City of Wimberley

221 Stillwater, Wimberley, Texas 78676

REGULAR CITY COUNCIL MEETING
WIMBERLEY CITY HALL – CITY COUNCIL CHAMBERS
221 STILLWATER, WIMBERLEY, TEXAS 78676
THURSDAY, NOVEMBER 18, 2021 - 6:00 PM

AGENDA

1. CALL TO ORDER November 18, 2021, at 6:00 PM

2. CALL OF ROLL City Secretary, Laura Calcote

3. INVOCATION Saint Stephen's Episcopal Church Reverend, Kevin Schubert

4. PLEDGE OF ALLEGIANCE/SALUTE TO THE TEXAS FLAG

5. CITIZENS COMMUNICATIONS

The City Council welcomes comments from the general public 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. PRESENTATION AND POSSIBLE ACTION

6.1. Presentation and consider possible action regarding the City of Wimberley's Quarterly Investment Report for the fourth quarter of Fiscal Year 2021. *(City Administrator, Mike Boese)*

7. CONSENT AGENDA

7.1. Approval of minutes from the Regular City Council Meeting held November 4, 2021.

7.2. Approval of the August 2021 Financial Statements for the City of Wimberley.

7.3. Approval of Place Three Council Member Christine Byrne's reappointment of Pam Tise to the Board of Adjustment.

7.4. Approval of Place Five Council Member David Cohen's reappointment of Michael (Mike) Rambo to the Board of Adjustment.

7.5. Approval of Place Five Council Member David Cohen's reappointment of Mary Espinoza to the

Ethics Review Commission.

7.6. Approval of consensus reappointment of Edmond Moreland to the Ethics Review Commission.

8. BOARD, COMMISSION, COMMITTEE REPORT

8.1. Report from the Economic Support and Development Committee regarding the Hotel Occupancy Tax.

9. DISCUSSION AND POSSIBLE ACTION

9.1. Discuss and consider possible action regarding a budget amendment in the amount of $8,118.75 for emergency water line repair at Blue Hole Regional Park. *(Parks Director, Richard Shaver)*

9.2. Discuss and consider possible action regarding the first reading of Ordinance No. 2021-33, an ordinance of the City of Wimberley, Texas, to set forth the tax rate to be imposed on hotel occupancy within the corporate limits and extraterritorial jurisdiction of the city; setting forth the duties of persons responsible for collection of the tax; providing for criminal penalties and fines; creating an advisory committee; and providing for findings of fact, savings, severability, repealer, an effective date, and proper notice and meeting. *(City Administrator, Mike Boese)*

10. CITY COUNCIL REPORTS

10.1. Announcements

10.2. Future agenda items

11. 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.

Attendance by Other Elected or Appointed Officials: It is anticipated that members of other governmental bodies, and/or city boards, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the body, board, commission and/or committee. The members of the boards, commissions and/or committees may be permitted to participate in discussion on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless item and action is specifically provided for on an agenda for that body, board, commission or committee subject to the Texas Open Meetings Act.

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, November 15, 2021, by 6:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Laura J. Calcote

Laura J. Calcote, MPA, TRMC
City Secretary

The City of Wimberley is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please contact City Secretary Laura Calcote at (512) 847-0025 two business days in advance of the meeting for appropriate arrangements.

City of Wimberley Quarterly Investment Report

Forth Quarter of FY 2021

Month	Fund	Investment Portfolio Summary: Cash in Bank	TexPool	CD	Total	% of Total Investment	Cash Summary: Yield Rate	MTD Interest Earned	YTD Interest Earned	TexPool Summary: MTD Interest Earned	YTD Interest Earned	CD Summary: Yield Rate	MTD Interest Earned	YTD Interest Earned
July 2021	General Fund	957,199.65	187,659.29	232,574.97	1,377,433.91	54%	0.05%	50.82	310.81	3.04	85.11	1.00%	191.00	1,902.96
	Blue Hole Operating	850,329.20			850,329.20	33%	0.05%	34.59	235.24	**3.04**	**85.11**	**Total**	**191.00**	**1,902.96**
	Blue Hole Development	11,666.79			11,666.79	0%	0.05%	3.92	8.66					
					-	0%	0.05%		-					
	Municipal Court Fees	2,975.97			2,975.97	0%	0.05%	0.13	1.25					
	Wastewater Operations	48,704.45			48,704.45	2%	0.05%	2.03	72.05					
	American Rescue Plan Act	-			-	0%	0.00%	0.00	0.00					
	Wastewater C&T	89,236.22			89,236.22	3%	0.09%	4.83	248.36					
	Donations	55,079.36			55,079.36	2%	0.05%	2.34	24.56					
	Hotel Occupancy Tax	123,435.60			123,435.60	5%	0.05%	5.24	57.02					
	Total	**2,138,627.24**	**187,659.29**	**232,574.97**	**2,558,861.50**			**103.90**	**957.95**					
	Portfolio Diversification Ratio	84%	7%	9%										
August 2021	General Fund	887,108.38	187,662.78	232,766.13	1,307,537.29	45%	0.05%	38.83	349.64	3.49	88.60	1.00%	191.16	2,094.12
	Blue Hole Operating	920,973.55			920,973.55	32%	0.05%	37.54	272.78	**3.49**	**88.60**	**Total**	**191.16**	**2,094.12**
	Blue Hole Development	11,667.29			11,667.29	0%	0.05%	0.50	9.16					
					-	0%	0.05%		-					
	Municipal Court Fees	2,976.10			2,976.10	0%	0.05%	0.13	1.38					
	Wastewater Operations	39,109.46			39,109.46	1%	0.05%	1.79	73.84					
	American Rescue Plan Act	400,422.10			400,422.10	14%	0.00%	0.00	0.00					
	Wastewater C&T	19,197.17			19,197.17	1%	0.05%	1.05	249.41					
	Donations	55,081.70			55,081.70	2%	0.05%	2.34	26.90					
	Hotel Occupancy Tax	119,381.09			119,381.09	4%	0.05%	5.21	62.23					
	Total	**2,455,916.84**	**187,662.78**	**232,766.13**	**2,876,345.75**			**87.39**	**1,045.34**					
	Portfolio Diversification Ratio	85%	7%	8%										
September 2021	General Fund	887,837.45	187,667.08	232,957.44	1,308,461.97	46%	0.05%	37.12	386.76	4.30	92.90	1.00%	191.31	2,285.43
	Blue Hole Operating	911,236.09			911,236.09	32%	0.05%	37.96	310.74	**4.30**	**92.90**	**Total**	**191.31**	**2,285.43**
	Blue Hole Development	11,667.77			11,667.77	0%	0.05%	0.48	9.64					
					-	0%			-					
	Municipal Court Fees	2,976.22			2,976.22	0%	0.05%	0.12	1.50					
	Wastewater Operations	48,689.80			48,689.80	2%	0.05%	1.96	75.80					
	American Rescue Plan Act	400,422.10			400,422.10	14%	0.00%	0.00	0.00					
	Wastewater C&T	1,009.73			1,009.73	0%	0.04%	0.06	249.47					
	Donations	55,083.96			55,083.96	2%	0.05%	2.26	29.16					
	Hotel Occupancy Tax	101,680.66			101,680.66	4%	0.05%	4.38	66.61					
	Total	**2,420,603.78**	**187,667.08**	**232,957.44**	**2,841,228.30**			**84.34**	**1,129.68**					
	Portfolio Diversification Ratio	85%	7%	8%										

The attached information comprises the *Quarterly Investment Report* for the City of Wimberley, Texas for the quarter ended September 30, 2021. 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, 2020.

M Boese

Mike Boese
City Administrator

AGENDA ITEM:	**Consent Agenda**
SUBMITTED BY:	Laura Calcote, City Secretary
DATE SUBMITTED:	November 12, 2021
MEETING DATE:	November 18, 2021

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

7.1. Approval of minutes from the Regular City Council Meeting held November 4, 2021.

7.2. Approval of the August 2021 Financial Statements for the City of Wimberley.

7.3. Approval of Place Three Council Member Christine Byrne's reappointment of Pam Tise to the Board of Adjustment.

7.4. Approval of Place Five Council Member David Cohen's reappointment of Michael (Mike) Rambo to the Board of Adjustment.

7.5. Approval of Place Five Council Member David Cohen's reappointment of Mary Espinoza to the Ethics Review Commission.

7.6. Approval of consensus reappointment of Edmond Moreland to the Ethics Review Commission.

REQUESTED ACTION

Motion ☒

Discussion ☐

Ordinance ☐

Resolution ☐

FINANCIAL

Budgeted Item ☐

Non-budgeted Item ☐

Not Applicable ☒

STAFF RECOMMENDATION

Approval of 7.1. and 7.2

ATTACHMENT/S

- November 4th Meeting Minutes
- August 2021 Financials will be sent separately before the meeting.

City of Wimberley

221 Stillwater, Wimberley, Texas 78676

REGULAR CITY COUNCIL MEETING
WIMBERLEY CITY HALL – CITY COUNCIL CHAMBERS
221 STILLWATER, WIMBERLEY, TEXAS 78676
THURSDAY, NOVEMBER 4, 2021 - 6:00 PM

DRAFT

MINUTES

1. CALL TO ORDER November 4, 2021, at 6:00 PM

Mayor, Gina Fulkerson, called the meeting to order on November 4, 2021 at 6:00 p.m.

2. CALL OF ROLL City Secretary, Laura Calcote

Council Members Present:
Gina Fulkerson, Mayor
Rebecca Minnick, Place One
Teresa Shell, Place Two
Christine Byrne, Place Three
Jim Chiles, Place Four
David Cohen, Place Five

City Staff Present:
Mike Boese, City Administrator
Laura Calcote, City Secretary
Charlie Zech, City Attorney
Chad Gilpin, City Engineer

3. INVOCATION Chapel in the Hills Representative, Anne Beall

Chapel in the Hills Representative, Anne Beall, gave the invocation.

4. PLEDGE OF ALLEGIANCE/SALUTE TO THE TEXAS FLAG

Mayor, Gina Fulkerson, led the pledges to the United States and Texas flags.

5. CITIZENS COMMUNICATIONS
The City Council welcomes comments from the general public 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.

There were no citizen's comments.

6. PROCLAMATION

6.1. Proclamation of the City of Wimberley, Texas congratulating members of the Wimberley Texans High School Tennis Team on winning the 4A State Team Tennis Championship. *(Mayor, Gina Fulkerson)*

Mayor, Gina Fulkerson, read aloud the proclamation.

7. PRESENTATION AND POSSIBLE ACTION

7.1. Presentation and consider possible action regarding an Eagle Scout Project at Blue Hole Regional Park. *(Diego Elizondo)*

Motion to approve an Eagle Scout Project at Blue Hole Regional Park, as presented, was made by Council Member Christine Byrne. Motion was seconded by Council Member Teresa Shell. Motion carried unanimously (5-0).

8. CONSENT AGENDA

Motion to approve Items 8.1. and 8.3. on the Consent Agenda was made by Council Member Christine Byrne. Motion was seconded by Council Member Jim Chiles. Motion carried unanimously (5-0).

8.1. Approval of minutes from the Regular City Council Meeting held October 21, 2021.

8.2. Approval of the August 2021 Financial Statements for the City of Wimberley.

8.3. Approval of Place Three Council Member Christine Byrne's reappointment of John Dunn to the Ethics Review Commission.

9. CITY STAFF REPORT

9.1. City Administrator Report

City Administrator, Mike Boese, reported on the revenue collected from the wastewater system in September 2021 and stated some users were still tying onto the system. Additionally, Mr. Boese noted the upcoming Fiscal Year 2021 Audit would begin soon, and the Audit would be presented to the Council in February 2022. He also provided the Council with an overview of sales tax software, ZacTax, which could assist the City in better tracking its monthly sales tax earnings and provide a detailed analysis of the tax collected.

10. DISCUSSION AND POSSIBLE ACTION

City Council adjourned into Executive Session at 6:28 p.m., pursuant to Texas Government Code, Chapter 551.071, consultation with legal counsel.
Regular Session reconvened at 6:39 p.m.

10.1. Discuss and consider possible action regarding naming the Rest Stop Park on Ranch Road 12 "The Wimberley Sunrise Park." *(Parks Director, Richard Shaver)*

Motion to approve the naming of the Rest Stop Park on Ranch Road 12 "The Wimberley Sunrise Park" was made by Council Member Christine Byrne. Motion was seconded by Council Member Jim Chiles. Motion carried unanimously (5-0).

10.2. Discuss and consider possible action to award a bid to Percheron Construction, LLC for the Oak Drive Parking Improvements Project. *(City Administrator, Mike Boese)*

City Engineer, Chad Gilpin, and his associate, Ryan Bell, provided an overview of the Oak Drive Parking Improvements Project and the bid tabulation for the Project. There was lengthy discussion regarding the specifics of the Project and the associated costs.
Motion to award the Base Bid and Bid Alternate #2 to Percheron Construction, LLC and to allow the City Administrator and Percheron to negotiate any cost savings that may be appropriate, was made by Council Member Rebecca Minnick.
City Council adjourned into Executive Session at 7:51 p.m., pursuant to Texas Government Code, Chapter 551.071, consultation with legal counsel.
Regular Session reconvened at 8:00 p.m.
Motion to award the Base Bid and Bid Alternate #2 to Percheron Construction, LLC for the Oak Drive Parking Improvements Project, and to authorize the City Administrator to discuss any change orders directly with Percheron, was made by Council Member Rebecca Minnick. Motion was seconded by Council Member Jim Chiles. Motion carried unanimously (5-0).

10.3. Discuss and consider possible action regarding the allocation and value of the Hotel Occupancy Tax (HOT) in Wimberley and surrounding areas. *(Place One City Council Member, Rebecca Minnick)*

There was discussion on this item, but no action was taken.

10.4. Discuss and consider possible action regarding short-term rental (STR) compliance within the city limits and extraterritorial jurisdiction. *(Place One Council Member, Rebecca Minnick)*

There was discussion on this item, but no action was taken.

11. CITY COUNCIL REPORTS

11.1. Announcements

- Mayor, Gina Fulkerson, announced there would be a parade on Friday, November 5th, at 11:20 a.m. honoring the Wimberley Texans Team Tennis members for winning the 4A State Championship.
- Council Member, Christine Byrne, noted the Wimberley Texans Varsity Volleyball Team had won area. Council Member Byrne also provided a reminder regarding the Wimberley Fall Clean Up set for Saturday, November 13th, from 8:00 a.m until 12:00 p.m.

11.2. Future Agenda Items

None.

12. ADJOURNMENT

Motion to adjourn the meeting at 8:59 p.m. was made by Council Member Christine Byrne. Motion was seconded by Council Member Jim Chiles. Motion carried unanimously (5-0).

RECORDED BY:

Laura J. Calcote, City Secretary

APPROVED BY:

Gina V. Fulkerson, Mayor

- **Do not start any new studies, no public workshops, etc**
- **Follow the requirements for notification,** but **keep moving forward with this initiative**
- **Highlight the financial details of the City**. Make everyone aware of how dire our circumstances are.
- **Identify how almost every other city of our size solves this problem** (with a HOT tax).
- **Put out the true facts of hot Tax** and how they apply to Wimberley.
  - Let everyone know that all previous HOT Tax is spent (Important to remove this issue, so make it happen if not done now).
  - Make sure that people understand that the ***Intent of HOT is to grow tourism in non-peak times and weekdays.***
- Clearly **identify the State of Texas Pre-Approved Expenditure plans** for our collected hot tax: (Our Plan for Hot).
  - **List the expenditure detail, amount approved, and expected timing.**
  - **This Tax is paid by Lodging, so make sure it directly benefits lodging.** Explain the return, as it might not be directly evident.
  - First dollars spent and majority of **funds collected to directly address Congestion** in Wimberley. (*Show return on investment to Lodging*):
    - Parking Shuttle
    - East/West traffic corridor addition
    - Parking additions and improvements
    - Solution to crosswalks in square over RR12
    - Lighting
    - Sidewalks
    - Signage
    - Information kiosk with directions
    - Etc
  - **Avoid the real objection points for Lodging** which are dollars spent on Chamber of Commerce, Art league, and any other similar group (Viewed as a money grab).
  - **Get lodging involved in Implementation Plan.**
  - **Make sure everyone knows this applies to City Limits and ETJ.**

- **Fully Implement the Process:**
  - Communicate all steps in the process, as you press forward.
  - Use CUP data, VRBO Website data, and CUP Records to locate all required tax payers.
  - Confirm with State who is paying Hotel Tax
  - Go after the HOT tax payers and get $ collected.
- **Communicate the success of dollars collected**, and the specific action of how it was spent to solve problems.
- **Confirm adherence to Policy, confirm adherence, confirm adherence**. If you quit watching, they will not pay.

AGENDA ITEM:	**Leak Detection Budget Ammendment**
SUBMITTED BY:	Richard Shaver
DATE SUBMITTED:	11/15/21
MEETING DATE:	11/18/21

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

Discuss and consider possible action regarding a budget amendment in the amount of $8,118.75 for emergency water line repair at Blue Hole Regional Park (*Parks Director, Richard Shaver*). Leak detection services were performed at the Park last week which resulted in detecting a large leak in the road near the main office. American Leak Detection will repair the leak as well as install a device to lower the water pressure in the park to prevent leakes in the future.

REQUESTED ACTION

Motion	☒
Discussion	☒
Ordinance	☐
Resolution	☒
Other	☐

FINANCIAL

Budgeted Item	☐	Original Estimate/Budget:	$
Non-budgeted Item	☒	Current Estimate:	$ 8,118.75
Not Applicable	☐	Amount Under/Over Budget:	$

STAFF RECOMMENDATION

Staff recommends that council approve this item.

ATTACHMENT/S

Quote and further explaination from Americsan Leak Detection.

American Leak Detection of San Antonio
31134 Interstate 10 West
Boerne, TX 78006

Phone: (830) 981-9516
Fax: (830) 981-4293
Each office Independently Owned/Operated

THE ORIGINAL LEAK SPECIALISTS™

Bill to
City of Wimberley
100 Blue Hole Ln.
Wimberley TX 78676

Ship to
Blue Hole Regional Park
Blue Hole Road
Wimberley TX 78676

Quote q12162

Quote Date: 11/8/2021

To proceed, please sign and return by email to southcentraltx@americanleak.com. Acceptance of this quote does not guarantee automatic scheduling of work. Our office will contact you upon receipt of approval and to obtain deposit information, if needed, and to schedule work. This quote expires 30 days from the Quote Date listed above.

I understand and approve the scope of work in the description below and approve the work to be completed at the amount quoted.

I understand that a deposit is required in order for work to be scheduled, for most jobs. A credit card number on file can be taken as the deposit.

I understand that any change of the scope of work, may result in a change of quote amount.

Richard Shaver 11/09/21

Authorization and Acceptance

Item	Description	Price
COMMERCIAL	In Dirt Repair This repair will consist of slight excavation, around the leaking PVC pipe, in order to properly repair the pipe. This repair will also consist of replacing the PVC ball valves with copper ones	$750.00
COMMERCIAL	In Asphalt Repair $4,550.00 - $5,550.00 depending on depth and ease of access This repair will consist of excavating the marked area in the asphalt in order to gain access to the leaking pipe. It could be up to 4 1/2' deep. This price also includes the possibility of replacing the ball valves at this leak location as well.	$5,500.00
COMMERCIAL	PRV Installment This repair will consist of us installing a PRV at the meter in the box in order to reduce the incoming water pressure. This will prevent any possible future leaks.	$1,250.00

American Leak Detection of San Antonio
31134 Interstate 10 West
Boerne, TX 78006

Phone: (830) 981-9516
Fax: (830) 981-4293
Each office Independently Owned/Operated

Item	Description	Price
COMMERCIAL	There will be dust made during repairs. Repair estimates do not include any cleaning nor dusting services. The CLIENT is responsible for moving any possessions necessary to be able to have access to the repair areas. The CLIENT is responsible for covering or moving any possessions necessary that need to be protected from dust. If a beam is encountered, causing access to be more difficult or requiring a second penetration for repair, there will be additional charges. If the leak is deeper than 30”, there will be additional charges. Wall repair/drywall/floor repair/replacement are not included and not provided by ALD. This estimate is valid for 30 days. We kindly ask that cancellations be made 24 hours in advance. If a Customer cancels when our Technicians arrive to perform the work, there will be a $ 175.00 Service Charge. Guarantee on repairs: Repairs are guaranteed for 12 months. All repairs are guaranteed from the date of completion. REQUIRED in order/prior to start of repairs: a deposit of $4,000.00 and an email stating acceptance of these terms & price. Payment of balance is due on the day of service.	$0.00

Total: $8,118.75

Arthur James Osborne, Jr.
License #RMP-5050
Texas State Board of Plumbing Examiners
P.O. Box 4200
Austin, TX 78765
Ph#1-800-845-6584

www.americanleakdetection.com/sanantonio
www.americanleakdetection.com/austin

THE ORIGINAL LEAK SPECIALISTS™

American Leak Detection of San Antonio
31134 Interstate 10 West
Boerne, TX 78006

Phone: (830) 981-9516
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Attachments

1. Blue Hole Regional Park WO 22217.pdf

RESOLUTION NO. 15-2021

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE 2021/2022 OPERATING BUDGET (BUDGET AMENDMENT NO. 1), PROVIDING FOR THE TRANSFER OF FUNDS WITHIN THE BLUE HOLE PARK FUND — UNOBLIGATED FUND BALANCE TO THE BLUE HOLE OPERATING ACCOUNT NUMBER 6797 (CAPITAL OUTLAY) AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council approved the 2021/2022 Blue Hole Park Operating Budget.

WHEREAS, the City Council has reviewed and approved the emergency leak detection repair request for Blue Hole Regional Park and recognized the need to appropriate funds for the repairs in the Blue Hole Park Operating Budget.

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

Section 1

The City Council of the City of Wimberley, Texas, hereby authorizes and approves an amendment to the 2021/ 2022 Operating Budget (Budget Amendment No. 1) for the purpose and in the amounts shown below.

Blue Hole Park Fund- Expenditures

The effect of these transactions will reduce fund balance ($8,118.75) in the Blue Hole Park Fund-Unobligated Fund Balance by $8,118.75 and increase expenditures in the Blue Hole Park Operating Budget Account Number 6797 (Capital Outlay & Improvements) by $8,118.75.

Section 2

The City Council of the City of Wimberley, Texas, hereby amends the 2021/2022 Operating Budget, increasing appropriations in the funds stated in Section 1 above.

Section 3

This resolution shall be and become effective immediately upon and after its adoption and approval.

PASSED AND APPROVED this 18th day of November, 2021.

____
Gina V. Fulkerson, Mayor

ATTEST:

____
Laura J. Calcote, City Secretary

CITY OF WIMBERLEY

AGENDA ITEM:	2. Discuss and consider possible action regarding the first reading of Ordinance No. 2021-33, an ordinance of the City of Wimberley, Texas, to set forth the tax rate to be imposed on hotel occupancy within the corporate limits and extraterritorial jurisdiction of the city; setting forth the duties of persons responsible for collection of the tax; providing for criminal penalties and fines; creating an advisory committee; and providing for findings of fact, savings, severability, repealer, an effective date, and proper notice and meeting. *(City Administrator, Mike Boese)*
SUBMITTED BY:	Mike Boese
DATE SUBMITTED:	
MEETING DATE:	November 18, 2021

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

The City of Wimberley does not currently assess a hotel occupancy tax. Ordinance No. 2021-33 will reestablish the hotel occupancy tax at seven percent (7%). The City plans to utilize the revenue generated through the hotel occupancy tax for authorized expenditures within the statue. The City will consider recommendations from the Hotel Occupancy Tax Advisory Committee.
This will be the first of two readings of the Ordinance, since it imposes a fine/penalty.

REQUESTED ACTION

Motion
Discussion
Ordinance

FINANCIAL

N/A

STAFF RECOMMENDATION

ATTACHMENT/S

1. Ordinance No. 2021-33- HOT

Ordinance No. 2021-33

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, TO SET FORTH THE TAX RATE TO BE IMPOSED ON HOTEL OCCUPANCY WITHIN THE CORPORATE LIMITS AND EXTRATERRITORIAL JURISDICTION OF THE CITY; SETTING FORTH THE DUTIES OF PERSONS RESPONSIBLE FOR COLLECTION OF THE TAX; PROVIDING FOR CRIMINAL PENALTIES AND FINES; CREATING AN ADVISORY COMMITTEE; AND PROVIDING FOR FINDINGS OF FACT, SAVINGS, SEVERABILITY, REPEALER, AN EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the City is authorized by Chapter 351 of the Texas Tax Code to impose a hotel occupancy tax for the purpose of promoting tourism and the convention and hotel industry, and for further purposes as set forth in Texas Tax Code, Section 351.101, as amended; and

WHEREAS, as further authorized by Section 351.0025, a municipality with a population of less than 35,000, may impose a hotel occupancy tax in the municipality's extraterritorial jurisdiction; and the U.S. Census shows the population of the City of Wimberley is less than 35,000 people; and

WHEREAS, in order to continue and promote the growth and fulfill the purposes cited above, it is necessary to impose a hotel occupancy tax within the corporate and extraterritorial limits of the City; and

WHEREAS, the City recognizes its responsibility and authority to impose ordinances and controls that are necessary for the government of the City, its interest, welfare, and good order of the City as a body politic.

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

Section 1. Findings of Fact

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

Section 2. There is hereby created "Division 3. Hotel Occupancy Tax", of Article 2.10 Taxation of the Codified Ordinances of the City of Wimberley, Texas to read as follows:

Division 3. Hotel Occupancy Tax.

Sec. 2.10.041 <u>Authorization.</u>

Under the authorization provided by the Texas Tax Code Chapter 351, the City of Wimberley, Texas levies a Hotel Occupancy Tax as described herein.

Sec. 2.10.042 **<u>Definitions.</u>**

For purposes of this Ordinance, and in accordance with Chapter 351 and Chapter 156 of the Texas Tax Code, the terms used will have the meanings set forth below. Words that are not defined will have their ordinarily accepted meanings unless defined elsewhere in this Ordinance.

(a) *<u>Consideration</u>*. The price of a room that is ordinarily used for sleeping in a hotel, but does not include the cost of food served by the hotel or the cost of personal services performed by the hotel except those services related to cleaning and readying the room for use or possession.
(b) *<u>Hotel.</u>* A building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn or rooming house, vacation rental, and bed and breakfast, but does not include (1) a hospital, sanitarium or nursing home, (2) a dormitory or other housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution; or (3) an oilfield portable unit, as defined by Section 152.001.
(c) *<u>Occupancy</u>*. The use or possession or the right to use or possession of a room or space for less than thirty consecutive days in a hotel costing $2 or more each day.
(d) *<u>Person.</u>* Any individual, company, corporation or association.

Sec. 2.10.043 <u>Tax Rate.</u>

A tax of seven percent (7%) of the consideration paid for a hotel room located within the corporate and extraterritorial limits of the City is levied on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays the consideration for the use or possession or for the right to the use or possession of a hotel room that costs $2 or more each day and is ordinarily used for sleeping.

Sec. 2.10.044 **<u>Exemptions.</u>**

(a) This Ordinance does not impose a tax on:

(1) A person who has the right to use or possess a hotel room for at least 30consecutive days, so long as there is no interruption of payment for the period; or
(2) A United States governmental entity described in Section 156.103(a) of the Texas Tax Code is exempt from the payment of tax authorized by this chapter; or
(3) A state governmental entity described in Section 156.103(b) of the Texas Tax Code shall pay the tax imposed by this chapter but is entitled to a refund of the tax paid; or
(4) A person who is described by Section 156.103(d) of the Texas Tax Code is exempt from the payment of the tax authorized by this chapter or
(5) A person who is described by Section 156.103(c) shall pay the tax imposed by this chapter but the state governmental entity with whom the person is associated is entitled to a refund of the tax paid.
(6) Any other person entitled to an exemption under Chapter 156 of the TexasTax Code.
(7) A person who made a hotel reservation on or before the effective date of this

Ordinance.

(b) To receive a refund of tax paid under this chapter, the governmental entity entitled to the refund must file a refund claim on a form provided by the City.

Sec. 2.10.045 <u>Collection by Operator.</u>

(a) A person who owns, operates, manages, or controls a hotel room within the corporate limits or the extraterritorial jurisdiction of the City shall collect the tax levied by this Ordinance for the City.

(b) A person who collects the tax shall keep and maintain for such hotel good, adequate and accurate records for the hotel, sufficient to show and establish the consideration paid to and received by the hotel, the true and correct amount of taxes due and payable by the hotel pursuant to this Ordinance, and the applicable exemptions if any.

(c) A person who is required to collect the tax under this section is hereby authorized to retain no more than one (1) percent of the tax collected to reimburse that person's costs in collecting the tax for the City. The reimbursement permitted by this paragraph shall be forfeited if the person collecting the tax fails to timely pay the tax to the City or fails to timely file the reports required by this Ordinance.

Sec. 2.10.046 <u>Reports and remittances.</u>

(a) On or before the same day that a person is required to file a report and remit hotel occupancy taxes to the State of Texas, that person shall also:

(b) File a written report with the City for the same period, with a copy of the report for state hotel occupancy taxes required by Section 156.151 (Report and Payment) of the Texas Tax Code for the same period; and

(c) Pay the tax due for that period.

(d) A report under this section shall be in the form prescribed by the City and shall include:

(1) The total consideration paid for rooms subject to the tax in the reporting period;

(2) The total amount of tax collected; and

(3) The total amount of tax exemptions granted.

(e) If requested by the City, a person responsible for collecting the tax shall provide the City with:

(1) The names, addresses, and identification relied upon to grant an exemption from the tax; and

(2) Any other information the City may reasonably require.

(f) The City may request, and a person required to collect the tax shall provide within a reasonable time, additional documentation verifying the information contained in the report to the City.

Sec. 2.10.047 **<u>Collection Procedure on Purchase of a Hotel.</u>**

(a) If a person who is liable for the payment of a tax under this chapter is the owner of a hotel and sells the hotel, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the amount of tax due until the seller provides a receipt issued by the City showing that the amount of tax due has been or a certificate issued by the City showing that no tax is due.

(b) A purchaser of a hotel who fails to withhold the amount of the purchase price as required by this section is liable for the unpaid tax required to be withheld to the extent of the value of the purchase price.

(c) The purchaser of a hotel may file a written request the City Administrator to issue a certificate stating that no tax is due or to issue a statement of the amount required to be paid before a certificate may be issued. The City Administrator shall issue the certificate or statement not later than the 60th day after the date that the City receives the request.

(d) If the City fails to issue the certificate or statement within the period provided by Subsection (c), the purchaser is released from the obligation to withhold the amount of tax from the purchase price or pay the amount of tax due.

Sec. 2.10.048 **<u>Rules and Regulations--Record Inspection Authority.</u>**

(a) The City shall have the power to make such rules and regulations as are necessary to effectively collect the tax levied herein, and shall upon reasonable notice have access to books and records necessary to enable the City to determine the correctness of any report filed as required by this subchapter and the amount of taxes due under the provisions of this subchapter.

(b) Whenever necessary to make an inspection of books and records to enforce any of the provisions of this subchapter, the City may enter such building or premises at all reasonable times to inspect the books and records or to perform any duty imposed upon the City by this subchapter; provided, that if such building or premises be occupied, the City official shall first present proper credentials and request entry; and if such building or premises be unoccupied, the City shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the City shall have recourse to every remedy provided by law to secure entry.

(c) When the City shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the City for the purpose of inspection and examination pursuant to this subchapter.

Sec. 2.10.049 <u>Offenses.</u>

(a) A person commits an offense if the person violates or fails to perform an act required by this Ordinance, or files a report containing false information. Each instance of a violation of this Ordinance is a separate offense, and each day that a person remains in violation constitutes a separate offense.

(b) An offense under this subchapter is a Class C misdemeanor, punishable by a fine not to exceed $500.00.

Sec. 2.10.050 <u>Penalty and Interest on Unpaid Tax.</u>

(a) In addition to the amount of any tax owed under this chapter, the person required to collect the tax is liable to the City for:

(1) the City's reasonable attorney's fees;

(2) the costs of an audit conducted under Subsection (b), as determined by the City using a reasonable rate, but only if:

(A) the tax has been delinquent for at least two complete municipal fiscal quarters at the time the audit is conducted; and

(B) the City has not received a disbursement from the comptroller as provided by Section 156.2513 of the Texas Tax Code related to the person's concurrent state tax delinquency described by Section 351.008 of the Texas Tax Code;

(3) a penalty equal to 15 percent of the total amount of the tax owed if the tax has been delinquent for at least one complete municipal fiscal quarter; and

(4) interest under Section 351.0042 of the Texas Tax Code.

(b) If a person required to file a tax report under this chapter does not file the report as required by the City, the City may determine the amount of tax due under this chapter by:

(1) conducting an audit of each hotel in relation to which the person did not file the report as required by the City; or

(2) using the tax report filed for the appropriate reporting period under Section 156.151 of the Texas Tax Code in relation to that hotel.

(c) If the person did not file a tax report under Section 156.151 of the Texas Tax Code for that reporting period in relation to that hotel, the municipality may estimate the amount of tax due by using the tax reports in relation to that hotel filed during the previous calendar year under this chapter or Section 156.151 of the Texas Tax Code. An estimate made under this subsection is prima facie evidence of the amount of tax due for that period in relation to that hotel.

(d) The authority to conduct an audit under this section is in addition to any other audit authority provided by statute, charter, or ordinance. The City may directly perform an audit authorized by this section or contract with another person to perform the audit on an hourly rate or fixed-fee basis. The City shall provide at least 30 days' written notice to a person who is required to collect the tax imposed by this chapter with respect to a hotel before conducting an audit of the hotel under this section.

Sec. 2.10.051 **Additional Enforcement Authority.** The City may take the following actions against a person who has failed to file a required report, failed to collect the tax imposed, failed to pay the taxes over to the City when due, or filed a false report:

(a) Bring suit to collect the unpaid tax or to enjoin the person from operating a hotel in the corporate limits or extraterritorial jurisdiction of the City until the tax is paid or the report filed, as applicable, as provided by the court's order; and any other remedy provided under state law.

Sec. 2.10.052 **Use of Proceeds.** The proceeds of the hotel occupancy tax levied by this Ordinance shall be used for the purpose of promoting tourism and the convention and hotel industry, and for further purposes as set forth in Texas Tax Code, Section 351.101, as amended.

Sec. 2.10.053 **Administration**

(a) The Council shall review applications to fund projects with hotel occupancy tax revenues received by the city. The Council shall have such powers and authority as described herein and as prescribed by the charter and state law.

(b) Citizens, groups, or entities that wish to apply for funding of projects eligible for funding with hotel occupancy tax revenue shall make application with the city utilizing such forms as may be required and amended from time-to-time.

(c) The Council shall consider applications for projects one time per year in conjunction with approval of the city budget or at such other times at the Council's discretion.

Sec. 2.10.054 **Applications**

The city administrator, or designee, shall conduct the following functions:

(1) Receive and review applications from businesses and individuals requesting funds for projects that are eligible for hotel occupancy tax funds;

(2) Prioritize the requests for such funds and projects; and advise the Council regarding any recommendations;

(3) Provide oversight of projects and entities or individuals that receive funds and verify that such funds are being used in accordance with state law requirements;

(4) Report to Council on a semi-annual basis regarding the activities of any entities, individuals and the projects that have received funds;

(5) Develop a planning calendar, procedure for evaluation and evaluation criteria to be used when recommending and prioritizing agencies and projects for hotel occupancy tax funds;

(6) Recommend advertising and marketing strategies for the Council to consider and assist the city with oversight of any contracts for advertising and marketing approved by the Council;

(7) Require all successful applicants to execute an agreement for funding as approved by Council;

(8) Any other function or duty directed by the Council in regards to use of revenues from the hotel occupancy tax.

Section 3. There is hereby created "Sec. 2.04.005 Hotel Occupancy Tax Advisory Committee", of Article 2.04 BOARDS, COMMISSIONS AND COMMITTEES of the Codified Ordinances of the City of Wimberley, Texas to read as follows:

Sec. 2.04.005 Hotel Occupancy Tax Advisory Committee

(a) Purpose. There is hereby established a six (6) member Hotel Occupancy Tax Advisory Committee (Committee), which shall provide advice on the implementation, collection, and use of hotel occupancy tax dollars to the Council.

(b) Membership.

1) Number of members.

The committee will have six (6) members, one of whom will be the committee chair appointed by the Council.

(2) Terms of members.

(A) Upon initial appointment of the committee, in order to stagger terms of the committee, three members shall serve a one-year term and three members shall serve a two-year term. Members shall draw lots as to which term they shall initially serve. Thereafter, committee members will be appointed to serve a two-year term. There is no limit as to how many terms a member may serve.

(B) Terms shall commence November 1st each year.

(3) Member selection.

(A) As vacancies occur, city staff and Council will prepare a slate of nominees for Council consideration. The slate will include nominees from various citizen groups, including but not limited to historic preservationists, planners, park supporters, the business community, nonprofits, and property owners. The slate will only include individuals that city staff has contacted and who have expressed an interest and availability to serve. Potential nominees may express interest in the committee by contacting the city secretary in writing.

(B) City staff will endeavor to reflect a variety of interests and diverse points of view (current and future) in the list of committee nominees.

(C) Council will approve, reject, or modify the list.

(4) Resignation; vacancies. A committee member may resign by notifying the city secretary in writing of his or her intent to resign. A failure to attend three or more sequential committee meetings will constitute a de facto notification of intent to resign. Members appointed to fill a vacancy will complete the unexpired portion of the term.

(c) Responsibilities. The Committee is responsible for the following:

(1) The Committee shall review revenue received by the City through the Hotel Occupancy Tax and shall make recommendations to the Council regarding appropriate expenditures.

(2) The Committee shall formulate a plan for expenditures of Hotel Occupancy Tax revenue by the City and shall update the plan as requested by Council.

(3) The Committee shall submit an annual report to the Council that identifies approved expenditures by the City for the preceding year, discuss approved and proposed expenditures in the context of compliance with state law regarding the use of Hotel Occupancy Tax funds, and evaluates the effectiveness of approved Hotel Occupancy Tax expenditures and programs.

(4) All recommendations of the Committee are subject to formal approval of the Council at a regularly scheduled meeting. The Committee shall not spend any money or authorize the expenditure of any money.

(d) Meetings.

(A) The committee will meet monthly at city hall, as coordinated with and arranged by city staff. Agendas will be drafted by the committee chair, under the advisement of committee members.

(B) The committee chair, or his or her designee(s), will attend the first Council meeting of each month to update the Council on projects and progress.

(e) Authority.

The committee has no authority to make decisions binding on the city. The committee's functions are purely advisory and not subject to the Open Meetings Act.

Section 4. Sunset Review.

(a) **Frequency of Review.** On or after three (3) years from the effective date of this Ordinance, the Council shall conduct a sunset review of the Hotel Occupancy Tax and the work of the Advisory Committee. The Council shall thereafter conduct periodic reviews every two (2) years.

(b) **Review Criteria.** The purpose of the sunset review shall be to determine whether a public need exists for the continuation of the Hotel Occupancy Tax and/or the Advisory Committee. The Council may consider the following criteria as part of its review:

(1) The benefit(s) enjoyed by the City and the City's tourism industry as a result of the Hotel Occupancy Tax;

(2) Performance and compliance with applicable statutes and regulations;

(3) The efficiency with which the Advisory Committee operates;

(4) The extent to which the Hotel Occupancy Tax and/or the Advisory Committee is needed or used; and

(5) Any other criteria identified by the Council.

Section 5. Savings.

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

Section 6. Severability.

Should any sentence, paragraph, subdivision, clause, phrase, or section of this Ordinance be adjusted or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Ordinance in whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

Section 7. Repealer.

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

Section 8. Effective Date.

This Ordinance shall take effect immediately from and after its passage and publication as may be required by law. The Hotel Occupancy Tax created by this ordinance shall not take effect until November 1, 2021.

Section 9. Proper Notice and Meeting.

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public 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. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED First Reading this ___ of______, 2021, by a vote of (Ayes) to (Nays) to (Abstain) vote of the City Council of the City of Wimberley, Texas.

PASSED AND APPROVED Second Reading this ___ of _____ 2021, by a vote of (Ayes) to (Nays) to (Abstain) vote of the City Council of the City of Wimberley, Texas.

____
Gina V. Fulkerson, Mayor

ATTEST:

____
Laura J. Calcote, City Secretary

APPROVED AS TO FORM:

____
City Attorney