits, if required, can be obtained but are not included in pricing	

PRICING GOO FOR 45 DAYS FROM THE PROPOSAL DATE

PRICING IS BASED ON GOOD ACCESS TO WORK AREAS BY TRUCK / BOBCAT.

PRICING IS BASED ON DRILLING THRU DIRT. DRILLING THRU CONCRETE, ROCK, ASPHALT WILL INCUR EXTRA CHARGES.

NOT INCLUDED: Permits/Bonds/Fees (if required), Site Work in Excess of Normal Installation (example: site prep - excavation/infill, concrete slab, french drains, excess rock removal, landscaping), Any Necessary Tree Trimming.

Payment Terms: 50% due with signed quote; Balance due upon completion of work and receipt of invoice
Credit card payments are not accepted.

Estimated Delivery & Installation: 11 - 13 weeks after receipt of signed quote or purchase order & color selections.

Thank you for giving us the opportunity to quote this equipment.

Tommy Harper



AGENDA ITEM: Survey for GLO Application
SUBMITTED BY: Shawn Cox, City Administrator
DATE SUBMITTED: April 30, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

The City is completing the General Land Office Application for State Land Use Lease. The completion of this application is one of the conditions for a Favorable Finding from the TWDB’s Environmental Review. The application is for a ten-year easement/lease for the installation of the wastewater line under Cypress Creek. A required attachment to the application is a survey plat for the area where the lease/easement is being requested.

Administration solicited proposals from five (5) surveyors. Each were provided the instruction from the GLO for preparation of the exhibits. The City received two (2) proposals back. Byrn & Associates provided the lowest cost proposal.

For consideration is Council’s approval of an expenditure for \$3,500 for a survey to be conducted by Byrn & Associates, Inc.

REQUESTED ACTION

- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

Budgeted Item	<input type="checkbox"/>	Original Estimate/Budget:	\$
Non-budgeted Item	<input checked="" type="checkbox"/>	Current Estimate:	\$ 3,500.00
Not Applicable	<input type="checkbox"/>	Amount Under/Over Budget:	\$

STAFF RECOMMENDATION

The City Administrator recommends approval of this item.

ATTACHMENTS:

- Cypress Creek Crossing Proposal – Byrn & Associated
- GLO Application Exhibit Instructions

Instructions for Preparing Exhibits For The Following General Land Office Applications:

Miscellaneous Easements (Pipelines)

Maps (or plats) showing the location of proposed and as-built projects on state-owned lands are required as part of the General Land Office (GLO) application process. The following instructions are to be followed when applying for new work (proposed project), or for reporting as-built conditions for a previously approved project, when the activity is a **Miscellaneous Easement (Pipeline/Right-of-Way)** on state land.

The information specified below represents **minimum** requirements of the GLO; additional information may be requested on a project-by-project basis to facilitate a full evaluation of the proposed activity.

The information should be submitted along with the required application form and processing fees. Each map or plat must conform to the specifications contained herein. An application is not considered complete, and processing of the application will not be initiated, until all information requested has been submitted and GLO staff has determined that it is adequate.

NOTE: Surveys and survey plats required by other entities, Federal, State, County and/or City, are PERMISSIBLE and USABLE for GLO applications provided they meet the following requirements.

IF SUBMITTING SURVEY PLATS DIGITALLY, PLEASE PROVIDE THE INFORMATION IN ONE OF THE FOLLOWING FORMATS:

1. In an ESRI format (i.e. Shape file, E00, or Geodatabase)
2. AutoDesk Map 6 or earlier version in a DWG format
3. **And Projection Information of the data set submitted**

A. GENERAL INSTRUCTIONS FOR ALL APPLICATIONS:

1. Each map or plat should be 8-1/2" x 11".
2. A one-inch margin should be left at the top edge of each sheet for binding purposes.
3. Any shading used to identify specific areas must be reproducible by ordinary copy machines.
4. Each map or plat submitted must have a title block identifying, at a minimum: (a) applicant name; (b) applicant address; (c) project name; (d) date of preparation; (e) name of preparer, and (f) project location as follows:
 - (1) if on state-owned uplands, then provide county, survey name (original grantee) and, as applicable, survey or section number, block number, township number, subdivision name, lot or tract number, and abstract number;
 - (2) if on submerged land, then provide county name, waterbody name, and state tract number.
5. The scale for each map or plat must be clearly indicated both digitally and by graphic scale.
6. Vicinity Maps -- Exhibit A for each project application must be a Vicinity Map showing the general location of the proposed work. The Vicinity Map must be produced using a U.S.G.S. 7.5-minute topographic map, a Texas Department of Transportation County Road Map, or navigation chart as its base layer. The project location should be indicated by a prominent arrow on the map. An 8 1/2" x 11" Xerox copy from the original Topo, county map, or navigation chart showing the project location is sufficient. It is not necessary to submit the entire Topo or county map, so long as the map is appropriately identified as to the origin of the base information (e.g., name, and date of base map information used). This is most easily accomplished by copying the legend of the base map and making it part of the Vicinity Map.

7. Project Site Map -- Exhibit B for each project application should be a Project Site Map (in Survey Plat format) which provides specific project location information. The Project Site Map should be produced at sufficient scale and detail to enable field inspectors to locate the project on the ground with minimal difficulty. Demographic features such as road numbers, stream names, railroad crossings, corporate city limits, and other prominent locative features should be included on the Project Site Map. The project location should be indicated by a prominent arrow on the map and a North arrow must be provided. Annotation may be included on the map regarding distance of the project from known points (e.g., highway intersections, road stream crossings, etc.). **Additional requirements for preparing Project Site Maps are provided in Section B of this document.**

8. Detailed Project Plan -- Exhibit C for each project application should be a Detailed Project Plan, consisting of an aerial plan-view drawing and a cross-sectional drawing of all proposed or existing structures on state-owned lands at the project site.

Page 1 of the Detailed Project Plan should contain, at a minimum:

- a. Location of the shoreline or banks if the project is on or adjacent to tidally influenced waters or crosses a state-owned river, stream, creek, or bayou
- b. The direction of ebb and flow if in or adjacent to tidal waters, or the direction of water flow if the project crosses a river, creek, stream, or bayou
- c. A North arrow
- d. The location of state tract lines (on tidally influenced lands), survey lines, or property lines, as applicable
- e. The location of any marshes, submerged grass flats, oyster reefs, mud or sand flats, or other sensitive natural/cultural resources known to exist in the project area
- f. The lines of mean high water and mean low water when applicable
- g. The Detailed Project Plan cross-sectional drawing must include notation as to the outside diameter (OD) of all pipelines covered by the easement, and the relationship of the pipeline(s) to any other pipeline(s) in the immediate vicinity.
- h. The registration, easement, or lease numbers for any structures at the site previously authorized by the GLO (available from GLO field offices upon request)
- i. Any applicable Corps of Engineers application numbers covering the proposed work, as soon as that application number is available, but, in any event, prior to issuance of the easement

Page 2 of the Detailed Project Plan should contain, as applicable, an explanation of construction methodology, techniques, and equipment that will be used at the site.

9. As-Built Survey -- A survey showing the depth of burial must be furnished for all projects on state-owned tidally influenced lands (Gulf of Mexico, bays, estuaries, etc.), crossings of state-owned rivers/streams/creeks/bayous. The survey shall show plan view only for projects on state-owned upland tracts. Failure to provide this information is, by terms of the state contract, grounds for termination of the easement and removal of the structure from state-owned land.

New Pipeline Installations: Each application for installation of a **new** pipeline must include with the application a profile drawing showing the **proposed** depth of burial at not fewer than 36" below the surface.

GLO will issue an easement using the **proposed** ROW and depth of burial information. Following installation of the pipeline, however, the applicant is required by terms of the GLO contract to provide a survey of actual burial depth measurements for that portion of the ROW length occupying state-owned land. The spacing between depth-of-burial measurement points is a function of the length of ROW. If the easement length is less than 500 feet, the depth of cover of the structure and waterway bottom elevation shall be determined at intervals not to exceed 50 feet. If the easement length is greater than 500 feet but less than 5,000 feet the interval between measurement points shall be 100 feet. Easements greater than 5,000 feet in length shall be surveyed at 250-foot intervals.

All work shall be performed under the supervision of, and sealed by, a registered professional land surveyor. All submitted drawings must be sealed by the supervising registered public land surveyor. All elevations must be referenced to a common datum (Mean Sea Level, National Geodetic Vertical Datum, Mean Low Water, etc.) and grid coordinates must reference Texas State Plane coordinate System of 1927 or 1983. The accuracy of the waterway bottom and pipeline elevations shall be +/- one-half (.5') foot for the waterway bottom and +/- one-half (0.5') foot for depth of burial less than or equal to 10 feet and +/- fifteen (15%) percent for depth of burial greater than ten (10) feet. Manual probing and electronic means (both active and passive) of survey type shall be acceptable for depth of burial determinations.

Existing Pipelines: At time of renewal of a contract for an existing underground pipeline easement, provide the data as required under Section 3.02.(iv) of this easement contract.

CERTIFICATION BY A TEXAS REGISTERED PUBLIC LAND SURVEYOR IS REQUIRED ON ALL OF THE FOLLOWING WITH THE EXCEPTION OF DIRECTIONALLY DRILLED WELL BORE LOGS .

B. SPECIFIC INSTRUCTIONS:

Maps or Survey Plats to be submitted as the Project Site Map and/or the Detailed Project Plan (see A7 and 8 above) must contain the information described below.

Upland survey data should be reported to normal boundary land surveying minimum standards. Offshore or submerged sites shall be located to a specified accuracy of +/- 5 feet of any reported location.

1. Projects located on Tidally Influenced State-owned Lands (Including the Gulf of Mexico, bay tracts, and the tidally influenced portions of rivers, creeks, streams, and bayous):

Coordinates must be provided at the beginning and ending points of the Rights-of-Way (ROWs) centerline, or on the principal point or points of tracts described by other means (directional well bores, etc.). These coordinates must be based on the Texas State Plane Coordinate System of 1927 or 1983. Courses and distances must be specified as either grid or geodetic for all centerlines and perimeter lines, and ties must be made from specific improvements (e.g., well heads, platforms, pilings, etc.) to a corner or corners of the lease or easement tract. All submerged state land tracts crossed by any part of the ROW must be shown and identified, and the points of each ROW crossing of a state-tract boundary identified in the Texas State Plane Coordinate System of 1927 or 1983. The distance between crossings of a state-tract boundary must be indicated in both feet and rods on the plat.

As-built plats (and confirmation surveys at time of renewal) must give bearing and distance between angle points along the easement route. In the event no angle points exist along the course of the ROW, the plat shall provide a minimum of one identified point for each 1,000 feet of ROW length. A ROW less than 1,000 feet long but greater than 500 feet in length requires one mid-point to be identified on the survey plat.

2. Projects across State-owned Upland Property, or the State-owned portion of a river, creek, stream, or bayou above the limit of Tidal Influence:

a. Upland Tract (State Fee Lands):

For new project applications, information provided for projects on state-owned upland tracts shall include the beginning and end points of the easement centerline, identified by coordinates on the Texas State Plane Coordinate System of 1927 or 1983, and shall include course and distance of all segments of the proposed easement centerline. Course and distance from one end of the easement to the nearest survey corner or subdivision survey corner shall be included, along with the survey name (original grantee), and as applicable, survey or section number, block number, township number, subdivision name, lot or tract number, and abstract number of all surveys abutting the easement.

At completion of construction, or at time of renewal, an as-built plat or confirmation survey (whichever is applicable) must be submitted. This plat must give bearing and distance between angle points along the easement route. In the event no angle points exist along the course of the easement route, the plat shall provide a minimum of one identified point for each 1,000 feet of length. For easement routes, fewer than 1,000 feet long but greater than 500 feet long, one mid-point shall be identified on the survey plat.

b. Crossing the State-owned portion of a river, creek, stream, or bayou above the limit of tidal influence.

Information provided for projects crossing non-tidal state-owned rivers, creeks, streams, or bayous shall include an identification of the stream or water body by local and any other names known (historic, from topographic or other maps, etc.). In addition, the beginning and end points of the easement centerline, identified by coordinates on the Texas State Plane Coordinate System of 1927 or 1983, and shall include course and distance of all segments of the easement centerline. Course and distance from one end of the easement to the nearest survey corner or subdivision survey corner shall be included, along with a cross section or profile of the crossing between the top of the high banks, survey name (original grantee), and as applicable, survey or section number, block number, township number, subdivision name, lot or tract number, and abstract number of all surveys abutting the easement.



SURVEYING

April 16, 2019

PROPOSAL FOR SURVEY OF A WASTEWATER PIPELINE CROSSING CYPRESS CREEK IN THE HENRY KEISER SURVEY AND THE BENJAMIN PAGE SURVEY, CITY OF WIMBERLEY, HAYS COUNTY, TEXAS

Thank you for considering Byrn & Associates, Inc. for this work.

We can provide the surveying services listed below for a fee of \$3,500.00 plus tax.

- Survey of proposed creek crossing horizontally and vertically
- Preparation of an exhibit in accordance with the instructions provided by the General Land Office as shown on the attached example exhibit

Sincerely,

Kyle Smith, R.P.L.S.

SURVEYORS NOTES

1. THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT. THIS SURVEYOR DID NOT RESEARCH THE DEED RECORDS FOR PREVIOUS CONFLICTS IN TITLE OR EASEMENTS, THEREFORE, CERTAIN EASEMENTS MAY HAVE BEEN GRANTED WHICH ARE NOT REFLECTED HEREON.

2. HORIZONTAL COORDINATES SHOWN REFER TO THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH CENTRAL ZONE, BASED ON GPS OBSERVATIONS.

ELEVATIONS SHOWN REFER TO NAVD 88 BASED ON GPS OBSERVATIONS.

3. THE BEARING BASIS FOR THIS SURVEY PLAT WAS DETERMINED FROM GPS OBSERVATIONS AND REFERS TO GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH CENTRAL ZONE.

TOP OF BANK
N 13856761.323
E 2331182.207

TOP OF BANK
N 13856723.528
E 2331366.300

*B. & G. FULCHER ORIGINAL LEAGUE
SURVEY NO. 19, A-21*

*WILLIAM PETTUS TWO
LEAGUE SURVEY, A-21*

N 28°37'21" E 52.57'
STA 1+00
N 13856488.860
E 2330890.065

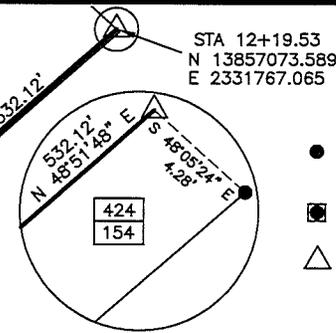
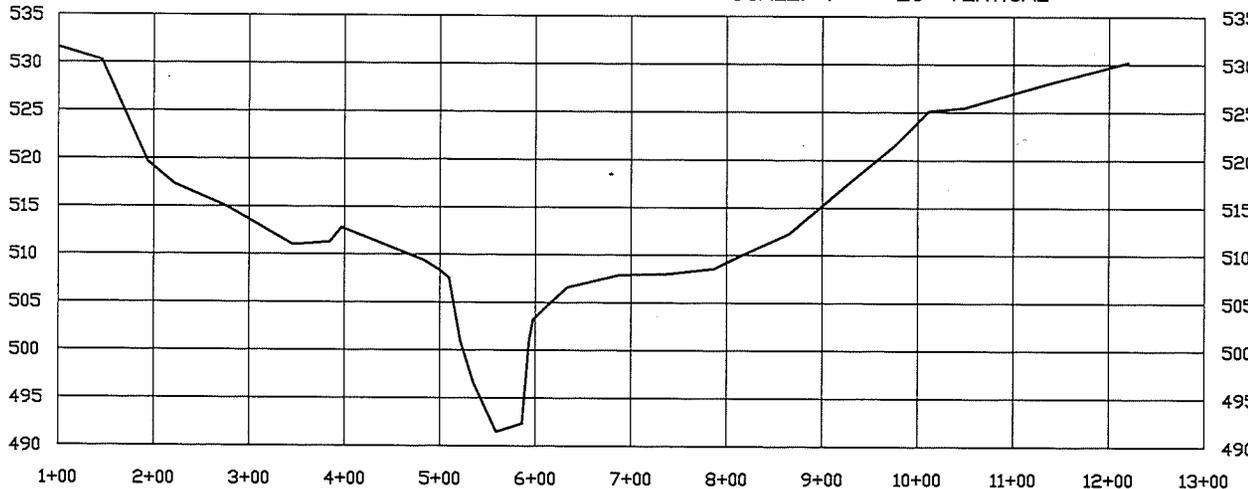
PROPOSED
EASEMENT
CENTERLINE

1233
938

APPROXIMATED LOCATION OF
COUNTY AND SURVEY LINES.

PROFILE

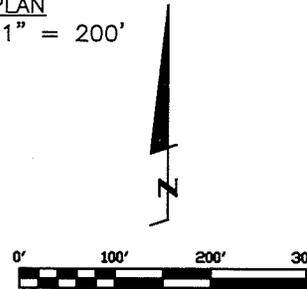
SCALE: 1" = 200' HORIZONTAL
SCALE: 1" = 20' VERTICAL



DETAIL - NOT TO SCALE

PLAN

SCALE: 1" = 200'



LEGEND

- 1/2" IRON ROD FOUND OR DIAMETER NOTED
- ◼ 1/2" IRON ROD FOUND WITH PLASTIC CAP STAMPED "BYRN SURVEY"
- △ CALCULATED POINT

GUADALUPE COUNTY OFFICIAL RECORDS

1233
938

T.R. BUIE ET UX TO
TOLLIE DANIEL BUIE ET UX
(5.698 ACRES)
APRIL 10, 1996

CALDWELL COUNTY DEED RECORDS

424
154

ELSIE R. DEVINEY TO
ROBERT R. DEVINEY
(1.54 ACRES)
MARCH 19, 1981

TO MARTINDALE WATER SUPPLY CORPORATION, EXCLUSIVELY, AND FOR USE WITH THIS TRANSACTION ONLY:

I HEREBY STATE TO THE BEST OF MY SKILL AND KNOWLEDGE: THAT THIS PLAT IS TRUE AND CORRECT ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND ON NOVEMBER 10, 2008. THAT ALL PROPERTY CORNERS ARE MONUMENTED AS SHOWN HEREON.

KYLE SMITH, R.P.L.S. NO. 5307



BYRN & ASSOCIATES, INC.
ENGINEERS SURVEYORS
P.O. BOX 1433 SAN MARCOS, TEXAS 78667
PHONE 512-396-2270 FAX 512-392-2945

**EXHIBIT B,
PLAN AND PROFILE,
SAN MARCOS RIVER CROSSING,
GUADALUPE & CALDWELL
COUNTY, TEXAS**

CLIENT: MARTINDALE WATER SUPPLY CORPORATION
DATE: NOVEMBER 10, 2008
OFFICE: PAYNE
CREW: EVERETT, LOZANO, C. SMITH
FB/P.G.: 665/39
PLAT NO.: 26333-08-a
JOBS/08/26333/26333.DWG

APPLICANT NAME: MARTINDALE WATER SUPPLY CORPORATION
APPLICANT ADDRESS: P.O. BOX 175 MARTINDALE, TX 78655
PROJECT NAME: BUIE/DEVINEY BORE
DATE OF PREPARATION: NOVEMBER 10, 2008
NAME OF PREPARER: PAYNE
COUNTY: GUADALUPE, CALDWELL
WATERBODY: SAN MARCOS RIVER



AGENDA ITEM: Pump & Haul Ordinance
SUBMITTED BY: Shawn Cox, City Administrator
DATE SUBMITTED: April 30, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

On December 7, 2017, the City adopted Ordinance No. 2017-025, which allowed existing and new business in the City to “pump, haul, and properly dispose of wastewater effluent prior to the installation of a sanitary sewer system”. The original ordinance is set to expire on June 7, 2019.

Currently there are 2 properties utilizing pump & haul. There are additional properties that have begun to look into it.

For consideration is the adoption of Ordinance No. 2019-12 which would continue to allow existing and new business to pump & haul for an additional 18 months, till December 7, 2020 or until the Central Wimberley Wastewater Collection system is online.

REQUESTED ACTION

- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

Budgeted Item	<input type="checkbox"/>	Original Estimate/Budget:	\$
Non-budgeted Item	<input type="checkbox"/>	Current Estimate:	\$
Not Applicable	<input checked="" type="checkbox"/>	Amount Under/Over Budget:	\$

STAFF RECOMMENDATION

The City Administrator recommends adoption of Ordinance No. 2019-12.

ATTACHMENTS:

- Ordinance No. 2017-025
- Ordinance No. 2019-12

ORDINANCE NO. 2017-025

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, ALLOWING EXISTING AND NEW BUSINESSES TO PUMP, HAUL AND PROPERLY DISPOSE OF WASTEWATER EFFLUENT PRIOR TO THE INSTALLATION OF A SANITARY SEWER SYSTEM.

WHEREAS, the City Council of the City of Wimberley (“City Council”) seeks to promote health, safety and general welfare of the citizens of the City of Wimberley (“City”); and

WHEREAS, the City Council seeks to ensure that sewer utility service is adequate and efficient for the citizens of the City; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City Council is authorized to adopt an ordinance that is for the good government, peace or order of the City and is necessary or proper for carrying out power granted by law to the City; and

WHEREAS, pursuant to Texas Local Government Code Section 51.012, the City Council is authorized to adopt an ordinance, not inconsistent with state law, that the Council considers proper for the government, interest, welfare or good order of the City; and

WHEREAS, pursuant to Texas Local Government Code Section 402.001, the City is authorized to purchase, construct and operate utility systems, including sewer systems; and

WHEREAS, the City desires to promote development while ensuring the proper disposal of wastewater affluent and sewer on a temporary basis.

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

Existing and new businesses that elect to pump, haul and properly dispose of wastewater effluent and sewage produced at the business on a temporary, interim basis while awaiting hookup to a sanitary sewer system would be eligible for a variance from the requirements delineated in this ordinance for on-site sewage facilities. This ordinance shall expire 18 months from the date of passage.

PASSED AND APPROVED this 7th day of December, 2017, by a vote of 5 (Ayes), 0 (Nays), and 0 (Abstentions)



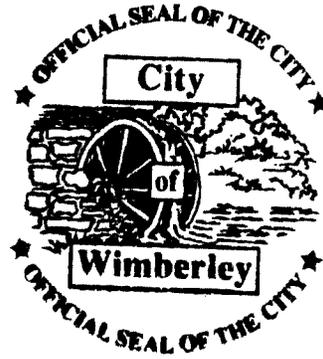
Herschel P. “Mac” McCullough, Mayor

ATTEST:

Laura Calcote
Laura Calcote, City Secretary

APPROVED AS TO FORM:

GBY
City Attorney
Diply



ORDINANCE NO. 2019-12

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, EXTENDING THE TIMEFRAME ALLOWING EXISTING AND NEW BUSINESSES TO PUMP, HAUL AND PROPERLY DISPOSE OF WASTEWATER EFFLUENT PRIOR TO THE INSTALLATION OF A SANITARY SEWER SYSTEM.

WHEREAS, the City Council of the City of Wimberley (“City Council”) seeks to promote health, safety and general welfare of the citizens of the City of Wimberley (“City”); and

WHEREAS, the City Council seeks to ensure that sewer utility service is adequate and efficient for the citizens of the City; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City Council is authorized to adopt an ordinance that is for the good government, peace or order of the City and is necessary or proper for carrying out power granted by law to the City; and

WHEREAS, pursuant to Texas Local Government Code Section 51.012, the City Council is authorized to adopt an ordinance, not inconsistent with state law, that the Council considers proper for the government, interest, welfare or good order of the City; and

WHEREAS, pursuant to Texas Local Government Code Section 402.001, the City is authorized to purchase, construct and operate utility systems, including sewer systems; and

WHEREAS, the City desires to promote development while ensuring the proper disposal of wastewater affluent and sewer on a temporary basis; and

WHEREAS, the original timeframe established by Ordinance No. 2017-025 allowing existing and new businesses that elect to pump, haul and properly dispose of wastewater effluent and sewage produced at the business on a temporary, interim basis while awaiting hookup to a sanitary sewer system will expire on June 7, 2019.

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

Existing and new businesses that elect to pump, haul and properly dispose of wastewater effluent and sewage produced at the business on a temporary, interim basis while awaiting hookup to a sanitary sewer system would be eligible for a variance from the requirements delineated in this ordinance for on-site sewage facilities. This ordinance shall expire 18 months from the date of passage.

PASSED AND APPROVED this 2nd day of May 2019, by a vote of _____ (Ayes), _____(Nays), and ___ (Abstentions)

Susan Jagers, Mayor

ATTEST:

Laura J. Calcote, City Secretary

APPROVED AS TO FORM:

City Attorney





AGENDA ITEM: Wimberley Water Franchise Agreement
SUBMITTED BY: Shawn Cox, City Administrator
DATE SUBMITTED: April 30, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

In 2009, the City Council adopted Ordinance No. 2009-12 which provided Wimberley Water Supply Corporation a non-exclusive franchise agreement to operate and maintain a water system within the City's rights-of-way. This agreement became effective on June 1, 2009 for a period of ten (10) years.

To provide consistency with similar franchise agreements entered into by the City, the new franchise agreement is proposed to be entered into by resolution.

The proposed agreement will again be for a period of ten (10) years, and will become effective, if approved, on June 1, 2019. The proposed franchise fee is three percent (3%) of gross receipts collected from customers and consumers within the corporate limits of the city. The proposed fee is consistent with what is currently being collected.

The City collects approximately 21% of its revenues from franchise fees annually. Wimberley Water makes up approximately 8% (2% of total revenues collected).

REQUESTED ACTION

- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

- | | | | |
|-------------------|-------------------------------------|---------------------------|----|
| Budgeted Item | <input type="checkbox"/> | Original Estimate/Budget: | \$ |
| Non-budgeted Item | <input type="checkbox"/> | Current Estimate: | \$ |
| Not Applicable | <input checked="" type="checkbox"/> | Amount Under/Over Budget: | \$ |

STAFF RECOMMENDATION

The City Administrator recommends approval of Resolution No. 06-2019 and the Franchise Agreement with Wimberley Water Supply Corporation as presented.

ATTACHEMENTS:

- Resolution No. 06-2019
- Proposed Wimberley Water Supply Corporation Franchise Agreement

RESOLUTION NO. 06-2019

A RESOLUTION OF THE CITY OF WIMBERLEY, TEXAS AUTHORIZING THE MAYOR TO SIGN A FRANCHISE AGREEMENT WITH WIMBERLEY WATER SUPPLY CORPORATION FOR A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A RETAIL WATER UTILITY SYSTEM WITHIN THE RIGHTS-OF-WAY OF THE CITY OF WIMBERLEY FOR A TERM OF TEN YEARS.

WHEREAS, Wimberley Water Supply Corporation (“WWSC” or “Corporation”), operates a retail water utility system located partially in the corporate limits of the City of Wimberley (“City”) pursuant to Certificate of Convenience and Necessity Number 10314 and wishes to continue to provide such services within the City of Wimberley; and

WHEREAS, the Corporation is a non-profit water supply corporation regulated by state authorities with appropriate jurisdiction, including the Texas Commission on Environmental Quality (“TCEQ”); and

WHEREAS, the City may adopt an order, act, law or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the City; and

WHEREAS, the City may adopt ordinances, rules or police regulations that are for the good government, peace or order of the City or for the trade and commerce of the City, and that are necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City has exclusive control over the public grounds, highways, streets and alleys of the City pursuant to the Texas Local Government Code; and

WHEREAS, an incorporated city or town may make a reasonable lawful charge for the use of a city street, alley, or public way by a public utility in the course of its business pursuant to the Texas Tax Code; and

WHEREAS, the City Council believes it in the best interest of the City to offer the Corporation a franchise on the terms and conditions enumerated herein.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, THAT:

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 Resolution as if copied in their entirety.

II. RESOLUTION

THAT, the Mayor is authorized to sign a Franchise Agreement in the form on file with the City Secretary granting Wimberley Water Supply Corporation a franchise to use City right-of-way subject to the terms and conditions of the Agreement.

PASSED AND APPROVED this ___ day of _____, 2019, by a _____ (Ayes) _____ (Nays) _____ (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY

By: _____
Susan Jagers, Mayor

ATTEST:

Laura J. Calcote, City Secretary



FRANCHISE AGREEMENT

This FRANCHISE AGREEMENT dated as of the ____ day of _____, 2019 (“Agreement”) by and between the CITY OF WIMBERLEY, TEXAS, a Type A general law municipality incorporated in Hays County, Texas (“City”), and WIMBERLEY WATER SUPPLY CORPORATION., a Texas Corporation, (“Grantee”) is effective on the date of the last of the signatures by the parties to this Agreement (“Effective Date”).

RECITALS

WHEREAS, Wimberley Water Supply Corporation (“Grantee”), operates a retail water supply system located partially in the corporate limits of the City of Wimberley (“City”) pursuant to Certificate of Convenience and Necessity Number 10314 and wishes to continue to provide such services within the City of Wimberley; and

WHEREAS, the Grantee is a publicly traded corporation regulated by state authorities with appropriate jurisdiction, including the Texas Commission on Environmental Quality (“TCEQ”); and

WHEREAS, the City may adopt an order, act, law or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the City; and

WHEREAS, the City may adopt ordinances, rules or police regulations that are for the good government, peace or order of the City or for the trade and commerce of the City, and that are necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City has exclusive control over the public grounds, highways, streets and alleys of the City pursuant to the Texas Local Government Code; and

WHEREAS, an incorporated city or town may make a reasonable lawful charge for the use of a city street, alley, or public way by a public utility in the course of its business pursuant to the Texas Tax Code; and

WHEREAS, the City Council approved the terms to this agreement on May 2, 2019, by adopting Resolution No. 06-2019, and believes it in the best interest of the City to offer the Grantee a franchise on the terms and conditions enumerated herein.

AGREEMENT:

Section 1. Definitions.

1.1. For the purposes of this Agreement, when not inconsistent with the context, words, used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined in this Section 1 shall be given their common and ordinary meaning.

1.2. For the purposes of this Agreement, the following words, terms, phrases and their derivations shall have the meaning given in this Section 1.2.

1.2.1. “City Council” shall mean the governing body of the City of Wimberley.

1.2.2. “City Secretary” shall mean the City Secretary of the City of Wimberley.

1.2.3. “Consumer” shall mean any person or organization receiving and using retail water service from the Grantee for his or her own appliances or equipment, whether or not the retail water service is billed directly to him or her, or to a second party. (As an example, in the case of a rental unit where the cost of utilities is part of the rent, the landlord is a Customer and the tenant is a Consumer.)

1.2.4. “Customer” shall mean any person or organization billed for retail and water service by the Grantee whether used by him or her, or by others.

1.2.5. “Effective Date” shall mean, _____, 2019 which is the date this Franchise shall become effective.

1.2.6. “Emergency” shall mean an occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.

1.2.7. “Franchise” shall mean this Ordinance, and all rights and obligations established herein or as it may be amended.

1.2.8. “Grantee” shall mean Wimberley Water Supply Corporation, a corporation authorized under Texas Water code Chapter 67 to transact business in the State of Texas, its successors and assigns.

1.2.9. “Gross Receipts” shall mean the total amount collected by the Grantee for retail water service provided to Consumers by the Grantee within the corporate limits of the City. Gross Receipts shall not include charges for taxes or regulatory charges on services furnished by the Grantee herein that are imposed directly upon any Consumer or Customer by the State, the City or other governmental unit and collected by the Grantee on behalf of the governmental units (including, without limitation, Texas Limited Sales Tax), nor shall it include any amounts refunded to Customers or Consumers.

1.2.10. “Rights-of-Way” shall mean the area on, below or above all publicly owned, dedicated or maintained streets, avenues, easements, alleys, highways, sidewalks, bridges, and other similar means of public access in the City.

1.2.11. “System” shall mean the system of pipes, distribution and transmission lines, pumps and pump stations, storage facilities, equipment, treatment facilities, land, and other appurtenances used or necessary for the provision of retail water utility service to/for Consumers or Customers in the City, including, without limitation, those owned or used by the Grantee.

1.2.12. “TCEQ” shall mean the Texas Commission on Environmental Quality, or its successor agency.

1.2.13. “Uniform ROW Management Ordinance” shall mean Ordinance No. 2001-015, titled Uniform Right-of-Way Ordinance, passed and approved by the City on May 17, 2001, and as may be subsequently amended.

1.2.14. “City” shall mean the City of Wimberley, Texas, a municipal corporation and a political subdivision of the State of Texas; and any area annexed thereto from time to time. For purposes of this Franchise, any annexation shall become effective within sixty (60) days of the City’s written notification to Grantee of the annexation.

Section 2. Grant of Franchise and Term.

2.1. There is hereby granted to the Grantee a non-exclusive franchise to maintain, construct, equip, extend, replace, repair, alter and otherwise establish and operate in the City, as constituted as of the Effective Date, or as may hereafter be constituted, works, systems, plants, collection, distribution and transmission lines, treatment facilities and all related facilities (including those now in service and including all parts and portions of the System) necessary or appropriate to sell, collect, convey or otherwise conduct, serve or furnish the inhabitants of the City, and to the City, retail water service, and the Grantee is hereby granted passage and rights-of-way in, under, along and across the Rights-of-Way of the City and beneath the surface of same, and the right to occupy and use in any lawful way during the term of this Franchise said Rights-of-Way as they now or hereafter may exist, for every and any such service, use, effect, and lawful purpose as herein mentioned; provided that all such work, activity and undertakings by the Grantee shall be subject to the terms and provisions of this Franchise and the Uniform ROW Management Ordinance. Nothing herein shall be construed to require or authorize Grantee to exceed any rights granted herein or by the TCEQ, or its successor agency.

2.2. The construction, maintenance, and operation of the System and property of the Grantee within the City shall be subject to the terms of this Franchise and all other applicable ordinances, rules and regulations adopted by the City, including the police powers of the City to adopt and enforce ordinances of general applicability necessary to the health, safety and welfare of the public that are not otherwise inconsistent with the terms and conditions of this Franchise.

2.3. In exercising its operations under this Franchise, the Grantee reserves the right to use affiliated entities or third-party contractors or subcontractors.

2.4. The Grantee shall be allowed to operate and maintain all lines existing on the Effective Date within City parks, greenbelts, and similar property, or then existing on land hereinafter designated as a City park. Except in an Emergency, the Grantee shall not undertake a replacement of such lines or install new lines within said parks, greenbelts or similar property without the permission of the City Administrator. Such permission shall not be unreasonably withheld or delayed.

2.5. The term of this Franchise shall be for a period of ten (10) years from the Effective Date, unless terminated sooner pursuant to the terms herein; provided that this Franchise shall not be or become effective unless accepted by the Grantee as stated herein. The Franchise may be renewed in accordance with applicable law.

2.6. The Grantee shall have full authority to repair and replace pipes and facilities within any Rights-of-Way existing on the effective date of this Ordinance and to expand and enlarge such facilities for the purpose of providing for growth and expansion both within and outside the City, subject to the terms of this Franchise and the Uniform ROW Management Ordinance.

2.7. This Franchise is non-exclusive, and the City retains the right and power to grant any other person, political subdivision, firm, or corporation a franchise to use its streets, highways, Rights-of-Ways, and City parks, greenbelts, or similar property.

2.8. Grantee shall be subject to applicable City ordinances governing rights-of-way construction permits for conducting land disturbing activities in the public rights-of-way, including but not limited to the Uniform ROW Management Ordinance, prior to the commencement of any construction in the Rights-of-Way. Such permits shall be issued only in compliance with applicable City ordinances.

2.9. As Built Plans. Upon the Effective Date of this Franchise, Grantee shall provide, without cost to the City a hard copy and electronic version of the existing System located within the Rights-of-Way. Within sixty (60) days of completion of each new permitted section of Grantee's facilities, Grantee, shall supply the City with a complete set of "as built" plans of record for the new permitted section in a format used in the ordinary course of business, but excluding customer specific, proprietary or confidential information and as reasonably prescribed by City, and as allowed by law. The City may, at its discretion, accept any reasonable alternative to as built plans of record which provides adequate information as to the location of facilities in the Rights-of-Way.

Section 3. Use of Rights-of-Way.

3.1. The Grantee is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges herein mentioned and granted by this Franchise, provided the same do not conflict with existing water or water lines, electric power lines, telephone lines, cable television lines and other authorized installations, and provided that all work done in said Rights-of-Way by the Grantee shall be done

with reasonable diligence, without unreasonable interference to the public or individuals, and in compliance with any applicable City ordinances rules or regulations regarding the Rights-of-Way. In the event of unreasonable interference to the public or Rights-of-Way, such facilities shall be moved by Grantee, temporarily or permanently, as determined by the City Administrator or his designee upon reasonable notice. The City shall take commercially reasonable precautions to avoid conflicting with Grantee's facilities in such Rights-of-Way. The City shall include as a requirement in all franchises that are granted or renewed after the Effective Date that all other franchised entities occupying Rights-of-Way shall also take commercially reasonable precautions to avoid conflicting with the Grantee's facilities in such Rights-of-Way. It is not the intention of either the City or the Grantee to create any liability, right or claim for the benefit of third parties and this Franchise is intended and shall be construed for the sole benefit of the City and the Grantee.

3.2. The City reserves the right to lay, and permit to be laid, water, cable television, water, telephone, electric, and other lines, cables and conduits, and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over or under any Rights-of-Ways or other public place occupied by the Grantee.

3.3. Grantee shall restore the Rights-of-Way and provide notification of any repairs and Emergency work to the City in accordance with the Uniform ROW Management Ordinance.

Section 4. Modification and Relocation of Facilities.

If, during the period of this Franchise, the City, for a public purpose, use or convenience, reconstructs, improves or changes any Rights-of-Way including, but not limited to, changing the grade or alignment of the Rights-of-Way or any distribution or transmission line, or any overhead or underground structure within the corporate limits of the City, so as to conflict with the distribution or transmission lines, treatment facilities, equipment and appurtenances of the Grantee or the System, the Grantee shall remove or relocate, as necessary, all of its distribution or transmission lines, equipment, and appurtenances at the Grantee's expense. Designated representatives of the Grantee and the City shall develop schedules for this work. If such representatives cannot agree on the schedules, the City, after consultation with the Grantee, shall establish a schedule which shall accommodate the Grantee's statutory obligation to obtain construction plan approval from the TCEQ, if required, prior to commencing any work. Additionally, if the City's plans require the Grantee to relocate its facilities, the City may, to the extent possible, identify Rights-of-Way to accommodate the Grantee's System.

Section 5. Franchise Fee.

5.1. The Rights-of-Way to be used by the Grantee in the operation of the System within the boundaries of the City as such boundaries exist as of the Effective Date, and as hereafter modified from time to time, are public properties acquired and maintained by the City at expense to its taxpayers. The Grantee will receive and obtain material benefits and operating efficiencies from this Franchise and the Grantee's rights to use the City Rights-of-Way. Without this Franchise, the Grantee would be required to invest in right-of-way cost and acquisition. The City will incur significant and material cost and expense in regulating, administering and carrying out actions necessary to give effect to this Franchise and thus, the Grantee shall, commencing on the Effective

Date and continuing through the term of this Franchise, pay to the City of the Grantee's Gross Receipts for water services collected from Customers and Consumers within the corporate limits of the City as a franchise fee. Such franchise fee shall be based on the following percentages of the gross receipts for water services collected from Customers and Consumers within the corporate limits of this City for the term of the franchise agreement, and paid as provided herein, as follows, ~~two percent (2%) for the first three years, and three percent (3%) for the remaining term~~three percent (3%) for the term of the franchise agreement.

5.2. The franchise fee shall be payable quarterly to the City and delivered to the City Secretary, or successor in function, together with a statement indicating the derivation and calculation of such payment. Each such quarterly payment shall be due on the fifteenth (15th) day of the month following the end of the quarterly period for which said payment is due and shall be based upon the Gross Receipts during that same calendar year period. The statement shall be presented in the form of generally accepted accounting procedures. At all times, the Grantee shall cause accurate books and records of account to be maintained as are necessary to permit the verification of the amount of such franchise fee. For purposes of verifying the amount of such fee, the books and records of account of the Grantee shall at all reasonable times be subject to inspection by the City and its duly authorized representatives. The Grantee shall file annually with the City Secretary, no later than four (4) months after the end of the Grantee's fiscal year, a statement of revenues attributable to the operations of the Grantee within the City.

5.3. If the franchise fee payment is not paid within seven (7) days after the due state specified herein, an interest charge shall be assessed at the rate of ten percent (10%) per year for each day that the franchise payment is late, and payment for the interest due shall accompany the late franchise fee payment.

5.4. The franchise fee shall be in lieu of any and all other City imposed rentals or compensation or franchise, license, privilege, instrument, occupation, excise or revenue taxes or fees and all other exactions or charges (except ad valorem property taxes, special assessments for local improvements, City sales tax, and such other charges for utility services imposed uniformly upon persons, firms or corporations then engaged in business within the City) or permits upon or relating to the business, revenue, franchise, collection lines, installations and systems, fixtures, and other facilities of the Grantee and all other property of the Grantee and its activities, or any part thereof, in the City which relate to the operations of the System.

5.5. No acceptance of any franchise fee shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further additional sums payable under this Ordinance. All amounts paid shall be subject to audit and recomputation by the City.

5.6. The period of recomputation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment is due from Grantee.

Section 6. Termination of Franchise.

6.1. Either party (provided such party is not then in material breach of this Franchise) may terminate this Franchise upon a material breach thereof by the other party (the “Breaching Party”) by giving not less than forty-five (45) days’ prior written notice of such termination (containing reasonable detail of the material breach) to the Breaching Party; provided, however, in the event that the Breaching Party shall have cured the specified material breach within the above-referenced forty-five (45) day notice period (or, if the material breach is of a type which is not reasonably capable of being cured within such a period, and the Breaching Party has then commenced action to cure such breach), the above-referenced notice shall be of no further force or effect.

6.2. The Grantee may terminate this Franchise at any time upon written notice to the City in the event the Grantee is then no longer providing service to Customers or Consumers within the corporate limits of the City.

6.3. In the event this Franchise is terminated, easements and real property purchased and acquired by the Grantee, and held in the name of the Grantee, shall be and remain the property of the Grantee, according to the terms, conditions and limitations of the instruments conveying such property and interest in property to the Grantee.

6.4. The City retains the right to terminate this Franchise upon written notification to the Grantee, whenever in its judgment revocation is necessary to secure efficiency of public service at reasonable rates or to assure that the property is maintained in good order throughout the life of the grant, the Grantee practices any fraud upon the City, or the Grantee becomes insolvent, unable or unwilling to pay its debts, or it is adjudged bankrupt or a receiver is appointed to it.

Section 7. Severability.

If any section, paragraph, subdivision, clause, part or provision hereof shall be adjudged invalid, illegal or unconstitutional, the same shall not affect the validity hereof as a whole or any part or provision other than the part or parts held invalid or unconstitutional.

Section 8. Captions and Headings.

The use of captions or headings for the various sections of this Franchise are for convenience of parties only and do not reflect the intent of the parties. The rule of interpretation to resolve ambiguities in a contract against the party drafting such contract shall not apply to this Franchise.

Section 9. Open Meetings.

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

Section 10. Publication.

The full caption of this Ordinance shall be published one (1) time in a weekly newspaper published within or in general circulation within the City and the expense of such publication shall be borne by the City. This Ordinance shall take effect only upon its acceptance by the Grantee within the time and manner herein above provided and publication, as may be required by governing law. In the event this Franchise is not accepted by the Grantee, this Ordinance shall expire and be and become null and void at midnight on the thirtieth (30th) day after date hereof.

Section 11. Endorsements and Records.

The City Secretary is hereby authorized and directed to make appropriate endorsements, for the public records and convenience of the citizens over her official hand and the seal of the City and on the form provided at the conclusion of this Franchise, of the date upon which this Ordinance is finally passed and adopted by the City Council; the date upon which the caption or notice of this Ordinance is published in the local newspaper, the date upon which this Ordinance shall expire if not first accepted by the Grantee and, if the Grantee shall accept this Franchise, the date of such acceptance by the Grantee.

Section 12. Entire Agreement; Amendments.

This Franchise contains the entire agreement between the parties with respect to the subject matter herein and all prior negotiations and agreements are merged herein and hereby superseded. This Franchise may not be amended or revised except upon agreement of both parties, which agreement shall be in writing signed by the parties after approval and formal action of the City.

Section 13. No Waiver.

13.1. The failure of the City or the Grantee, upon one or more occasions, to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.

13.2. Waiver of a particular breach of this Franchise shall not be construed as a waiver of any other breach. No provision of this Franchise shall operate as a waiver by the City or the Grantee of any right guaranteed by the federal or state constitutions or other applicable law.

Section 14. Assignment; Transfer; Sale or Conveyance by Grantee.

14.1. The Grantee shall not assign or transfer this Franchise or any of its rights and privileges granted hereunder to any person, without the prior written consent of the City expressed by Ordinance.

14.2. Subject to the provisions in Section 15.1, this Franchise shall be binding upon and inure to the benefit of the City and the Grantee and their respective successors and permitted assigns, and nothing express or mentioned in this Franchise is intended or shall be construed to give

any other person any legal or equitable right, remedy or claim under or in respect of this Franchise or any provisions of this Franchise, and conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of such persons and for the benefit of no other person.

Section 15. Notices.

15.1. Any notice, request, instruction or other document deemed by any party hereunder to be necessary or desirable to be given to any other party shall be deemed delivered three (3) days after deposit in the U.S. mail if such written notification is sent by registered mail or certified mail, postage prepaid, with return receipt requested, correctly addressed as follows:

If to City: City Administrator, City of Wimberley
 12111 RR12
 PO Box 2027
 Wimberley, Texas 78676

If to Grantee: Wimberley Water Supply Corporation
 P.O. Box 10
 Wimberley, TX 78676

or to the last address for notice, which the sending party has for the receiving party at the time of mailing. Either party may change its address for notice designating the new address in a written notice served upon the other party in the manner provided herein. Notices or other information delivered in any other manner will be deemed delivered if and when actually received.

Section 16. Force Majeure.

Each party shall be excused for failures and delays in performance of its respective obligations under this Franchise due to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, riot or insurrection, law or regulation, strike, flood, fire, explosion or inability due to any of the aforementioned causes to obtain necessary labor, materials or facilities. This provision shall not, however, release such party from using its best efforts to avoid or remove such cause and such party shall continue performance hereunder with the utmost dispatch whenever such causes are removed. Upon claiming any such excuse or delay for non-performance, such party shall give prompt written notice thereof to the other party, provided that failure to give such notice shall not in any way limit the operation of this provision.

Section 17. Findings.

All of the Whereas clauses 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 18. Insurance and Bond.

18.1. The Grantee shall maintain throughout the term of the Franchise, and thereafter for a period of not less than twelve (12) months, general liability insurance with limits not less than:

- a. One Million and No/100 Dollars (\$1,000,000) primary; and,
- b. One Million and No/100 Dollars (\$1,000,000) umbrella, or other securities as acceptable to the City Administrator or his designee. Insurance policies and certificates must be issued from an insurance company licensed to do business in the State of Texas and acceptable to the City, insuring against claims for liability and damages for the benefit of the City. The insurance shall include the City as an additional insured; however, the policy must provide that insurers shall have no right of recovery against the City and no recourse against the City for payment of any premiums or assessments.

18.2. The Grantee shall maintain through the term of the Franchise the requisite statutory workers' compensation insurance.

18.3. A copy of the insurance policy, or policies, obtained by the Grantee in compliance with this section shall be provided to the City, and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the City Secretary during the term of this Franchise, and shall be changed from time to time to reflect changing liability limits, as reasonably required by the City Council. The City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable requests for deletion or modification of particular terms, conditions, limitations, or exclusions. If the City determines that a certificate of insurance is acceptable evidence for insurance coverage, a copy of the required endorsement shall be attached to the certificate of insurance.

18.4. The policy shall contain a provision that it may not be canceled, revoked or annulled by the insurer without giving the City ten days' prior written notice. The Grantee shall not surrender or release such policy without filing in lieu thereof another policy complying with the requirements of this section.

18.5. Neither the City or any officer or employee thereof shall be liable for the financial responsibility of any insurer, or in any manner become liable for any claim, act or omission, relating the Grantee's use of the public right-of-way.

18.6. The Grantee shall immediately advise the City of any significant litigation, actual or potential, that may develop and would affect this insurance.

18.7. Grantee shall annually obtain, maintain and file with the City Secretary, a corporate surety bond with a surety company authorized to do business in the State of Texas, and found acceptable by the City Attorney, in the amount of Seventy-Five Thousand and No/100 Dollars (\$75,000), or of the estimated amount of the value of work anticipated to be completed that year, whichever is greater, to guarantee the restoration of the Rights-of-Way in the event Grantee leaves a job site unfinished, incomplete, unsafe or unreasonably delays the completion of the construction. Grantee shall provide this corporate bond within thirty (30) days of the issuance of a permit under

this Franchise but prior to commencement of construction. Should Grantee without a bond in place leave a job site in the Rights-of-Way unfinished, incomplete, unsafe or unreasonably delays the completion of the construction, Grantee shall pay the actual cost of restoring the Rights-of-Way, plus any administrative fee to reimburse the City's cost of overseeing any such restoration.

18.8. The rights reserved to the City with respect to the insurance or bond are in addition to all other rights of the City, whether reserved by this Franchise or authorized by law; and no action, proceeding or exercise of a right with respect to such insurance or bond shall affect any other right the City may have.

Section 19. Indemnification and Hold Harmless.

19.1. The Grantee shall, at its sole cost and expense, indemnify, defend and hold harmless the City, board, its agents, officers and employees, against and from any and all claims, demands, causes of actions, suits, proceedings, damages, liabilities and judgments of every kind by or on behalf of any person, firm, corporation or other entity, arising from or due to the Grantee's construction or operation of the System, or arising from any act of negligence of the Grantee, or any of its agents, contractors, servants, employees or licensees, and from and against all costs, attorneys fees, expenses and liability incurred in or about any such claim or proceeding brought thereon, and from any and all claims arising from any breach or default on the part of the Grantee to be performed pursuant to the terms of this Franchise.

19.2. The Grantee shall, at the sole risk and expense of the Grantee, upon demand of the City, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, or otherwise brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, board, agents or employees arising out of or due to the Grantee's construction or operation of the System in the City.

19.3. The Grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand, rendered made or issued, against the Grantee, the City, its officers, board, agents or employees, for the foregoing; and such indemnity shall exist and continue without reference to or limitation by the amount of any policy of insurance, or other assurance required hereunder or otherwise.

Section 20. Interpretation.

Each of the parties has been represented by legal counsel of their choosing in the negotiation and preparation of this Franchise. Regardless of which party prepared the initial draft of this Franchise, this Franchise shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.

Section 21. Governmental Function.

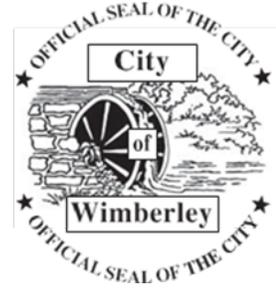
All of the lawful regulations and activities required by this Franchise are hereby declared to be governmental for the health, safety and welfare of the general public.

CITY OF WIMBERLEY, TEXAS

Susan Jagers
Mayor

ATTEST:

Laura J. Calcote
City Secretary



GRANTEE:

WIMBERLEY WATER SUPPLY CORPORATION

Paul Polhemus
President, Board of Directors

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 201__, by
_____, an individual residing in _____ County, Texas.

Notary Public Signature

(seal)



AGENDA ITEM: Aqua Franchise Agreement
SUBMITTED BY: Shawn Cox, City Administrator
DATE SUBMITTED: April 30, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

In 2009, the City Council adopted Ordinance No. 2009-13 which provided Aqua Utilities, Inc. a non-exclusive franchise agreement to operate and maintain a sewer system within the City's rights-of-way. After discussions with Aqua, it was their desire to enter into a franchise agreement by resolution, rather than ordinance. On May 21, 2009, the City adopted Ordinance No. 2009-22 which repealed Ordinance No. 2009-13. At the same meeting, the City approved Resolution No. 09-2009 which authorized the current franchise agreement with Aqua. This agreement became effective on June 1, 2009 and is for a period of ten (10) years.

The proposed agreement will again be for a period of ten (10) years, and will become effective, if approved, on June 1, 2019. The proposed franchise fee is three percent (3%) of gross receipts collected from customers and consumers within the corporate limits of the city. The proposed fee is consistent with what is currently being collected.

The City collects approximately 21% of its revenues from franchise fees annually. Aqua makes up approximately 1% (.24% of total revenues collected).

REQUESTED ACTION

- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

- Budgeted Item Not Applicable
- Non-budgeted Item Original Estimate/Budget: \$

Current Estimate: \$

Amount Under/Over Budget: \$

STAFF RECOMMENDATION

The City Administrator recommends approval of Resolution No. 06-2019 and the Franchise Agreement with Aqua Utilities, Inc. DBA Aqua Texas, Inc. as presented.

ATTACHMENTS:

- Resolution No. 07-2019
- Proposed Aqua Utilities, Inc. Franchise Agreement

RESOLUTION NO. 07-2019

A RESOLUTION OF THE CITY OF WIMBERLEY, TEXAS AUTHORIZING THE MAYOR TO SIGN A FRANCHISE AGREEMENT WITH AQUA UTILITIES, INC. DBA AQUA TEXAS, INC. FOR A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A RETAIL WASTEWATER UTILITY SYSTEM WITHIN THE RIGHTS-OF-WAY OF THE CITY OF WIMBERLEY FOR A TERM OF TEN YEARS.

WHEREAS, Aqua Texas Inc. (“Grantee”), a subsidiary of Aqua America, Inc., operates a retail sewer system located partially in the corporate limits of the City of Wimberley (“City”) pursuant to Wastewater Certificate of Convenience and Necessity Number 20453 and wishes to continue to provide such services within the City of Wimberley; and

WHEREAS, the Grantee is a publicly traded corporation regulated by state authorities with appropriate jurisdiction, including the Texas Commission on Environmental Quality (“TCEQ”); and

WHEREAS, the City may adopt an order, act, law or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the City; and

WHEREAS, the City may adopt ordinances, rules or police regulations that are for the good government, peace or order of the City or for the trade and commerce of the City, and that are necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City has exclusive control over the public grounds, highways, streets and alleys of the City pursuant to the Texas Local Government Code; and

WHEREAS, an incorporated city or town may make a reasonable lawful charge for the use of a city street, alley, or public way by a public utility in the course of its business pursuant to the Texas Tax Code; and

WHEREAS, the City Council believes it in the best interest of the City to offer the Grantee a franchise on the terms and conditions enumerated herein.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, THAT:

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 Resolution as if copied in their entirety.

II. RESOLUTION

THAT, the Mayor is authorized to sign a Franchise Agreement in the form on file with the City Secretary granting Aqua Texas, Inc. a franchise to use City right-of-way subject to the terms and conditions of the Agreement.

PASSED AND APPROVED this ___ day of _____, 2019, by a _____ (Ayes) _____ (Nays) _____ (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY

By: _____
Susan Jagers, Mayor

ATTEST:

Laura J. Calcote, City Secretary



FRANCHISE AGREEMENT

This FRANCHISE AGREEMENT dated as of the ____ day of _____, 2019 (“Agreement”) by and between the CITY OF WIMBERLEY, TEXAS, a Type A general law municipality incorporated in Hays County, Texas (“City”), and AQUA UTILITIES, INC, DBA AQUA TEXAS, INC., a Texas Corporation, (“Grantee”) is effective on the date of the last of the signatures by the parties to this Agreement (“Effective Date”).

WHEREAS, Aqua Texas Inc. (“Grantee”), a subsidiary of Aqua America, Inc., operates a retail sewer system located partially in the corporate limits of the City of Wimberley (“City”) pursuant to Wastewater Certificate of Convenience and Necessity Number 20453 and wishes to continue to provide such services within the City of Wimberley; and

WHEREAS, the Grantee is a publicly traded corporation regulated by state authorities with appropriate jurisdiction, including the Texas Commission on Environmental Quality (“TCEQ”); and

WHEREAS, the City may adopt an order, act, law or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the City; and

WHEREAS, the City may adopt ordinances, rules or police regulations that are for the good government, peace or order of the City or for the trade and commerce of the City, and that are necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City has exclusive control over the public grounds, highways, streets and alleys of the City pursuant to the Texas Local Government Code; and

WHEREAS, an incorporated city or town may make a reasonable lawful charge for the use of a city street, alley, or public way by a public utility in the course of its business pursuant to the Texas Tax Code; and

WHEREAS, WHEREAS, Grantee is willing to enter into an Agreement with City in order to avoid a dispute, if any, with City regarding compliance with the law and will pay the fees for customers within City's boundaries in order to exercise the rights stated herein, but is not waiving the right to contest the terms of any City ordinance impacting Grantee's rights under CCN Number 20453 or the original and exclusive jurisdiction of TCEQ over certain matters; the City's remedies described herein are not exclusive, and the City is not waiving any of its rights to seek a remedy available under the law with an entity with jurisdiction over Grantee regarding Grantee's performance under this Agreement;

WHEREAS, the City Council approved the terms to this agreement on May 2, 2019, by adopting Resolution No. 07-2019, and believes it in the best interest of the City to offer the Grantee a franchise on the terms and conditions enumerated herein.

AGREEMENT:

Section 1. Definitions.

1.1. For the purposes of this Ordinance, when not inconsistent with the context, words, used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined in this Section 1 shall be given their common and ordinary meaning.

1.2. For the purposes of this Ordinance, the following words, terms, phrases and their derivations shall have the meaning given in this Section 1.2.

1.2.1. “City Council” shall mean the governing body of the City of Wimberley.

1.2.2. “City Secretary” shall mean the City Secretary of the City of Wimberley.

1.2.3. “Consumer” shall mean any person or organization receiving and using retail sewer service from the Grantee for his or her own appliances or equipment, whether or not the retail sewer service is billed directly to him or her, or to a second party. (As an example, in the case of a rental unit where the cost of utilities is part of the rent, the landlord is a Customer and the tenant is a Consumer.)

1.2.4. “Customer” shall mean any person or organization billed for retail and sewer service by the Grantee whether used by him or her, or by others.

1.2.5. “Effective Date” shall mean, _____, 2019 which is the date this Franchise shall become effective.

1.2.6. “Emergency” shall mean an occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.

1.2.7. “Franchise” shall mean this Ordinance, and all rights and obligations established herein or as it may be amended.

1.2.8. “Grantee” shall mean Aqua Texas Incorporated, a corporation authorized under Texas law to transact business in the State of Texas, its successors and assigns.

1.2.9. “Gross Receipts” shall mean the total amount collected by the Grantee for retail sewer service provided to Consumers by the Grantee within the corporate limits of the City. Gross Receipts shall not include charges for taxes or regulatory charges on services furnished by the Grantee herein that are imposed directly upon any Consumer or Customer by the State, the City or other governmental unit and collected by the Grantee on behalf of the governmental units (including, without limitation, Texas Limited Sales Tax), nor shall it include any amounts refunded to Customers or Consumers.

1.2.10. “Rights-of-Way” shall mean the area on, below or above all publicly owned, dedicated or maintained streets, avenues, easements, alleys, highways, sidewalks, bridges, and other similar means of public access in the City.

1.2.11. “System” shall mean the system of pipes, distribution and transmission lines, pumps and pump stations, storage facilities, equipment, treatment facilities, land, and other appurtenances used or necessary for the provision of retail sewer utility service to/for Consumers or Customers in the City, including, without limitation, those owned or used by the Grantee.

1.2.12. “TCEQ” shall mean the Texas Commission on Environmental Quality, or its successor agency.

1.2.13. “Uniform ROW Management Ordinance” shall mean Ordinance No. 2001-015, titled Uniform Right-of-Way Ordinance, passed and approved by the City on May 17, 2001, and as may be subsequently amended.

1.2.14. “City” shall mean the City of Wimberley, Texas, a municipal corporation and a political subdivision of the State of Texas; and any area annexed thereto from time to time. For purposes of this Franchise, any annexation shall become effective within sixty (60) days of the City’s written notification to Grantee of the annexation.

Section 2. Grant of Franchise and Term.

2.1. There is hereby granted to the Grantee a non-exclusive franchise to maintain, construct, equip, extend, replace, repair, alter and otherwise establish and operate in the City, as constituted as of the Effective Date, or as may hereafter be constituted, works, systems, plants, collection, distribution and transmission lines, treatment facilities and all related facilities (including those now in service and including all parts and portions of the System) necessary or appropriate to sell, collect, convey or otherwise conduct, serve or furnish the inhabitants of the City, and to the City, retail sewer service, and the Grantee is hereby granted passage and rights-of-way in, under, along and across the Rights-of-Way of the City and beneath the surface of same, and the right to occupy and use in any lawful way during the term of this Franchise said Rights-of-Way as they now or hereafter may exist, for every and any such service, use, effect, and lawful purpose as herein mentioned; provided that all such work, activity and undertakings by the Grantee shall be subject to the terms and provisions of this Franchise and the Uniform ROW Management Ordinance. Nothing herein shall be construed to require or authorize Grantee to exceed any rights granted herein or by the TCEQ, or its successor agency.

2.2. The construction, maintenance, and operation of the System and property of the Grantee within the City shall be subject to the terms of this Franchise and all other applicable ordinances, rules and regulations adopted by the City, including the police powers of the City to adopt and enforce ordinances of general applicability necessary to the health, safety and welfare of the public that are not otherwise inconsistent with the terms and conditions of this Franchise.

2.3. In exercising its operations under this Franchise, the Grantee reserves the right to use affiliated entities or third-party contractors or subcontractors.

2.4. The Grantee shall be allowed to operate and maintain all lines existing on the Effective Date within City parks, greenbelts, and similar property, or then existing on land hereinafter designated as a City park. Except in an Emergency, the Grantee shall not undertake a replacement of such lines or install new lines within said parks, greenbelts or similar property without the permission of the City Administrator. Such permission shall not be unreasonably withheld or delayed.

2.5. The term of this Franchise shall be for a period of ten (10) years from the Effective Date, unless terminated sooner pursuant to the terms herein; provided that this Franchise shall not be or become effective unless accepted by the Grantee as stated herein. The Franchise may be renewed in accordance with applicable law.

2.6. The Grantee shall have full authority to repair and replace pipes and facilities within any Rights-of-Way existing on the effective date of this Ordinance and to expand and enlarge such facilities for the purpose of providing for growth and expansion both within and outside the City, subject to the terms of this Franchise and the Uniform ROW Management Ordinance.

2.7. This Franchise is non-exclusive, and the City retains the right and power to grant any other person, political subdivision, firm, or corporation a franchise to use its streets, highways, Rights-of-Ways, and City parks, greenbelts, or similar property.

2.8. Grantee shall be subject to applicable City ordinances governing rights-of-way construction permits for conducting land disturbing activities in the public rights-of-way, including but not limited to the Uniform ROW Management Ordinance, prior to the commencement of any construction in the Rights-of-Way. Such permits shall be issued only in compliance with applicable City ordinances.

2.9. As Built Plans. Upon the Effective Date of this Franchise, Grantee shall provide, without cost to the City a hard copy and electronic version of the existing System located within the Rights-of-Way. Within sixty (60) days of completion of each new permitted section of Grantee's facilities, Grantee, shall supply the City with a complete set of "as built" plans of record for the new permitted section in a format used in the ordinary course of business, but excluding customer specific, proprietary or confidential information and as reasonably prescribed by City, and as allowed by law. The City may, at its discretion, accept any reasonable alternative to as built plans of record which provides adequate information as to the location of facilities in the Rights-of-Way.

Section 3. Use of Rights-of-Way.

3.1. The Grantee is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges herein mentioned and granted by this Franchise, provided the same do not conflict with existing

water or sewer lines, electric power lines, telephone lines, cable television lines and other authorized installations, and provided that all work done in said Rights-of-Way by the Grantee shall be done with reasonable diligence, without unreasonable interference to the public or individuals, and in compliance with any applicable City ordinances rules or regulations regarding the Rights-of-Way. In the event of unreasonable interference to the public or Rights-of-Way, such facilities shall be moved by Grantee, temporarily or permanently, as determined by the City Administrator or his designee upon reasonable notice. The City shall take commercially reasonable precautions to avoid conflicting with Grantee's facilities in such Rights-of-Way. The City shall include as a requirement in all franchises that are granted or renewed after the Effective Date that all other franchised entities occupying Rights-of-Way shall also take commercially reasonable precautions to avoid conflicting with the Grantee's facilities in such Rights-of-Way. It is not the intention of either the City or the Grantee to create any liability, right or claim for the benefit of third parties and this Franchise is intended and shall be construed for the sole benefit of the City and the Grantee.

3.2. The City reserves the right to lay, and permit to be laid, sewer, cable television, water, telephone, electric, and other lines, cables and conduits, and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over or under any Rights-of-Ways or other public place occupied by the Grantee.

3.3. Grantee shall restore the Rights-of-Way and provide notification of any repairs and Emergency work to the City in accordance with the Uniform ROW Management Ordinance.

Section 4. Modification and Relocation of Facilities.

If, during the period of this Franchise, the City, for a public purpose, use or convenience, reconstructs, improves or changes any Rights-of-Way including, but not limited to, changing the grade or alignment of the Rights-of-Way or any distribution or transmission line, or any overhead or underground structure within the corporate limits of the City, so as to conflict with the distribution or transmission lines, treatment facilities, equipment and appurtenances of the Grantee or the System, the Grantee shall remove or relocate, as necessary, all of its distribution or transmission lines, equipment, and appurtenances at the Grantee's expense. Designated representatives of the Grantee and the City shall develop schedules for this work. If such representatives cannot agree on the schedules, the City, after consultation with the Grantee, shall establish a schedule which shall accommodate the Grantee's statutory obligation to obtain construction plan approval from the TCEQ, if required, prior to commencing any work. Additionally, if the City's plans require the Grantee to relocate its facilities, the City may, to the extent possible, identify Rights-of-Way to accommodate the Grantee's System.

Section 5. Franchise Fee.

5.1. The Rights-of-Way to be used by the Grantee in the operation of the System within the boundaries of the City as such boundaries exist as of the Effective Date, and as hereafter modified from time to time, are public properties acquired and maintained by the City at expense to its taxpayers. The Grantee will receive and obtain material benefits and operating efficiencies from this Franchise and the Grantee's rights to use the City Rights-of-Way. Without this Franchise, the

Grantee would be required to invest in right-of-way cost and acquisition. The City will incur significant and material cost and expense in regulating, administering and carrying out actions necessary to give effect to this Franchise and thus, the Grantee shall, commencing on the Effective Date and continuing through the term of this Franchise, pay to the City of the Grantee's Gross Receipts for water and wastewater services collected from Customers and Consumers within the corporate limits of the City as a franchise fee. Such franchise fee shall be based on the following percentages of the gross receipts for water and wastewater services collected from Customers and Consumers within the corporate limits of this City for the term of the franchise agreement, and paid as provided herein, as follows, ~~two percent (2%) for the first three years, and three percent (3%) for the remaining term~~ three percent (3%) for the term of the franchise agreement.

5.2. The franchise fee shall be payable quarterly to the City and delivered to the City Secretary, or successor in function, together with a statement indicating the derivation and calculation of such payment. Each such quarterly payment shall be due on the ~~twentieth (20th)~~ fifteenth (15th) day of the month following the end of the quarterly period for which said payment is due and shall be based upon the Gross Receipts during that same calendar year period. The statement shall be presented in the form of generally accepted accounting procedures. At all times, the Grantee shall cause accurate books and records of account to be maintained as are necessary to permit the verification of the amount of such franchise fee. For purposes of verifying the amount of such fee, the books and records of account of the Grantee shall at all reasonable times be subject to inspection by the City and its duly authorized representatives. The Grantee shall file annually with the City Secretary, no later than four (4) months after the end of the Grantee's fiscal year, a statement of revenues attributable to the operations of the Grantee within the City.

5.3. If the franchise fee payment is not paid on the due date specified herein, an interest charge shall be assessed at the rate of ten percent (10%) per year for each day that the franchise payment is late, and payment for the interest due shall accompany the late franchise fee payment.

5.4. The franchise fee shall be in lieu of any and all other City imposed rentals or compensation or franchise, license, privilege, instrument, occupation, excise or revenue taxes or fees and all other exactions or charges (except ad valorem property taxes, special assessments for local improvements, City sales tax, and such other charges for utility services imposed uniformly upon persons, firms or corporations then engaged in business within the City) or permits upon or relating to the business, revenue, franchise, collection lines, installations and systems, fixtures, and other facilities of the Grantee and all other property of the Grantee and its activities, or any part thereof, in the City which relate to the operations of the System.

5.5. No acceptance of any franchise fee shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further additional sums payable under this Ordinance. All amounts paid shall be subject to audit and recomputation by the City.

5.6. The period of recomputation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment is due from Grantee.

Section 6. Termination of Franchise.

6.1. Either party (provided such party is not then in material breach of this Franchise) may terminate this Franchise upon a material breach thereof by the other party (the “Breaching Party”) by giving not less than forty-five (45) days’ prior written notice of such termination (containing reasonable detail of the material breach) to the Breaching Party; provided, however, in the event that the Breaching Party shall have cured the specified material breach within the above-referenced forty-five (45) day notice period (or, if the material breach is of a type which is not reasonably capable of being cured within such a period, and the Breaching Party has then commenced action to cure such breach), the above-referenced notice shall be of no further force or effect.

6.2. The Grantee may terminate this Franchise at any time upon written notice to the City in the event the Grantee is then no longer providing service to Customers or Consumers within the corporate limits of the City.

6.3. In the event this Franchise is terminated, easements and real property purchased and acquired by the Grantee, and held in the name of the Grantee, shall be and remain the property of the Grantee, according to the terms, conditions and limitations of the instruments conveying such property and interest in property to the Grantee.

6.4. The City retains the right to terminate this Franchise upon written notification to the Grantee, whenever in its judgment revocation is necessary to secure efficiency of public service at reasonable rates or to assure that the property is maintained in good order throughout the life of the grant, the Grantee practices any fraud upon the City, or the Grantee becomes insolvent, unable or unwilling to pay its debts, or it is adjudged bankrupt or a receiver is appointed to it.

6.5. Upon termination of this Franchise for whatever reason, the Grantee shall upon request of the City, at the Grantee’s sole expense, remove any or all of the System from the Rights-of-Way, and restore the Rights-of-Way to its original condition or better.

Section 7. Severability.

If any section, paragraph, subdivision, clause, part or provision hereof shall be adjudged invalid, illegal or unconstitutional, the same shall not affect the validity hereof as a whole or any part or provision other than the part or parts held invalid or unconstitutional.

Section 8. Captions and Headings.

The use of captions or headings for the various sections of this Franchise are for convenience of parties only and do not reflect the intent of the parties. The rule of interpretation to resolve ambiguities in a contract against the party drafting such contract shall not apply to this Franchise.

Section 9. Open Meetings.

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

Section 10. Publication.

The full caption of this Ordinance shall be published one (1) time in a weekly newspaper published within or in general circulation within the City and the expense of such publication shall be borne by the City. This Ordinance shall take effect only upon its acceptance by the Grantee within the time and manner herein above provided and publication, as may be required by governing law. In the event this Franchise is not accepted by the Grantee, this Ordinance shall expire and be and become null and void at midnight on the thirtieth (30th) day after date hereof.

Section 11. Endorsements and Records.

The City Secretary is hereby authorized and directed to make appropriate endorsements, for the public records and convenience of the citizens over her official hand and the seal of the City and on the form provided at the conclusion of this Franchise, of the date upon which this Ordinance is finally passed and adopted by the City Council; the date upon which the caption or notice of this Ordinance is published in the local newspaper, the date upon which this Ordinance shall expire if not first accepted by the Grantee and, if the Grantee shall accept this Franchise, the date of such acceptance by the Grantee.

Section 12. Entire Agreement; Amendments.

This Franchise contains the entire agreement between the parties with respect to the subject matter herein and all prior negotiations and agreements are merged herein and hereby superseded. This Franchise may not be amended or revised except upon agreement of both parties, which agreement shall be in writing signed by the parties after approval and formal action of the City.

Section 13. No Waiver.

13.1. The failure of the City or the Grantee, upon one or more occasions, to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver or compliance or performance, unless such right has been specifically waived in writing.

13.2. Waiver of a particular breach of this Franchise shall not be construed as a waiver of any other breach. No provision of this Franchise shall operate as a waiver by the City or the Grantee of any right guaranteed by the federal or state constitutions or other applicable law.

Section 14. Assignment; Transfer; Sale or Conveyance by Grantee.

14.1. The Grantee shall not assign or transfer this Franchise or any of its rights and privileges granted hereunder to any person, without the prior written consent of the City expressed by Ordinance.

14.2. Subject to the provisions in Section 15.1, this Franchise shall be binding upon and inure to the benefit of the City and the Grantee and their respective successors and permitted assigns, and nothing express or mentioned in this Franchise is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Franchise or any provisions of this Franchise, and conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of such persons and for the benefit of no other person.

Section 15. Notices.

15.1. Any notice, request, instruction or other document deemed by any party hereunder to be necessary or desirable to be given to any other party shall be deemed delivered three (3) days after deposit in the U.S. mail if such written notification is sent by registered mail or certified mail, postage prepaid, with return receipt requested, correctly addressed as follows:

If to City: City Administrator, City of Wimberley
 12111 RR12
 PO Box 2027
 Wimberley, Texas 78676

If to Grantee: Aqua Texas Inc.
 1421 Wells Branch Parkway, Ste. 105
 Pflugerville, Texas 78660

or to the last address for notice, which the sending party has for the receiving party at the time of mailing. Either party may change its address for notice designating the new address in a written notice served upon the other party in the manner provided herein. Notices or other information delivered in any other manner will be deemed delivered if and when actually received.

Section 16. Force Majeure.

Each party shall be excused for failures and delays in performance of its respective obligations under this Franchise due to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, riot or insurrection, law or regulation, strike, flood, fire, explosion or inability due to any of the aforementioned causes to obtain necessary labor, materials or facilities. This provision shall not, however, release such party from using its best efforts to avoid or remove such cause and such party shall continue performance hereunder with the utmost dispatch whenever such causes are removed. Upon claiming any such excuse or delay for non-performance, such party shall give prompt written notice thereof to the other party, provided that failure to give such notice shall not in any way limit the operation of this provision.

Section 17. Findings.

All of the Whereas clauses 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 18. Insurance and Bond.

18.1. The Grantee shall maintain throughout the term of the Franchise, and thereafter for a period of not less than twelve (12) months, general liability insurance with limits not less than:

- a. One Million and No/100 Dollars (\$1,000,000) primary; and,
- b. One Million and No/100 Dollars (\$1,000,000) umbrella, or other securities as acceptable to the City Administrator or his designee. Insurance policies and certificates must be issued from an insurance company licensed to do business in the State of Texas and acceptable to the City, insuring against claims for liability and damages for the benefit of the City. The insurance shall include the City as an additional insured; however, the policy must provide that insurers shall have no right of recovery against the City and no recourse against the City for payment of any premiums or assessments.

18.2. The Grantee shall maintain through the term of the Franchise the requisite statutory workers' compensation insurance.

18.3. A copy of the insurance policy, or policies, obtained by the Grantee in compliance with this section shall be provided to the City, and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the City Secretary during the term of this Franchise, and shall be changed from time to time to reflect changing liability limits, as reasonably required by the City Council. The City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable requests for deletion or modification of particular terms, conditions, limitations, or exclusions. If the City determines that a certificate of insurance is acceptable evidence for insurance coverage, a copy of the required endorsement shall be attached to the certificate of insurance.

18.4. The policy shall contain a provision that it may not be canceled, revoked or annulled by the insurer without giving the City ten days' prior written notice. The Grantee shall not surrender or release such policy without filing in lieu thereof another policy complying with the requirements of this section.

18.5. Neither the City or any officer or employee thereof shall be liable for the financial responsibility of any insurer, or in any manner become liable for any claim, act or omission, relating the Grantee's use of the public right-of-way.

18.6. The Grantee shall immediately advise the City of any significant litigation, actual or potential, that may develop and would affect this insurance.

18.7. Grantee shall annually obtain, maintain and file with the City Secretary, a corporate surety bond with a surety company authorized to do business in the State of Texas, and found acceptable by the City Attorney, in the amount of Seventy-Five Thousand and No/100 Dollars (\$75,000), or of the estimated amount of the value of work anticipated to be completed that year, whichever is greater, to guarantee the restoration of the Rights-of-Way in the event Grantee leaves a job site unfinished, incomplete, unsafe or unreasonably delays the completion of the construction. Grantee shall provide this corporate bond within thirty (30) days of the issuance of a permit under this Franchise but prior to commencement of construction. Should Grantee without a bond in place leave a job site in the Rights-of-Way unfinished, incomplete, unsafe or unreasonably delays the completion of the construction, Grantee shall pay the actual cost of restoring the Rights-of-Way, plus any administrative fee to reimburse the City's cost of overseeing any such restoration.

18.8. The rights reserved to the City with respect to the insurance or bond are in addition to all other rights of the City, whether reserved by this Franchise or authorized by law; and no action, proceeding or exercise of a right with respect to such insurance or bond shall affect any other right the City may have.

Section 19. Indemnification and Hold Harmless.

19.1. The Grantee shall, at its sole cost and expense, indemnify, defend and hold harmless the City, board, its agents, officers and employees, against and from any and all claims, demands, causes of actions, suits, proceedings, damages, liabilities and judgments of every kind by or on behalf of any person, firm, corporation or other entity, arising from or due to the Grantee's construction or operation of the System, or arising from any act of negligence of the Grantee, or any of its agents, contractors, servants, employees or licensees, and from and against all costs, attorneys fees, expenses and liability incurred in or about any such claim or proceeding brought thereon, and from any and all claims arising from any breach or default on the part of the Grantee to be performed pursuant to the terms of this Franchise.

19.2. The Grantee shall, at the sole risk and expense of the Grantee, upon demand of the City, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, or otherwise brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, board, agents or employees arising out of or due to the Grantee's construction or operation of the System in the City.

19.3. The Grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand, rendered made or issued, against the Grantee, the City, its officers, board, agents or employees, for the foregoing; and such indemnity shall exist and continue without reference to or limitation by the amount of any policy of insurance, or other assurance required hereunder or otherwise.

Section 20. Interpretation.

Each of the parties has been represented by legal counsel of their choosing in the negotiation and preparation of this Franchise. Regardless of which party prepared the initial draft of this Franchise, this Franchise shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.

Section 21. Governmental Function.

All of the lawful regulations and activities required by this Franchise are hereby declared to be governmental for the health, safety and welfare of the general public.

CITY OF WIMBERLEY, TEXAS

Susan Jagers
Mayor

ATTEST:

Laura J. Calcote
City Secretary



GRANTEE:

AQUA UTILITIES, INC. DBA AQUA TEXAS, INC.

Robert L. Laughman
President

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 201__, by
_____, an individual residing in _____ County, Texas.

Notary Public Signature

(seal)



AGENDA ITEM: Community Center Sign
SUBMITTED BY: Shawn Cox, City Administrator
DATE SUBMITTED: April 30, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

On January 17, 2019, the City approved contributing no more than \$4,666 (one-third of the proposed \$14,000 for construction of the sign). Since approval of this expenditure, the Wimberley Valley Art League has obtained bids for the project which total \$18,052 for construction.

For consideration is the approval of expending approximately \$6,017 (one-third of the total \$18,052) for the construction of a new Wimberley Community Center Sign. This will still be a Wimberley Valley Art League Project. The permit fees would continue to be waived as originally agreed to.

REQUESTED ACTION

- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

Budgeted Item	<input type="checkbox"/>	Original Estimate/Budget:	\$ 4,666
Non-budgeted Item	<input checked="" type="checkbox"/>	Current Estimate:	\$ 6,017
Not Applicable	<input type="checkbox"/>	Amount Under/Over Budget:	\$ 1,351

STAFF RECOMMENDATION



AGENDA ITEM: Community Center A/C Repair
SUBMITTED BY: Terri Provost, Community Center Director
DATE SUBMITTED: April 30, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

Replacing the A/C unit at the Wimberley Community Center that services the Commercial Kitchen area. The system is not able to be repaired so new unit is required.

The City of Wimberley Community Center must replace the 5 Ton Condenser and Evaporator Coil for the A/C unit that handles the Commercial Kitchen area. The furnace portion is not in need of replacing at this time. Three bids were received, and installation should be asap due to events.

the ac guys	\$4,782.00	Woods Comfort Systems	\$6,060.00
Garner A/C	\$6,000.00		

REQUESTED ACTION

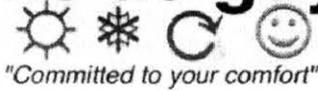
- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

Budgeted Item	<input type="checkbox"/>	Original Estimate/Budget:	\$
Non-budgeted Item	<input checked="" type="checkbox"/>	Current Estimate:	\$4782.00
Not Applicable	<input type="checkbox"/>	Amount Under/Over Budget:	\$

STAFF RECOMMENDATION

the ac guys



The AC Guys
142 Trinity Drive Kyle, Texas 78640
(512) 757-4770

Estimate 5366056
Job 5363752
Estimate Date 4/23/2019
Completed Date
Customer PO

Billing Address
City of Wimberley Community Center
14068 RR12
P.O. Box 678
Wimberley, TX 78676

Job Address
City of Wimberley
Community Center
14068 RR12, P.O. Box 678
Wimberley, TX 78676 USA

Estimate Details

Condenser & Evaporator coil replacement: Replace the 5 ton 3 phase condenser & 5 ton evaporator coil.

Task #	Description	Quantity	Your Price	Your Total
1	Goodman 5.0 Ton Condenser and 5 ton evaporator coil . (Upflow) - 3 phase 5 ton condenser. - upflow 5 ton coil - upgrade to the new 410a refrigerant - flush the refrigerant lines to remove r-22 oil. - seal up any duct work as needed. - overflow safe-t switch installed. - 5 year parts & 1 year labor warranty .	1.00	\$4,782.00	\$4,782.00

Potential Savings \$0.00
Sub-Total \$4,782.00
Tax \$0.00
Total \$4,782.00

THIS IS AN ESTIMATE, NOT A CONTRACT FOR SERVICES. The summary [above] is furnished by [the contractor] as a good faith estimate of work to be performed at [LOCATION] [the location described above] and is based on our evaluation and does not include material price increases or additional labor and materials which may be required should unforeseen problems arise after the work has started. I understand that the final cost of the work may differ from the estimate, perhaps materially. THIS IS NOT A GUARANTEE OF THE FINAL PRICE OF WORK TO BE PERFORMED. Any price changes must be authorized and agreed upon. I agree to the estimate and authorize [the contractor] to perform the work as summarized and on these estimated terms, and I agree to pay the full amount for all work performed when completed.



AGENDA ITEM: GCWA Report
SUBMITTED BY: Shawn Cox, City Administrator
DATE SUBMITTED: April 30, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

On April 4, 2019, Council agreed to utilize ZARA Environmental, LLC for environmental services related to the Central Wimberley Wastewater Project.

The City was required to have the assessment completed as a condition of the Texas Water Development Board (TWDB) approved change in scope for the Central Wimberley Wastewater Project.

The field work was completed on April 11, 2019, and a draft report was provided to the City on April 29, 2019.

REQUESTED ACTION

- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

- | | | | |
|-------------------|-------------------------------------|---------------------------|----|
| Budgeted Item | <input type="checkbox"/> | Original Estimate/Budget: | \$ |
| Non-budgeted Item | <input type="checkbox"/> | Current Estimate: | \$ |
| Not Applicable | <input checked="" type="checkbox"/> | Amount Under/Over Budget: | \$ |

ATTACHMENTS:

- Draft GCWA Report from ZARA Enviromental

ZARA

ENVIRONMENTAL LLC

1707 West FM 1626
Manchaca, Texas 78652
512-291-4555
www.zaraenvironmental.com

DRAFT: GOLDEN-CHEEKED WARBLER HABITAT ASSESSMENT AT PROPOSED WASTEWATER LAUNCHING AND RECEIVING PITS IN WIMBERLEY, HAYS COUNTY, TEXAS



Ashe juniper woodland habitat along either side of an access road in Blue Hole Regional Park within the study area.

Prepared for
City of Wimberley
221 Stillwater (P.O. Box 2027)
Wimberley, TX 78676

29 April 2019

Introduction

During April 2019, Zara Environmental LLC (Zara) performed a habitat assessment for the Golden-cheeked Warbler (*Setophaga chrysoparia*; GCWA) at the proposed City of Wimberley wastewater launching and receiving pits, Wimberley, Hays County, Texas (project). The City of Wimberley intends to bore under Cypress Creek to install wastewater pipelines. The two areas proposed for construction (i.e., the launching pit and the receiving pit) plus a 300-ft buffer includes approximately 7.8 ac of woodlands within and adjacent to Blue Hole Regional Park that could support breeding habitat for the GCWA (study area; Figure 1).

Golden-cheeked Warbler Habitat

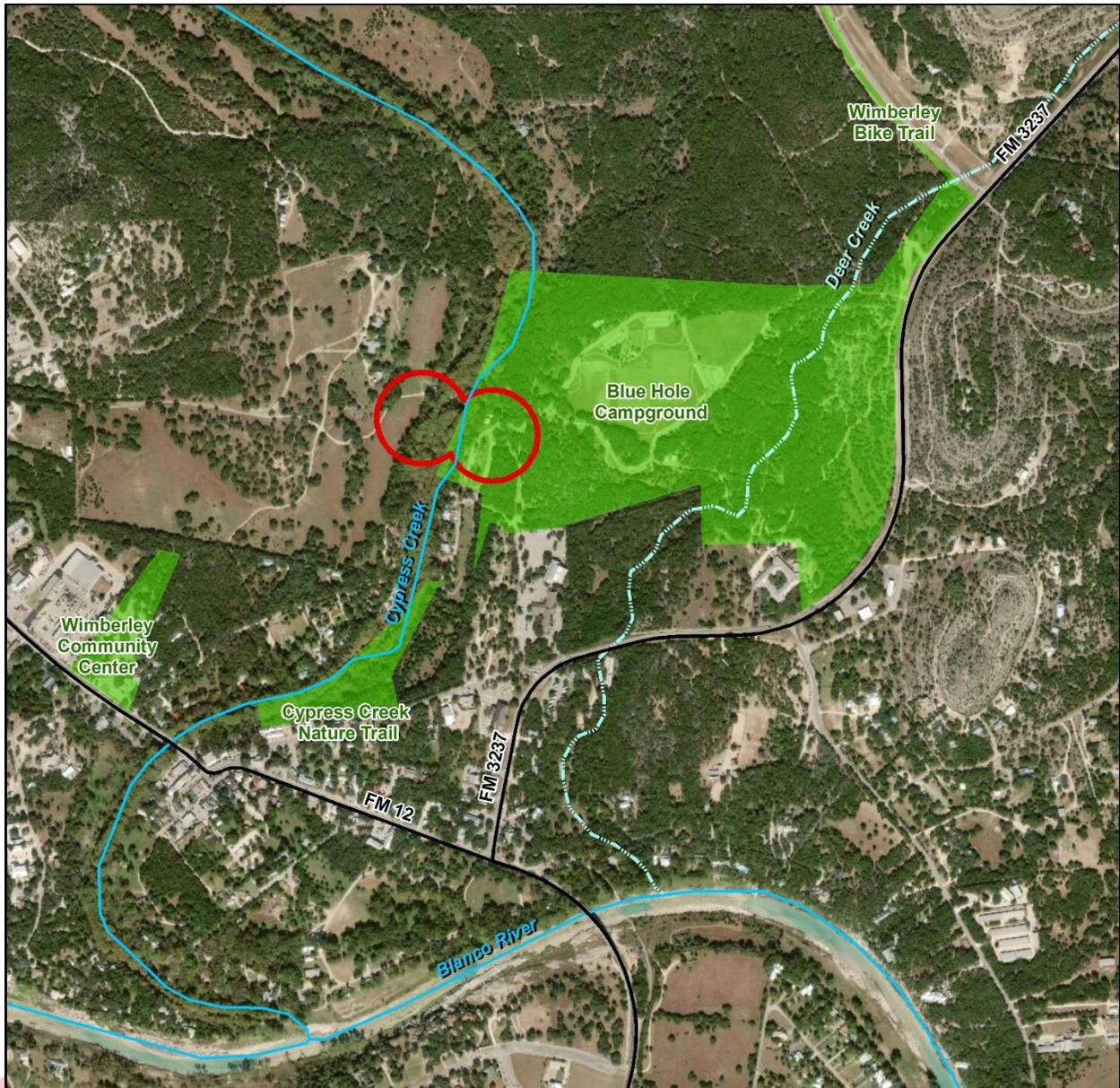
The Texas Parks and Wildlife Department (TPWD) describes three major categories for potential GCWA habitat (Campbell 2003¹). Those major categories are paraphrased as: vegetation associations where GCWAs are expected to occur; vegetation associations that may be used by GCWAs; and vegetation associations where GCWAs are not expected to be found. The “may be used” and “not expected to occur” vegetation association descriptions include vegetation components that typically may not be used by GCWAs unless they are adjacent to or near GCWA habitat.

Vegetation associations where GCWAs are expected to occur include woodlands with mature Ashe juniper trees (*Juniperus ashei*; 15 ft in height with a trunk dbh [diameter at breast height] of around 5.0 in) interspersed with a mix of hardwoods, including oaks (*Quercus* spp.) and elms (*Ulmus* spp.) in mesic areas encompassing steep canyons and slopes. Canopy cover should be nearly continuous with 50 to 100 percent canopy closure and an overall woodland canopy height of 20 ft or more.

Vegetation associations that may be used by GCWAs depend largely on the location, size of tract, land use, adjacent landscape features, and vegetation structure. These habitat types are most often used when they are adjacent to or near areas of high quality habitat and are described as:

1. Stands of mature Ashe juniper with shredding bark amidst scattered live oaks (*Q. fusiformis* or *Q. virginiana*), where the total canopy cover exceeds 35 percent.
2. Bottomlands along creeks and drainages that support at least a 35 percent canopy of deciduous trees with mature Ashe juniper growing either in the bottom or on nearby slopes.

¹Campbell, L. 2003. Endangered and threatened animals of Texas: their life history and management. Texas Parks and Wildlife Department, Austin, Texas.



Basemaps: ESRI 2019; Parks, Roads, Rivers: CAPCOG GIS accessed April 25, 2019; Intermittent Stream: Digitized from USGS topographic maps, 1:24K DRG, Wimberley and Driftwood quadrangles, TNRS 2019.

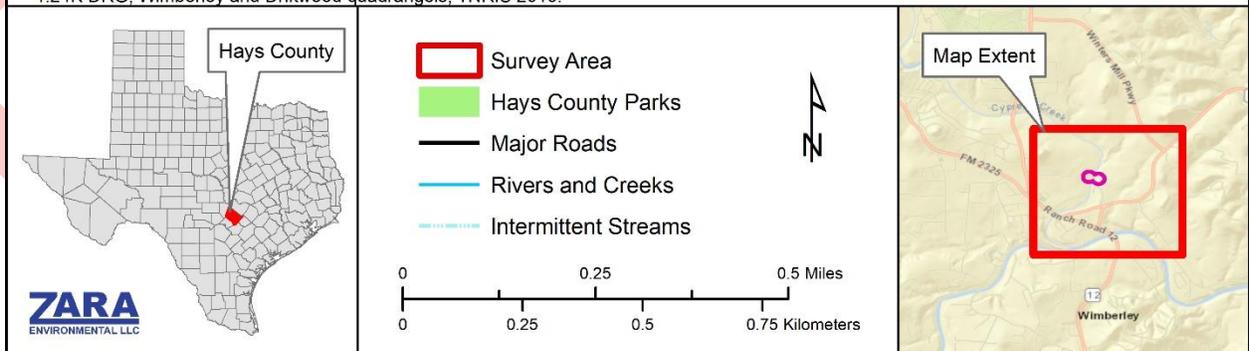


Figure 1. Location of the proposed wastewater launching and receiving pits and GCWA study area.

1. Mixed stands of post oak (*Q. stellata*) and/or blackjack oak (*Q. marilandica*; 10 to 30 percent canopy cover), with scattered mature Ashe juniper, where the total canopy cover of trees exceeds 35 percent and overall woodland canopy height is 20 ft.
2. Mixed stands of shin oak (*Q. sinuata* var. *breviloba*) (10 to 30 percent canopy cover) with scattered mature Ashe juniper, where the total canopy cover exceeds 35 percent and overall woodland canopy height is 20 ft.

Vegetation associations where GCWAs are not expected to be found include areas that are not typical for GCWA habitat and that are unlikely to be used by the GCWA unless these associations are adjacent to GCWA habitat, as described above. These areas include:

1. Dry, relatively flat areas with small Ashe juniper averaging less than 15 ft in height and 5.0 in dbh.
2. Pure stands of larger (greater than 15 ft in height and 5.0 in dbh) Ashe juniper, with few or no oaks or other hardwoods.
3. Open park-like woodlands or savannahs where canopy cover is less than 35 percent.
4. Small junipers (less than 15 ft tall) and other trees growing along existing fence lines or under larger hardwoods where junipers have been removed in the past 20 years.

Methods

Desktop Review

Topographic maps and aerial photographs of the study area were reviewed prior to performing field investigations to better assess the range of habitats potentially occurring in and adjacent to the area. The preliminary habitat delineation of potential GCWA habitat was performed through interpretation of digital true-color aerial photography (2018) at the highest available resolution and topographic maps to determine areas that meet the habitat definitions provided above, specifically species composition, canopy coverage, vegetation height, size of woodland habitat, surrounding land use, and topographic relief.

Field Investigation

The study area was assessed for GCWA habitat during an on-site field investigation via walking surveys. Average canopy coverage, average canopy height, dominant woody species, vegetative structure, percent oak species and mature Ashe juniper, and average slope of habitat areas examined were recorded during the investigation. Additional information was recorded to facilitate the habitat determination, such as the surrounding land use, overall woodland health, and proximity to other potential GCWA habitat areas observed outside of the study area. Representative habitat was photographed and delineated on field maps with aerial background during the field investigation.

Results

Desktop Review

Based on aerial imagery assessed during the desktop review, approximately 7.8 ac of potential GCWA habitat were identified in the study area. This qualified assessment was based on percentage of canopy cover, estimated canopy height, and species composition of woodland habitats (Figure 2). Topography within the study area ranges from relatively flat within the Cypress Creek floodplain (0 to 5 percent slopes) to gently rolling (up to 10 percent slopes) in upland areas within Blue Hole Regional Park. Aside for developed portions of Blue Hole Regional Park with little canopy coverage (parking lots and ball fields), almost 200 ac of contiguous closed-canopy woodland habitat surrounds the study area (Figure 1; Figure 2).

Field Investigation

On 11 April 2019, the study area was assessed for GCWA habitat by two Zara biologists, both holding a USFWS scientific research permit for the species. The woodland habitat found in upland portions of the study area were dominated by mature Ashe juniper with live oaks and other deciduous trees sparsely dispersed throughout (Figure 3; Figure 4). The average canopy coverage was approximately 70 percent and the average canopy height approximately 25 - 30 ft. Ashe juniper represented approximately 95 percent of the canopy and mature Ashe juniper was observed throughout (Figure 3, Figure 4). Approximately 2 percent of the canopy was represented by live oak. Other woody species observed in the Ashe juniper-live oak woodland include cedar elm (*Ulmus crassifolia*), netleaf hackberry (*Celtis reticulata*), Texas persimmon (*Diospyros texana*), flameleaf sumac (*Rhus lanceolata*), and agarita (*Mahonia trifoliolata*). The woodland met the definition of vegetation associations that may be used by GCWAs depending on the location, size of tract, land use, adjacent landscape features, and vegetation structure.

The parking lot located west of the Ashe juniper woodland within the study area had a canopy coverage of less than 5 percent and the vegetation consisted of maintained grasses, shrubs, and trees (Figure 5, Figure 6). Woody species observed in this area include post oak (*Quercus stellata*), Texas red oak (*Quercus buckleyi*), Texas huisache (*Acacia smallii*), chinquapin oak (*Quercus muehlenbergii*) and American sycamore (*Plantanus occidentalis*). The parking lot is not consistent with GCWA habitat due to its developed nature and lack of woodland canopy.

The riparian zone along Cypress Creek within the study area was dominated by bald cypress (*Taxodium distichum*) with various deciduous trees scattered throughout (Figure 7, Figure 8). Ashe juniper, including mature individuals, was observed on nearby slopes. The average canopy coverage was approximately 90 percent and the average canopy height approximately 50 – 60 ft. Other woody species observed in the riparian zone included American sycamore, common hackberry (*Celtis occidentalis*), black walnut (*Juglans nigra*), possumhaw (*Ilex decidua*), green ash (*Fraxinus pennsylvanica*), yaupon holly (*Ilex vomitoria*), red mulberry (*Morus rubra*), box elder (*Acer negundo*), American elm (*Ulmus americana*), glossy privet (*Ligustrum lucidum*), honey mesquite (*Prosopis glandulosa*), and Ashe juniper.



Basemaps: ESRI 2019; Rivers: CAPCOG GIS accessed April 25, 2019; GCWA Observations: Lee Ann Linam, pending confirmation.

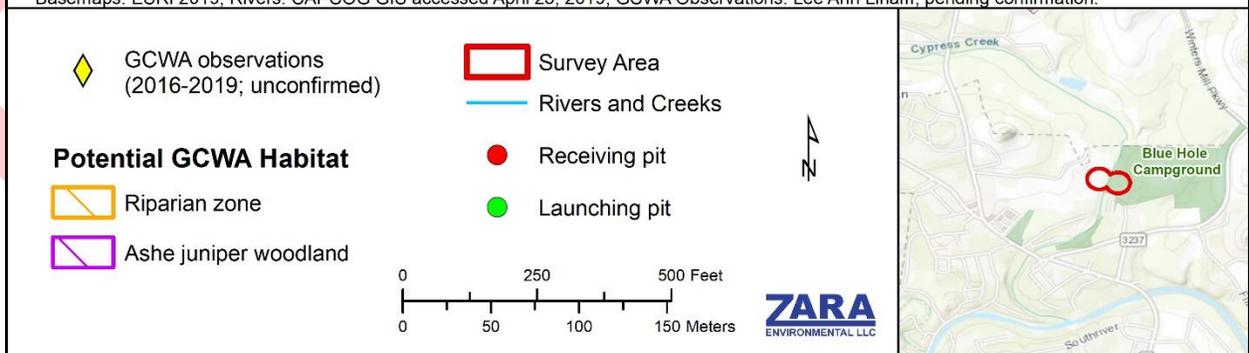


Figure 2. Study area displaying the results of the desktop review and field investigation.



Figure 3. Ashe juniper woodland with mature Ashe juniper in the study area.



Figure 4. Ashe juniper woodland with mature Ashe juniper and live oaks in the study area.



Figure 5. Parking lot in the study area looking northeast with the Ashe juniper woodland in the background.



Figure 6. Blue Hole Regional Park Visitor's Center within the study area.



Figure 7. View of transitional area between the Ashe juniper woodland and the riparian zone within the study area.



Figure 8. Cypress Creek and the riparian zone within the study area.

The study area was field verified to include habitat connectivity to Ashe juniper woodlands throughout Blue Hole Regional Park and undeveloped areas north of the park. All woodlands identified as potential GCWA habitat during the desktop review met the definition of habitat types where GCWA may occur. During the field survey, an employee of the City of Wimberley provided information of recent GCWA sightings in the north and northeastern portions of the park approximately 0.2 – 0.5 mi northeast of the study area (Shawn Cox pers comm., 11 April 2019). Additionally, after the field assessment was complete, a frequent visitor to the park provided data of GCWA sightings collected over the past 3 years by several volunteers for Friends of Blue Hole Regional Park (Lee Ann Linam pers comm., 26 April 2019; Figure 2). Based on aerial imagery and observations made during the field investigation, Ashe juniper woodland habitat meeting the definition of where GCWA may occur connects those potentially occupied areas to the study area.

Discussion

The Ashe juniper woodland and riparian zone within the study area were determined to have the vegetative characteristics consistent with the TPWD definition of “vegetation associations that may be used by GCWAs based on the location, size, land use, adjacent landscape features, and vegetation structure”. The Ashe juniper woodland consisted of stands of mature Ashe juniper with shredding bark amidst scattered live oaks, where the total canopy cover was approximately 70 percent. The riparian zone consisted of a bottomland along a creek that supported approximately 90 percent canopy of deciduous trees with mature Ashe juniper growing on nearby slopes.

Due to the presence of mature Ashe juniper and deciduous trees in closed-canopy woodlands, the presence of a perennial creek within the study area, and almost 200 ac of undeveloped woodland habitat connecting the study area to nearby potentially occupied habitat, woodland portions of the study area were determined to be consistent with potential GCWA breeding habitat. If tree removal is planned within the potential GCWA habitat identified within the study area, it is recommended that a U.S. Fish and Wildlife Service incidental take permit for the GCWA be acquired or three seasons of presence/absence surveys to be conducted with negative results prior to construction. Additionally, it is recommended that any construction, aside from the removal of trees, occur outside of the breeding season (March – August) to minimize impacts to GCWAs.



AGENDA ITEM: First Regular City Council Meeting in July
SUBMITTED BY: Laura Calcote, City Secretary
DATE SUBMITTED: April 29, 2019
MEETING DATE: May 2, 2019

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

The first Regular City Council Meeting in July falls on Thursday, July 4th, which is a City holiday. Council should consider rescheduling this meeting for a different date.

REQUESTED ACTION

- Motion
- Discussion
- Ordinance
- Resolution
- Other

FINANCIAL

- Budgeted Item Original Estimate/Budget: \$
- Non-budgeted Item Current Estimate: \$
- Not Applicable Amount Under/Over Budget: \$

STAFF RECOMMENDATION