

City of Wimberley
 City Hall, 221 Stillwater
 Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
 January 19, 2017 at 6:00 p.m.

City Council meeting called to order at 6:00 p.m. by Mayor Mac McCullough.

Mayor McCullough gave the Invocation and Councilmembers led the Pledge of Allegiance to the United States and Texas flags.

Councilmembers Present: Mayor Mac McCullough, Councilmembers Bob Dussler, Craig Fore, Sally Trapp, Gary Barchfeld, and John White.

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

Oath of Office

Administer the Oath of Office to newly appointed Parks and Recreation Advisory Board member Matt Meeks

Mayor McCullough administered the Oath of Office to newly appointed Parks and Recreation Advisory Board member Matt Meeks.

Citizens Communications

Citizens for Responsible Development (CARD) representative Louis Parks thanked everyone for interest in last week's meeting and stated he is open to answering questions at any time.

1. Consent Agenda

- A. Approval of minutes of the Regular City Council meeting of January 5, 2017
- B. Approval of minutes of the Special City Council meeting of January 5, 2017
- C. Approval of November 2016 Financial Statements for the City of Wimberley
- D. Approval of December 2016 Financial Statements for the City of Wimberley

City Administrator Ferguson provided an example of the modified balance sheet to be presented to Council when considering the January 2017 Financial Statements.

Councilmember Trapp asked why hotel occupancy tax funds are listed in assets and City Administrator Ferguson explained that upon the Committee's submission of a budget those funds will be placed in a separate fund. He explained there is no co-mingling of hotel occupancy tax funds.

Councilmember Trap moved to approve the Consent Agenda, as presented. Councilmember White seconded. Motion carried on a vote of 5-0.

City Administrator Ferguson stated printed copies of future Financial Statements will be provided to Council. Discussion of large agenda packet files included a preference for receiving a link to the files in their entirety, as opposed to receiving multiple PDF email attachments, as well as consistency in page orientation within PDF files.

2. City Administrator Report

- Status report on the Central Wimberley Wastewater Project

City Administrator Ferguson reported the Texas Water Development Board (TWDB) continues its review of the construction bid package. He reported the Wastewater subcommittee members (Councilmembers Barchfeld and Trapp, Planning and Zoning Commission Chair John Urban, and himself) met with Aqua Texas's Robert Laughman in advance of the scheduled special workshop meeting to be held on January 23, 2017, which will present information on wastewater options. City Administrator Ferguson noted that the U.S. Economic Development Administration (EDA) has notified the City that federal grant funds cannot be used for the wholesale service plan option or for any system that enriches a for-profit, private entity. He advised that TCEQ is exploring options relating to the upcoming June 27th deadline for decommissioning the existing Blue Hole drain field.

- Status report Hidden Valley Low Water Crossing Reconstruction Project

City Administrator Ferguson reported the City is awaiting the issuance of the sand and gravel permit from Texas Parks and Wildlife (TPW), which is required for construction to begin. He spoke on an extensive meeting with TPW, including Mayor McCullough and project engineers, which was held in the hopes of expediting permit issuance. Mayor McCullough noted frustrations with project delay associated with the permit issuance and expected some progress early next week.

- Status report on sales tax collections

City Administrator Ferguson reported the City's January sales tax check, representing November 2016 collections, totaled \$68,249, which is a five percent increase from the same period last year. He noted collections continue to run ahead of sales tax revenue budget.

- Status report on flood recovery efforts

City Administrator Ferguson reported an archeological survey will be required for one property at a cost of approximately \$3,000 to be reimbursed from grant funds. He advised of a meeting with TDA representatives on the status of the City's application for funding to help cover matching funds. He reported on the anticipated close-out with FEMA on the 2013 & 2015 floods. In response to Councilmember Trapp regarding release of updated BFE maps, City Administrator Ferguson anticipated the initial release within the next sixty days. He noted certain timelines associated with approval of the updated maps and the appeals process. He advised citizens to call City Hall for assistance in viewing the Region 6 map online.

- Status report on Blue Hole Regional Park operations

City Administrator Ferguson reported minimal trail damage from heavy rains earlier this week. He advised that the Wimberley Valley Dark Sky/Friends of Blue Hole representatives are planning a site visit to the Park. He noted the Parks Board recommended approval of a facility use agreement for use of the soccer fields scheduled for Council consideration on February 2, 2017. He advised preparations are underway for the 2017 summer season, including hiring of seasonal park staff.

- Status report on relocation of Wimberley Farmers Market

City Administrator Ferguson reported Farmers Market representatives are working out details of insurance coverage for the new location and he anticipated March 1st as the target date for relocation.

- Status report on Short-term Rental Outreach Project

City Administrator Ferguson reported on finalizing revisions to the application, development of a website page, and holding informational public meetings.

3. Public Hearings and Possible Action

- A. Hold a public hearing and consider approval of the second and final reading of an ordinance amending Title XI (Business Regulations), Chapter 112 (Regulation of Vacation Rentals and Bed and Breakfast Lodgings) of the City of Wimberley Code of Ordinances; and amending Title XV (Land Usage), Chapter 155 (Zoning), Section 155.065 (Vacation Rental 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, and effective date, and proper notice and meeting. (*City Administrator*)

City Administrator Ferguson stated this is the second reading, which incorporates revisions resulting from Council's discussion on first reading.

Discussion addressed concerns regarding enforcement procedures and need for further review and defining terms such as "valid" and "unresolved."

Mayor McCullough opened the public hearing.

Phil Collins proposed specific changes to the proposed ordinance: clarification on the requirement for "separate permit from the CUP" and confusion on language in §112.02(B)(1) relating to the requirement that vacation rentals have either a valid CUP or be "nonconforming"; §112.02(B)(2) relating to "any other occurrence that results in a call for service by a law enforcement agency." He also questioned how to determine whether a complaint is valid and felt that vacation rental permits should be transferable and proposed "audit" procedures for new owners who would be subject to inspections. He proposed changing the language in §112.05(B)

regarding septic capacity from “. . . as established by the City” to “as established by the County.” He suggested clarifying “capacity” as starting at two people per bedroom, limited by septic system capacity or adjusted for other factors, such as lot size and proximity to neighbors. Discussion established that the City is the designated representative and obligated to follow the State’s calculations relating to maximum occupancy/septic capacity. Regarding §155.065(E)(13), Mr. Collins proposed putting a capacity for a group specifically on that house or meeting room and not on paying guests who sleep there. He spoke of his consultation with two attorneys who said this ordinance is not enforceable. He felt the best way to handle complaints is to call law enforcement to help determine if a complaint is frivolous and to have documentation of the complaint.

No further public comments were heard.

Councilmember Trapp referred to §112.04(D) and felt the permit fee should be discussed before the ordinance is approved. She questioned how complaints would be recorded by the City under §112.06(A). She asked to change §112.06(C) to read “staff” instead of “City Administrator.” Referencing §112.06(E), Councilmember Trapp asked if there is a fine or fee as part of Council’s determination that a permit’s terms have been violated and the permit revoked. Councilmember Trapp said she thought §112.06(E)(2) relating to property inspection had been struck from the ordinance. City Administrator Ferguson noted that there are specific procedures that have to be followed to inspect property.

Mayor McCullough questioned whether the ordinance can be approved at this meeting, due to the number of questions brought up tonight.

Councilmember Barchfeld moved to hold a workshop to further discuss the proposed ordinance. Councilmember Trapp seconded.

Councilmember White moved to postpone action on this item until a workshop is held.

Councilmember Barchfeld rescinded his prior motion and Councilmember Trapp’s second.

Councilmember Fore seconded Councilmember White’s motion.

Various workshop dates/times were discussed, with agreement to meet on January 27th at noon.

Motion carried on a vote of 5-0.

- B. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, Texas approving an application submitted by David Estey for a conditional use permit to allow for the operation of a vacation rental facility on residentially zoned property located at 171 Panorama Drive, Wimberley, Hays County, Texas. (*David Estey, Applicant*)

City Administrator Ferguson recommended continuing this item until Council’s meeting on February 16, 2017, in order to allow for republication of the public hearing notice due to a technical issue.

Councilmember White moved to continue this item, as recommended by City Administrator Ferguson. Councilmember Trapp seconded. Motion carried on a vote of 5-0.

- C. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, Texas approving an application submitted by the City of Wimberley requesting a change in the zoning from Rural Residential 1 (R-1) to Single Family Residential 2 (R-2) for a property located 25 La Toya Trail, Wimberley, Hays County, Texas. (*City of Wimberley, Applicant*)

City Administrator Ferguson reported the rezoning is necessary due to a zoning error made when the City initiated residential zoning shortly after incorporation.

Councilmember Trapp moved to approve the ordinance, as presented. Councilmember Fore seconded. Motion carried on a vote of 5-0.

4. Ordinance

Consider approval of an ordinance of the City of Wimberley, Texas, to reduce the tax rate to be imposed on hotel occupancy within the corporate limits and extraterritorial jurisdiction of the City; and providing for findings of fact, savings, severability, repealer, an effective date, and proper notice and meeting. (*City Administrator*)

City Administrator Ferguson noted Council's approval of the City's Hotel Occupancy Tax Advisory Committee's recommendation to reduce the tax rate to zero percent (0%) from five percent (5%) at its January 5, 2017 meeting and advised the ordinance is needed to formalize the rate change.

Councilmember Trapp questioned the wording regarding the effective date and discussion established that the tax rate change is effective for stays beginning February 1, 2017. City Administrator Ferguson advised the ordinance can be amended to clarify the effective date as February 1, 2017.

Councilmember Trapp moved to approve the ordinance, as presented, including the correction that the effective date of the 0% tax rate is February 1, 2017. Councilmember Barchfeld seconded. Motion carried on a vote of 4-1. Councilmember Dussler voted against.

5. Discussion and Possible Action

- A. Discuss and consider possible action regarding a proposal to perform enhanced water testing on the Cypress Creek in Central Wimberley. (*Place Four Councilmember Gary Barchfeld*)

Dr. Deborah Koeck spoke of her professional and educational background, qualifications, and experience in many positions as a scientist and researcher. She asked Council to consider enhanced professional water testing for Cypress Creek and look at microbial source testing for

DNA attribution. She said current testing is done by “citizen scientists,” cited text from the Meadows Center’s Cypress Creek Watershed Protection Plan webpage, and questioned data collection, testing methods, and accuracy.

Linda Kaye Rogers spoke of her love for the Wimberley Valley and changes over the last 17 years that she is not happy with. She expressed concerns that “we get what we pay for” regarding the wastewater project and said money is not the only thing that is important. She favored keeping Wimberley in the “hands of the locals” and was opposed to Aqua Texas. She stated the City has spent about \$800,000 to date on planning and engineering and stated that if the City goes with Aqua Texas that money will be wasted. She offered her understanding of funding details and noted that the \$1,000,000 grant could not be used for the Aqua Texas option, nor could the City receive loan forgiveness. She spoke of her dealings with Aqua Texas, specifically its line losses and 5-year plan to correct those losses, which she said was not completed past Phase 2. She spoke of the need for fire hydrants, which do not work due to lack of pressure. She asked that money not be made the bottom line and said Blue Hole will dry up if we have another drought. She said Blue Hole brings a huge amount of money into this community. She asked Council to look carefully into the future and consider what this community is really worth.

No further public comments were heard.

Councilmember Barchfeld questioned spending money on a plant and if it was found that E coli was all or mostly from animals. He said he was confused on various wastewater reports and referred to some Cypress Creek data from 1998-2013 that showed temperature ranges that he felt should be more consistent for artesian springs. He favored the “trust, but verify” approach and noted a chart that shows a linear regression and questioned certain variations. He proposed DNA testing on Cypress Creek by professionals to obtain data in a way that ensures fair testing. He spoke of his contact with Microbial Source Tracking, which he said had reasonable rates of about \$800 per single test. He felt that a single test would not be adequate and suggested spending money on professional testing before spending \$5,000,000 on a wastewater system. He also felt that baseline testing should be done by professionals. Councilmember Barchfeld suggested that he and City Administrator Ferguson speak with Microbial Source Tracking about the possibility of multiple studies and associated costs. City Administrator Ferguson advised that Microbial Source Tracking tests are for the presence (as opposed to percentages) of certain markers, and the company does not have a test to detect markers for bats. He said multiple DNA tests at several locations would be advisable over time in conjunction with companion bacteria testing to help find spikes in certain locations.

In response to an inquiry from the audience, Councilmember Barchfeld asked Dr. Koeck if she had experience with such testing. Dr. Koeck replied affirmatively but insisted that she is bound by professional ethics and would require that she be accompanied by other parties, such as City Council and competing organizations to ensure that there is agreement samples were taken in the appropriate locations. She said she can also do fecal coliform counts to help determine where the spikes might be and that might direct the research to provide cost savings to the City. She said she could provide her data and analysis but would ask for a second opinion.

Councilmember Barchfeld said there was another testing company he would like to look into.

An audience member asked if the testing would include the presence of pharmaceuticals, which she said would indicate human contact.

Mayor McCullough asked about the intent of this item and Councilmember Barchfeld said this would not delay or stop the project, as the City is still waiting for approval to bid the project. Mayor McCullough questioned what would result from the data and City Administrator Ferguson noted the categories of fecal sources that are tested for. Discussion addressed the impetus for source testing, its usefulness to help clean up Cypress Creek, its relevance, and its effectiveness in testing for specific sources, such as bats. Mayor McCullough said the City could choose to do additional testing beyond the baseline testing that is included in the settlement agreement, but asked what the City would do with the additional data. Councilmember Barchfeld said he heard many people question the source of pollution.

Councilmember Dussler referenced David Baker's detailed statements on test results that indicated presence of pharmaceuticals, but asked if there is an underlying basis to prove claims that there are not aging, leaking septic systems, and that the problems are due to bats under the bridge. He did not favor going down another "rabbit trail" that would delay the project for six months and was skeptical.

Councilmember Fore understood Councilmember Dussler's skepticism, but said if there is another problem and the testing identifies it, then that is another problem to take care of besides the sewer. He stated we cannot address the problem if we do not know what it is and said it has nothing to do with the sewer.

Councilmember Trapp agreed with Councilmember Fore's comments.

Councilmember White felt this might be used to postpone or kill the sewer. He said he is past the point of delaying it in any shape, form, or manner. He said "let's run the test" and see what comes back, but did not want it tied to putting in the sewer system.

Councilmember Barchfeld stated he does not want to delay the project and hoped we would be a lot farther along than we are right now. He said taking one sample to start with would give us some idea, will not cost much or take much time, and said the testing could be done before going out for bids. He favored further testing and said the price is reasonable, can include citizen involvement, and delays nothing.

Councilmember Fore said this is in addition to the sewer to achieve the goal of cleaning up the creek and did not see how the additional testing is related to the sewer or any delays. Councilmember Trapp asked if there were clear ideas on pricing. City Administrator Ferguson proposed working with Councilmember Barchfeld to work on testing locations and number of markers to test for in order to estimate costs. Discussion included the possibility of testing for pharmaceuticals and contacting another testing company that tests for bats.

City Administrator Ferguson recommended bringing a proposal to Council at its next meeting that includes items such as costs and testing locations.

Councilmember Barchfeld made a motion to work with City Administrator Ferguson on developing a proposal recommending costs, locations, and other items (such as who will conduct sampling) and present to Council at its next regular meeting. Councilmember White seconded. Motion carried on a vote of 5-0.

- B. Discuss and consider possible action regarding the creation of a Wastewater Impact Advisory Committee and appointment of members to the Committee. (*City Administrator*)

City Administrator Ferguson explained the statutory requirement to appoint an advisory committee to work with the City's impact fee consultant, the committee's role/composition, and anticipated 90-day timeframe for impact fee development and approval. He noted that at least 40% of the committee members must be representative of the real estate, development, or construction industries (not employees or officials of a political subdivision or governmental entity). He cited various members of existing City boards/commissions and their respective eligibility to serve on the committee based on the aforementioned required membership representative percentage.

Discussion addressed specific duties of the committee and fee development; committee's purpose; application of the impact fee to future development only; factors limiting large-scale developments; utilizing Planning and Zoning Commission members, with possible additional members to meet committee composition requirements; and anticipated meeting schedule of twice annually.

Councilmember Trapp moved to postpone action on creation of the Wastewater Impact Advisory Committee and appointment of members until Council's February 2, 2017 meeting. Councilmember Fore seconded. Motion carried on a vote of 5-0.

- C. Discuss and consider possible action relating to future use of the City of Wimberley General Fund Balance. (*City Administrator*)

City Administrator Ferguson explained that Council is required to adopt Fund Balance Designation/Policy and noted that percentages can be changed at any time by Council. He reviewed the existing Designation/Policy and restricted/committed fund balances. He referred to December's balance sheet and pointed out that the percentages listed could be changed as Council sees fit. He said Council could set aside Fund Balance money to address concerns about future wastewater expenses, grant matches, or other unexpected needs.

Mayor McCullough noted Councilmember Fore's diligence in bringing up this topic. Councilmember Fore favored setting a minimum threshold to keep in Fund Balance. City Administrator Ferguson advised auditors typically recommend retaining a minimum of 3-4 months of operating expenses. However, as the City relies on sales tax revenue, he recommended maintaining a level of 50% of the City's operating budget as a good business

practice. He explained that setting a minimum threshold level based on percentage of operating budget would not entail changing the percentage allocation.

Discussion addressed historical Fund Balances; freezing of unbudgeted expenditures once threshold is met; possible use of an uncommitted fund balance; consideration of various percentages to maintain in Fund Balance; fiscal year-to-date Fund Balance expenditures; possible investment of part of Fund Balance; and use of Fund Balance for unexpected or emergency expenditures. City Administrator Ferguson advised that he could present a proposal at Council's February 2nd meeting based on tonight's discussion.

No vote was taken.

- D. Discuss and consider possible action relating to the proposed creation of an *Honor Wall* in the City Council Chamber at Wimberley City Hall. (*City Administrator*)

City Administrator Ferguson spoke of the need to update Council photographs with individual portraits and group photos of past and present City Councils/mayors. Councilmember Barchfeld spoke of his professional experience as a photographer and offered his services at no cost to help create the *Honor Wall*. Discussion favored creation of the *Honor Wall*. No vote was taken.

6. City Council Reports

- Announcements
- Future Agenda Items

Councilmember Trapp requested scheduling a follow-up meeting to Council's January 23rd workshop at the Wimberley Community Center, as there may not be time for questions and answers. Mayor McCullough was unsure about a follow-up meeting and said he was good with taking questions and answers on Monday, January 23, 2017. Discussion included reasoning for holding an additional meeting, if necessary, given the potential length of Monday's workshop and amount of information presented. Mayor McCullough stated he would announce at Monday's workshop that public comments will not be taken following the presentation of wastewater options. Discussion agreed to hold an additional public meeting on January 30, 2017 at 6 p.m. at the Wimberley Community Center.

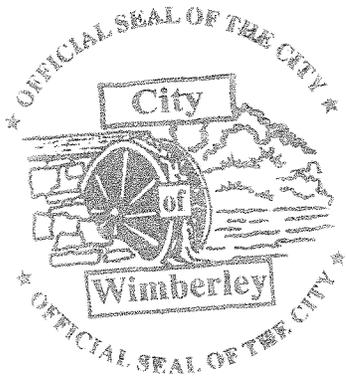
Hearing no further announcements or future agenda items, Mayor McCullough called the meeting adjourned.

Adjournment: Council meeting adjourned at 8:10 p.m.

Recorded by:


Cara McPartland

These minutes approved on the 2nd of February, 2017.



APPROVED:

A handwritten signature in black ink, appearing to be "Mac McCullough".

Mac McCullough, Mayor