City of Wimberley

221 Stillwater, Wimberley, Texas 78676

REGULAR CITY COUNCIL MEETING
WIMBERLEY CITY HALL – CITY COUNCIL CHAMBERS
221 STILLWATER, WIMBERLEY, TEXAS 78676
THURSDAY, DECEMBER 2, 2021 - 6:00 PM

AGENDA

1. CALL TO ORDER December 2, 2021, at 6:00 PM

2. CALL OF ROLL City Secretary, Laura Calcote

3. INVOCATION Chapel in the Hills Reverend, Jim Denham

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. CONSENT AGENDA

6.1. Approval of minutes from the Regular City Council Meeting held November 18, 2021.

7. CITY STAFF REPORT

7.1. City Administrator Report

- City financials and sales tax

8. DISCUSSION AND POSSIBLE ACTION

8.1. Discuss and consider possible action regarding Resolution No. 16-2021, supporting the VFW Post 6441 in their request for a grant from T-Mobile. *(Mayor, Gina Fulkerson)*

8.2. Discuss and consider possible action regarding the second and final 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)*

9. CITY COUNCIL REPORTS

9.1. Announcements

9.2. Future agenda items

10. 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 29, 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.

AGENDA ITEM:	1. Consent Agenda
SUBMITTED BY:	Laura Calcote
DATE SUBMITTED:	
MEETING DATE:	December 2, 2021

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

Approval of the minutes from the Regular City Council Meeting held November 18, 2021.

REQUESTED ACTION

Motion

FINANCIAL

N/A

STAFF RECOMMENDATION

Approval of minutes.

ATTACHMENT/S

1. City Council Minutes 11-18-2021 (Reg)

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

MINUTES

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

Mayor, Gina Fulkerson, called the meeting to order on November 18, 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
Jim Chiles, Place Four
David Cohen, Place Five

Council Members Absent:
Christine Byrne, Place Three

City Staff Present:
Mike Boese, City Administrator
Laura Calcote, City Secretary
Charlie Zech, City Attorney
Richard Shaver, Parks Director

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

Saint Stephen's Episcopal Church Reverend, Kevin Schubert, 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 two citizen's comments. They were as follows:

1. Gary Barchfeld addressed Council regarding the history of the hotel occupancy tax (HOT) in Wimberely and spoke in opposition to the reinstatement of the tax. Mr. Barchfeld also suggested the Council consider creating a Public Improvement District (PID) in lieu of implementing the HOT. Furthermore, Mr. Barchfeld criticized the Economic Support and Development Committee's lack of transparency and accountability.
2. Sharon Carter spoke regarding a neighborhood meeting that was held in late October 2021 with the Citaspel Village developer. Ms. Carter presented the Council with a Q&A document for the planned development and noted a meeting would be held by the property owner at the Wimberley Community Center on Thursday, December 2, 2021, at 6:00 p.m.

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)*

Motion to accept the City of Wimberley's Quarterly Investment Report for the fourth quarter (July-September 2021) of Fiscal Year 2021 was made by Council Member Rebecca Minnick. Motion was seconded by Council Member Teresa Shell. Motion carried unanimously (4-0).

7. CONSENT AGENDA

Motion to approve the Consent Agenda, as presented, was made by Council Member Rebecca Minnick. Motion was seconded by Council Member Jim Chiles. Motion carried unanimously (4-0).

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.

Economic Support and Development Committee (ESDC) Member, Chris Oddo, presented unanimous recommendations from the ESDC pertaining to the potential reinstatement of the hotel occupancy tax (HOT), including the proposed rate, planning and accountability. There was discussion between the Council and Mr. Oddo regarding the suggestions.

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)*

Motion to approve Resolution No. 15-2021, 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, was made by Council Member Jim Chiles. Motion was seconded by Council Member Teresa Shell. Motion carried unanimously (4-0).

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)*

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

1. Marcilia Bishop spoke regarding the Texas Tax Code, Chapter 351, which authorizes the expenditure of the hotel occupancy tax (HOT) to directly promote tourism and the convention and the hotel industry. Ms. Bishop advised the Council to ease into collecting the HOT and to clearly define how the revenue would be expended, along with an account of how the previous funds were spent.
2. Chris Mahoney addressed Council regarding the history of the hotel occupancy tax in Wimberely, the need for a plan and encouraged the Council to consider a Public Improvement District (PID) instead of implementing the HOT once more. He was opposed to reinstating the HOT.

City Administrator, Mike Boese, presented Ordinance No. 2021-33, along with the potential cost of utilizing a shuttle company on the weekends to help with tourist mobility. Mr. Boese stated there were 143 hotels and short-term rentals currently paying hotel occupancy tax to the State Comptroller. There was discussion among City staff and the Council concerning hiring a compliance company to assist with managing the number of short-term rentals in the city limits and extraterritorial jurisdiction. There was also an overview of other tourist cities within the state and the hotel occupancy tax rate set by these entities.

Motion to approve 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, as presented, was made by Council Member Jim Chiles. Motion was seconded by Council Member David Cohen. Motion carried unanimously (4-0).

10. CITY COUNCIL REPORTS

10.1. Announcements

Council Member, Rebecca Minnick, provided a reminder about the upcoming Wimberley Winter Wonderland Event on November 19th and 20th at the Wimberley Community Center.

10.2. Future agenda items

None.

11. ADJOURNMENT

Motion to adjourn the meeting at 7:08 p.m. was made by Council Member David Cohen. Motion was seconded by Council Member Teresa Shell. Motion carried unanimously (4-0).

RECORDED BY:

Laura J. Calcote, City Secretary

APPROVED BY:

Gina V. Fulkerson, Mayor

RESOLUTION NO. 15-2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, SUPPORTING THE VFW POST 6441 IN THEIR REQUEST FOR A GRANT FROM T-MOBILE

WHEREAS, the City Council of the City of Wimberley realizes the benefits the VFW Post 6441 provides the City of Wimberley and the Wimberley Valley; and

WHEREAS, the City Council of the City of Wimberley realizes the VFW Post 6441 rodeos are essential in maintaining a healthy tourism industry, while providing outdoor spectator events to our residents; and

WHEREAS, the VFW Post 6441 facilities are available for meetings, local events, and festivals; and

WHEREAS, the VFW Post 6441 sponsors the local Boy Scout Troop 127; and

WHEREAS, the City Council of the City of Wimberley realizes the VFW Post 6441 current facilities are in need of updating to provide a venue for additional events, increase handicap accessibility, and usage of the rodeo grounds.

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, HEREBY ADOPTS THE FOLLOWING RESOLUTION IN SUPPORT:

Section 1

The City Council of the City of Wimberley does hereby support the VFW Post 6441 in their current and future endeavors in providing a venue for meetings, local events, rodeos, and festivals.

Section 2

The City Council of the City of Wimberley does hereby support the VFW Post 6441 in their application for a grant in the amount of $50,000 to T-Mobile.

Section 3

This Resolution shall be effective immediately upon its passage.

PASSED AND APPROVED this 2nd day of December, 2021.

Gina V. Fulkerson, Mayor

ATTEST:

Laura J. Calcote, City Secretary

AGENDA ITEM:	2. Discuss and consider possible action regarding the second and final 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:	December 2, 2021

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

City Council unanimously passed the first reading of Ordinance No. 2021-33 on November 18th. This will be the second and final reading of the Ordinance. The effective date within the Ordinance is set for January 1, 2022.

REQUESTED ACTION

Motion
Discussion
Ordinance

FINANCIAL

N/A

STAFF RECOMMENDATION

ATTACHMENT/S

1. Ordinance No. 2021-33- Hotel Occupancy Tax (4880-9100-9795.2)

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 to be effective on January 1st, 2022.

Sec. 2.10.042 **Definitions.**

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) *Consideration*. 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) *Hotel.* 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) *Occupancy*. 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) *Person.* Any individual, company, corporation or association.

Sec. 2.10.043 Tax Rate.

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 **Exemptions.**

(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 Collection by Operator.

(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 Reports and remittances.

(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 Offenses.

(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 Penalty and Interest on Unpaid Tax.

(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 January 1, 2022.

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 18th of November 2021, by a vote of 4 (Ayes) to 0 (Nays) to 0 (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