

City of Wimberley

12111 Ranch Road 12, P.O. Box 2027, Wimberley, Texas, 78676

REGULAR CITY COUNCIL MEETING
WIMBERLEY CITY HALL-CITY COUNCIL CHAMBERS
12111 RANCH ROAD 12, WIMBERLEY, TEXAS
FEBRUARY 5, 2009 6:30 P.M.

AGENDA

CALL TO ORDER: FEBRUARY 5, 2009 @ 6:30 P.M.

CALL OF ROLL: CITY SECRETARY

INVOCATION

PLEDGE OF ALLEGIANCE/SALUTE TO THE TEXAS FLAG

CITIZENS COMMUNICATIONS:

THE CITY COUNCIL WELCOMES COMMENTS FROM CITIZENS ON ISSUES AND ITEMS OF CONCERN, NOT ON THIS AGENDA. THOSE WISHING TO SPEAK MUST SIGN IN BEFORE THE MEETING BEGINS AND OBSERVE A THREE-MINUTE TIME LIMIT WHEN ADDRESSING 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.

1. CONSENT AGENDA

THE FOLLOWING ITEMS MAY BE ACTED UPON IN ONE MOTION. NO SEPARATE DISCUSSION OR ACTION IS NECESSARY UNLESS REQUESTED BY A COUNCIL MEMBER OR CITIZEN, IN WHICH EVENT THOSE ITEMS WILL BE PULLED FROM THE CONSENT AGENDA FOR SEPARATE CONSIDERATION.

- (A) APPROVAL OF MINUTES OF THE REGULAR CITY COUNCIL MEETING OF JANUARY 15, 2009.
- (B) APPROVAL OF MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF JANUARY 28, 2009.

2. CITY ADMINISTRATOR REPORT

- STATUS REPORT ON EFFORTS UNDERWAY TO SECURE STATE AND FEDERAL FUNDING FOR THE DOWNTOWN WASTEWATER PROJECT
- STATUS REPORT ON THE TEXAS PARKS AND WILDLIFE GRANT APPLICATION FOR THE DEVELOPMENT OF THE BLUE HOLE REGIONAL PARK
- STATUS REPORT ON THE COORDINATED COMPLIANCE REVIEW OF SEPTIC SYSTEMS IN DOWNTOWN WIMBERLEY
- STATUS REPORT ON ACTIVITIES OF THE WIMBERLEY MUNICIPAL COURT

- STATUS REPORT ON ACTIVITIES OF THE CITY MARSHAL

3. **PRESENTATIONS**

- (A) PRESENTATION BY THE CHAIRMAN OF THE TRANSPORTATION ADVISORY BOARD (TAB) OF THE BOARD'S QUARTERLY ACTIVITIES REPORT.
- (B) PRESENTATION BY CITY STAFF ON THE CITYWIDE ZONING PROJECT.

4. **PUBLIC HEARING AND POSSIBLE ACTION**

- (A) HOLD A PUBLIC HEARING AND CONSIDER APPROVAL OF THE SECOND AND FINAL READING OF AN ORDINANCE AMENDING SUBSECTION 155.107(B)(1) (PLANNING AND ZONING COMMISSION), OF THE CODE OF ORDINANCES OF THE CITY OF WIMBERLEY, TEXAS, IN ORDER TO REVISE THE MEMBERSHIP REQUIREMENTS; PROVIDING FOR AN EFFECTIVE DATE; PROPER NOTICE AND MEETING, SEVERABILITY AND REPEALER. *(PLACE FIVE COUNCIL MEMBER DICK LARSON)*
- (B) HOLD A PUBLIC HEARING AND CONSIDER APPROVAL OF AN APPLICATION FOR AN AMENDING PLAT OF LOTS 5 AND 6, FLITE ACRES/LITTLE RANCHES LOCATED OFF HOOTS HOLLER ROAD, WIMBERLEY, HAYS COUNTY, TEXAS ALONG WITH A REQUESTED EXCEPTION TO THE CITY CODE REQUIREMENTS RELATING TO MINIMUM WIDTH/MAXIMUM DEPTH LOT RATIOS. *(LON BREITENBACH, APPLICANT)*

5. **RESOLUTIONS**

CONSIDER APPROVAL OF A RESOLUTION OF THE CITY OF WIMBERLEY, TEXAS IN SUPPORT OF THE CREATION AND IMPLEMENTATION OF A WASTEWATER SYSTEM. *(CITY ADMINISTRATOR)*

6. **ORDINANCES**

- (A) CONSIDER APPROVAL OF THE SECOND AND FINAL READING OF AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS AMENDING TITLE V (PUBLIC WORKS) BY CREATING CHAPTER 51 (WATER CONSERVATION) OF THE CODE OF ORDINANCES IN ORDER TO ESTABLISH REGULATIONS TO CONSERVE WATER; PROVIDING FOR A PENALTY FOR VIOLATIONS OF THE ORDINANCE; FINDINGS OF FACT; REPEALER, SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING. *(PLACE FOUR COUNCIL MEMBER STEVE THURBER)*
- (B) CONSIDER APPROVAL OF AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, ORDERING A GENERAL ELECTION ON MAY 9, 2009, FOR THE PURPOSE OF ELECTING CITY COUNCIL MEMBERS FOR PLACES ONE, THREE AND FIVE OF THE CITY OF WIMBERLEY CITY COUNCIL, SUCH ELECTION TO BE HELD JOINTLY WITH HAYS COUNTY AND WIMBERLEY ISD; ESTABLISHING EARLY VOTING LOCATIONS AND POLLING PLACES FOR THE ELECTION; MAKING OTHER PROVISIONS FOR THE CONDUCT OF THE ELECTION; AND PROVIDING FOR FINDINGS OF FACT, SEVERABILITY, CONFLICTING PROVISIONS, GOVERNING LAW, PROPER NOTICE AND OPEN MEETING, AND AN EFFECTIVE DATE. *(CITY ADMINISTRATOR)*

7. DISCUSSION AND POSSIBLE ACTION

- (A) DISCUSS AND CONSIDER APPROVAL OF THE CITY OF WIMBERLEY ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2008. (CITY ADMINISTRATOR)
- (B) DISCUSS AND CONSIDER APPROVAL OF AN AGREEMENT WITH THE HAYS COUNTY ELECTION DIVISION TO CONDUCT THE MAY 9, 2009 ELECTION FOR THE CITY OF WIMBERLEY. (CITY ADMINISTRATOR)
- (C) DISCUSS AND CONSIDER POSSIBLE ACTION REGARDING A PROPOSED JOINT ELECTION AGREEMENT WITH THE WIMBERLEY ISD FOR THE MAY 9, 2009 ELECTION. (CITY ADMINISTRATOR)
- (D) DISCUSS AND CONSIDER POSSIBLE ACTION REGARDING A PROPOSED JOINT ELECTION AGREEMENT WITH HAYS COUNTY FOR THE MAY 9, 2009 ELECTION. (CITY ADMINISTRATOR)
- (E) DISCUSS AND CONSIDER ACTION APPROVING A VARIANCE TO THE CITY OF WIMBERLEY SIGN REGULATIONS FOR A BUSINESS LOCATED AT 12605 RANCH ROAD 12. (CITY ADMINISTRATOR)
- (F) DISCUSS AND CONSIDER ACTION APPROVING A VARIANCE TO THE CITY OF WIMBERLEY SIGN REGULATIONS FOR A BUSINESS LOCATED AT 14201 RANCH ROAD 12. (CITY ADMINISTRATOR)
- (G) DISCUSS AND CONSIDER APPROVAL OF A COMMERCIAL LEASE AGREEMENT FOR THE EXISTING CITY OF WIMBERLEY CITY HALL OFFICE SPACE AND STORAGE SPACE. (CITY ADMINISTRATOR)
- (H) DISCUSS AND CONSIDER POSSIBLE ACTION REGARDING THE DUTIES AND RESPONSIBILITIES OF THE CITY OF WIMBERLEY ADVISORY BOARDS AND COMMISSIONS. (MAYOR PRO TEM BOB FLOCKE)
- (I) DISCUSS AND CONSIDER ACTION TO ESTABLISH A PROCESS THAT WILL BE USED TO DETERMINE THE USE OF THE PROPERTY RECENTLY DONATED TO THE CITY OF WIMBERLEY BY PEDERNALES ELECTRIC COOPERATIVE. (CITY ADMINISTRATOR)
- (J) DISCUSS AND CONSIDER POSSIBLE ACTION RELATING TO THE ANNUAL PERFORMANCE REVIEW OF THE CITY ADMINISTRATOR. (MAYOR TOM HALEY)

8. CITY COUNCIL REPORTS

- ANNOUNCEMENTS
- FUTURE AGENDA ITEMS

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 LOCAL GOVERNMENT CODE; CONSULTATION WITH LEGAL COUNSEL PURSUANT TO CHAPTER 551.071 OF THE TEXAS GOVERNMENT CODE; DISCUSSION ABOUT REAL ESTATE ACQUISITION PURSUANT TO CHAPTER 551.072 OF THE TEXAS GOVERNMENT CODE; DISCUSSION OF PERSONNEL MATTERS PURSUANT TO CHAPTER 551.074 OF THE TEXAS GOVERNMENT CODE; DELIBERATIONS ABOUT GIFTS AND DONATIONS PURSUANT TO CHAPTER 551.076 OF THE TEXAS GOVERNMENT CODE; DISCUSSION OF ECONOMIC DEVELOPMENT PURSUANT TO CHAPTER 551.087 OF THE TEXAS GOVERNMENT CODE; ACTION, IF ANY, WILL BE TAKEN IN OPEN SESSION.

CERTIFICATION

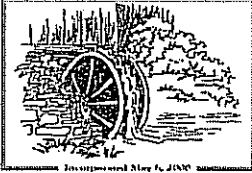
I hereby certify the above Notice of Meeting was posted on the Bulletin Board at the Wimberley City Hall on February 2, 2009 at 5:00 p.m.



CARA MC PARTLAND, CITY SECRETARY

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

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: APPROVAL OF JANUARY
15, 2009 MINUTES OF REGULAR CITY COUNCIL
MEETING

Funds Required:

Funds Available:

Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☒ Motion
- ☐ Discussion

Project/Proposal Summary:

Attached are minutes for the January 15, 2009 Regular City Council Meeting for review and consideration.

City of Wimberley
City Hall, 12111 Ranch Road 12, Ste. 114
Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
January 15, 2009 at 6:30 p.m.

City Council meeting called to order at 6:35 p.m. by Mayor Tom Haley.

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

Councilmembers Present: Mayor Haley and Councilmembers Charles Roccaforte, Bob Flocke, Jeri Xiques, Steve Thurber, and Dick Larson.

Staff Present: City Administrator Don Ferguson, City Secretary Cara McPartland, and Assistant City Attorney Cindy Crosby.

Presentations of Citizens:

- Citizen Communications

No citizen comments were heard.

1. Consent Agenda

- A. Approval of minutes of the special City Council meeting of December 18, 2008.
- B. Approval the November 2008 Financial Statements for the City of Wimberley

Councilmember Thurber moved to approve Consent Agenda items as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

2. City Administrator Report

- Status report on efforts underway to secure federal funding for the Downtown Wastewater Project

This item was heard after Agenda Item No. 5A. City Administrator Ferguson reported on contact with State officials on efforts relating to possible stimulus package funding for projects submitted to the Texas Water Development Board. Mr. Ferguson advised that with the assistance of Herschel "Mac" McCullough and community residents, a website is being developed to educate the public about progress on the Downtown Wastewater Project and help generate support. Given the urgent need for action to preserve Wimberley Valley water features, Mayor Haley and Councilmember Flocke encouraged public support and attendance at the public meeting to be held on Wednesday,

January 28, 2009 at 6:30 p.m. at the Wimberley Community Center. City Administrator Ferguson stressed the importance of citizen contact with government representatives in order communicate concerns affecting Wimberley.

- Status report on the development of the Blue Hole Regional Park

City Administrator Ferguson thanked Hays County Commissioner Will Conley and Hays County Judge Elizabeth Sumter on the execution of the City's Blue Hole Regional Park improvements funding agreement with Hays County. He provided the timeline for grant application submission to Texas Department of Parks and Wildlife and noted that an appointed stakeholder group will be making recommendations to Council on the Requests for Qualifications (RFQs) for design/project management that are due by February 12, 2009. The remainder of original Blue Hole Regional Park grant funding is expected to be expended this summer in order to help fund the Winters Mill Parkway hike and bike trail.

- Status report on the coordinated compliance review of septic systems in downtown Wimberley

City Administrator Ferguson reported on efforts underway with Hays County representatives to conduct a door-to-door courtesy review with downtown property owners. He noted that the final planning meeting will be held next week.

- Status report on the City-initiated commercial zoning project

City Administrator Ferguson reported on progress to date, the timeframe for completion, and noted the public hearing schedule and property owner notification process. He advised that maps will be available for viewing at several locations, including the City of Wimberley website.

- Status report on the update of the City of Wimberley website

City Administrator Ferguson reported that the website update project will take approximately three weeks to complete and will result in an improved, user-friendly website. He welcomed suggestions and advised that all boards and commissions will be involved in redesign efforts.

- Status report on activities of the Wimberley Municipal Court

City Administrator Ferguson reported statistics on court activity, dockets, and the issuance of one arrest warrant to date.

- Status report on activities of the City Marshal

City Administrator Ferguson provided statistics on activities such as public contacts, public meetings, presentations, and traffic enforcement, as well as establishment of regular positive contact

with the business community and interagency cooperation with Hays County Sheriff's Office/Constable's Office and School Resource Officers.

3. Presentations

A. Presentation by representatives of the Pedernales Electric Cooperative (PEC) of the *PEC Quarterly Report*

This item was heard after Agenda Item No. 1 (Consent Agenda). PEC representative Celestino de Leon reported on PEC's office closure in observance of Martin Luther King, Jr. Day on January 19, 2009. Mr. de Leon reminded that PEC's website is a valuable source of information for PEC customers and the public. He presented PEC's quarterly franchise payment to Mayor Haley and thanked Council.

B. Presentation by the City Attorney on issues relating to becoming a home rule municipality

This item was heard after Agenda Item No. 2. Assistant City Attorney Cindy Crosby outlined the major differences between general law and home rule municipalities, including authority within the city limits versus the extra territorial jurisdiction (ETJ). Information was presented regarding determination of population in order to meet threshold requirements, and the advisability of postponing action until completion of the 2010 U.S. Census. Discussion acknowledged the need for general information, with no imminent Council action planned.

C. Presentation by City staff on the 2008 Development Report for the City of Wimberley

City Administrator Ferguson presented 2008 statistics and comparisons with prior years' data on the following:

- Building permits (residential and commercial) issued
- Values of construction projects
- Housing starts
- Average home values
- Subdivision/zoning cases
- Variances

4. Public Hearing and Possible Action

- #### **A. Hold a public hearing and consider approval of a proposed application from the City of Wimberley for an outside recreational grant from the Texas Parks and Wildlife Department and consider adoption of a resolution authorizing the submission of the subject grant application (*City Administrator*).**

City Administrator Ferguson explained that this item is needed to meet grant requirements. Mayor Haley opened the public hearing. Hearing no response, Mayor Haley closed the public hearing.

Councilmember Thurber moved to approve the item as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

- B. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, amending Section 15 (Zoning), Appendix F, of the Code of Wimberley, designating geographic boundaries for a particular zoning district and classification for a 0.24 acre tract located at 180 Henson Drive, Wimberley, Hays County, Texas, designating initial zoning for such tract as Mobile Home (MH); and providing for the following: delineation on zoning map; severability; effective date and proper notice and meeting (*Lisa Powell, Applicant*).

City Administrator Ferguson explained the applicant's requested zoning, noting subject property's location, and current/proposed zoning/uses. He advised that staff and the Planning and Zoning Commission recommend approval.

Mayor Haley opened the public hearing. Hearing no response, Mayor Haley closed the public hearing. Councilmember Xiques moved to approve the item as presented. Councilmember Larson 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, amending Section 155 (Zoning), Appendix F, of the Code of Wimberley, designating geographic boundaries for a particular zoning district and classification for a 3.11 acre tract located at 320 Wimberley Square, Wimberley, Hays County, Texas, designating initial zoning for such tract as Commercial – High Impact (C-3); and providing for the following: delineation on zoning map; severability; effective date and proper notice and meeting (*Calkins Interest, Ltd., Applicant; Kelly Kilber, Agent*).

City Administrator Ferguson reported that the subject property is currently for sale and undergoing subdivision, which requires that the property be properly zoned. He reported on total acreage, lot sizes, and proposed uses, with staff and Planning and Zoning Commission recommending approval. Mr. Ferguson noted that one adjacent property owner, Rob Pitzer, appeared at Planning and Zoning's January 8, 2009 meeting to request information on the subject property's intended use and expressed concerns related to noise at the former Cypress Creek Café, but did not oppose the requested zoning.

Mayor Haley opened the public hearing. Wimberley resident, Sue Sweatt, asked whether prospective owner(s) would be subject to historic preservation rules. City Administrator Ferguson advised that the subject property is not designated as an historic site, but discussion with the potential buyer revealed that only interior modifications are under consideration. Hearing no further comments, Mayor Haley closed the public hearing.

Councilmember Xiques moved to approve the item as presented. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

- D. Hold a public hearing and consider approval of an application for a Preliminary Plan and Final Plat of 3.11 acres to be known as the CCC Addition located at 320 Wimberley Square, Wimberley, Hays County, Texas (*Calkins Interest, Ltd., Applicant; Randy Burt, Agent*).

City Administrator Ferguson reviewed the subdivision application, noting lots, acreages, frontages, and existing/proposed structures and uses. Mr. Ferguson recommended that motion for approval be contingent upon the addition of title commitment notes related to minor easement adjustments. He closed his comments with staff's recommendation for approval with the stated contingencies.

Mayor Haley opened the public hearing. Hearing no response, Mayor Haley closed the public hearing. Councilmember Xiques moved to approve the item with the previously stated contingencies related to minor easement adjustments. Councilmember Flocke seconded. Motion carried on a vote of 5-0.

Mayor Haley called a recess at 7:47 p.m. Mayor Haley reconvened at 7:57 p.m.

- E. Hold a public hearing and consider approval of the first reading of an ordinance amending Subsections of 33.02 (Transportation Advisory Board), 33.03 (Water and Wastewater Advisory Board), 33.04 (Parks and Recreation Board), 150.01 (Building Code Board of Review), and 155.107 (Planning and Zoning Commission), of the Code of Ordinances of the City of Wimberley, Texas, in order for all boards to have the same number of appointments and revise the residency requirements, providing for an effective date; proper notice and meeting, severability and repealer (*Place Five Councilmember Dick Larson*).

City Administrator Ferguson reviewed the results of past considerations of this item, including Planning and Zoning Commission's recommendation that its Commission's residency requirements remain as currently written, with the additional requirement that the maximum number of two allowed residents of the extraterritorial jurisdiction (ETJ) must own real property within City limits.

Mr. Ferguson advised that after weighing public input, Councilmember Larson requested the addition of the following language (noted in italicized text) to §155.107(B)(1):

"There is created, in accordance with the Tex. Loc. Gov't. Code, Chapter 211, the Planning and Zoning Commission, hereafter sometimes referred to as the 'Commission,' which shall consist of 7 members who are either resident citizens of the city or are residents of the extraterritorial jurisdiction of the city, provided that no more than 2 members shall reside in the extraterritorial jurisdiction of the city, *that these 2 must be owners and operators of a business located inside the city limits of Wimberley.*"

City Administrator Ferguson advised that Councilmember Larson does not wish to change the residency requirements for the remaining boards and commissions.

Mayor Haley opened the public hearing.

Wimberley Transportation Advisory Board (TAB) Chairman Corwin Vansant spoke in favor of keeping the current number of appointments and residency requirements for boards and commissions. Though TAB's duties are advisory only, Mr. Vansant noted that TAB considers recommendations on issues affecting the greater Wimberley Valley. He noted that TAB has successfully performed its duties under the present residency requirements, and also that the City employs paid consultants from outside the City limits.

TAB Secretary Bert Ray echoed Chairman Vansant's comments, felt that "we are all in this together," and stated that many of those who live outside the City limits care a lot about Wimberley. Mr. Ray expressed his desire to continue serving Wimberley, though he resides outside City limits.

TAB Vice Chair Mark Roden agreed with statements made by his fellow TAB members, Corwin Vansant and Bert Ray. Speaking as a citizen, Mr. Roden was privileged to serve on TAB and felt that Wimberley's talented volunteers provide a tremendous asset to the community. He reflected on the City's incorporation efforts and urged Council to not limit the skilled human resources available to the City as volunteers.

Wimberley resident Rob Pitzer confirmed with City Administrator Ferguson that the most recent version of the proposed ordinance does not change the composition of any boards or commissions, *except* for Planning and Zoning. Because the entire Wimberley Valley is part of the community, Mr. Pitzer supported taking advantage of resources that are outside of the City limits.

Speaking as a Wimberley citizen, Hays County Judge Elizabeth Sumter commended Councilmember Larson for his amendments to the proposed ordinance (presented at tonight's meeting) and Council for its pursuit of City-wide zoning.

Planning and Zoning Commissioner Paul Xiques was pleased that the City-resident only requirement has been amended by Councilmember Larson. Due to the advisory nature of boards/commissions, Commissioner Xiques felt that Council would benefit by obtaining advice from as many sources as possible. He relayed concerns that Planning and Zoning expressed relating to requiring business ownership versus real property ownership for up to two allowed ETJ members, with Planning and Zoning's general consensus in favor of additionally requiring real property ownership.

Wimberley resident Susan Thurber recommended delaying action on this item due to the changes proposed at tonight's meeting by Councilmember Larson that are not included in the posted agenda item.

Hearing no further comments, Mayor Haley closed the public hearing.

Councilmember Larson provided reasoning for his proposed change allowing up to two Planning and Zoning members to reside in the ETJ *and* own and operate a business within the City limits in order to give business owners a voice. He noted for speaker Susan Thurber that this is the first

reading of the agenda item, which will be considered again on second reading at Council's next meeting.

Discussion among Council and City Administrator Ferguson addressed representation of business owners' interests via Council/Board representation, need to clarify boards/commissions' residency requirements by eliminating references to "vicinity," preference for allowance of up to two ETJ residents for Planning and Zoning membership, and differences in proposed wording relating to "business" versus "property/real property" ownership. Discussion generally favored Councilmember Larson's amendment eliminating references to all other boards and commissions other than the Planning and Zoning Commission in the proposed ordinance.

Wimberley resident Curt Busk spoke in favor of compromise language stating that up to two Planning and Zoning members may reside in the ETJ or be a business owner in the City. Brief discussion posed hypothetical questions on changes affecting membership status such as removal of business owners from service should the business close or cease operations.

Mayor Haley recommended postponing any action until the ordinance can be rewritten based on input to date and reconsidered as a future agenda item. Councilmember Thurber moved to table this item and direct staff to rewrite the proposed ordinance based on input for consideration at a future meeting. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

5. Resolutions

- A. Consider approval of a resolution authorizing the City of Wimberley, Texas to support the Hays County, Texas application for flood protection planning grant assistance filed with the Texas Water Development Board (*Precinct Three Hays County Commissioner Will Conley*).

This item was heard after Agenda Item 5B. Commissioner Will Conley emphasized the importance of water/drainage issues for Hays County/Wimberley residents and asked for support in developing a county-wide coalition resulting in a drainage master plan. Commissioner Conley encouraged support for the master plan to better plan for correction/prevention of existing/future drainage problems. He closed his comments by introducing Wes Birdwell of Halff Associates, whose presentation addressed: Phase I and Phase II timeline/costs; benefits of the plan to Hays County residents, existing/new homeowners, developers, and staff; components of the study and accompanying goals; various flood control alternatives; public meetings; funding details; and, action plan. Discussion among Council and Mr. Birdwell addressed alternatives for runoff including dams such as the one proposed in the past for Cloptin's Crossing and associated potential benefits to flood prevention.

Hearing no further discussion, Mayor Haley entertained a motion. Councilmember Larson moved to approve the item as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

- B. Consider approval of a resolution of the City of Wimberley, Texas accepting a gift of real property from Pedernales Electric Cooperative, Inc. (*City Administrator*).

This item was heard after Agenda Item No. 3A. City Administrator Ferguson provided history on the subject property and the process of acquisition. He stressed that transfer of ownership is conditioned on the use of the subject property for a public purpose. If at any time the subject property is not used for a public purpose, ownership would revert back to Pedernales Electric Cooperative (PEC).

Councilmember Thurber moved to approve the item as presented. Councilmember Roccaforte seconded. Motion carried on a vote of 5-0. Acknowledging a new era of cooperation, PEC General Manager Juan Garza and PEC Board member Patrick Cox were pleased to work collaboratively with local governmental entities in order to implement conveyance of this property.

Mayor Haley called for a short recess at 6:37 p.m. in order to execute the deed and take photographs of the signing. Mayor Haley reconvened the meeting at 6:51 p.m.

6. Ordinances

Consider approval of the first reading of an ordinance of the City of Wimberley, Texas amending Title V (Public Works) by creating Chapter 51 (Water Conservation) of the Code of Ordinances in order to establish regulations to conserve water; providing for a penalty for violations of the ordinance; findings of fact; repealer; severability; effective date; and proper notice and meeting. (*Place Four Councilmember Steve Thurber*).

This item was heard after Agenda Item No. 4E. Mayor Haley introduced the item and opened Council discussion. Councilmember Thurber stated the need for this extremely important ordinance and relayed negative comments made by Hays County Commissioner Court regarding Wimberley's lack of water conservation/drought management measures. Council generally agreed on the need for this ordinance and discussed the following issues:

- Restructuring of language in §51.29 moving the last sentence ("The City and its employees shall make every effort to contact the property owner or authorized occupant prior to entering the premises.") to the beginning of §51.29
- Revision of times for allowed watering (6 p.m. to 10 a.m.) during winter months

Mayor Haley opened the public hearing.

Ed Pope, speaking on behalf of the Citizens Alliance for Responsible Development (CARD), supported the proposed ordinance as a needed start to address current and future stresses on the water needs of Wimberley and surrounding areas, allowing Wimberley to respond timely and effectively to changes in the water supply. He encouraged proactive measures to ensure that the quality of living remains high by anticipating needs and taking action to keep our economy viable.

Planning and Zoning Commissioner David Glenn reminded Council of its adoption of the directed consensus recommendation (No. 3) of the Wimberley Valley Water Issues Subcommittee to develop a comprehensive water conservation plan for the Wimberley Valley through a collaboration of municipalities and water suppliers under the leadership of the Hays Trinity Groundwater Conservation District. Commissioner Glenn supported approval of tonight's proposed water conservation ordinance, along with Wimberley Water Supply Corporation's recently enacted drought management plan as the starting point for further action. Commissioner Glenn noted Wimberley's proximity to desert conditions, rainfall statistics, and the inevitability of drought. He urged Council's approval of the proposed ordinance and noted the need to focus attention on promoting voluntary conservation.

Hearing no further comments, Mayor Haley closed the public hearing. Subsequent Council discussion addressed enforcement procedures, revision of watering times to accommodate differences in sunrise/sunset times in winter/summer months, and general agreement on the previously stated recommended language restructuring in §51.29. Hearing no further discussion, Mayor Haley entertained a motion.

Councilmember Thurber moved to approve the first reading of an ordinance of the City of Wimberley, amending Title V (Public Works) by creating Chapter 51 (Water Conservation) of the Code of Ordinances in order to establish regulations to conserve water, with the proviso that the following changes are made to the ordinance: the previously stated restructuring of language in §51.29 (Access to Premises), revision of prohibited watering times to accommodate differences in sunrise/sunset times in winter/summer months. Councilmember Flocke seconded. Motion carried on a vote of 5-0.

7. Discussion and Possible Action

- A. Discuss and consider the designation of the City Administrator as the point of contact for the City of Wimberley under the Hays County Emergency Management Plan and authorizing the Mayor to execute the paperwork necessary to make the designation (*City Administrator*).

City Administrator Ferguson recommended approval of this routine request by Hays County to designate a point of contact with the City. Councilmember Thurber moved to approve the item as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

- B. Discuss and consider approval of a logo design for the tennis center to be built at the Blue Hole Regional Park (*City Administrator*).

City Administrator Ferguson explained the need for the Wimberley Tennis Association to obtain approval for the logo to be used in fund raising efforts and for tennis center signage. He provided details on the logo's color scheme of yellow, blue, and white, and recommended approval. Curt Busk noted that use of Friends of Blue Hole art work is copyrighted, which requires the appropriate copyright designation (©), and did not register any objections to the tennis center logo design. Councilmember Roccaforte moved to approve the item as presented. Councilmember Xiques

seconded. Councilmember Thurber commended Bob Kerrigan and the Wimberley Tennis Association for its hard work on this project. Motion carried on a vote of 5-0.

- C. Discuss and consider approval of a commercial lease agreement for the existing City of Wimberley City Hall office space and storage space (*City Administrator*).

After brief discussion, Council directed staff to revisit the lease agreement terms with the landlord in order to reduce or eliminate the amount of the rent increase. No action was taken on this item.

- D. Discuss and consider approval of the transfer of \$5,000 from the City of Wimberley unrestricted General Fund balance to meet a prior commitment to provide matching funds to Hays County for the development of a regional water supply and wastewater facility plan and amending the Fiscal Year 2009 Budget to reflect the transfer (*City Administrator*).

Because Hays County's grant funding has been approved, City Administrator Ferguson recommended approval based on a prior matching funds commitment made by the City. Councilmember Xiques moved to approve the item as presented. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

- E. Discuss and consider approval of the transfer of \$2,000 from the City of Wimberley unrestricted General Fund balance to fund repairs to the air conditioning system at the City-owned Wimberley Community Center and amending the Fiscal Year 2009 Budget to reflect the transfer (*City Administrator*).

City Administrator Ferguson noted that the City is sharing the repair costs with Wimberley Senior Citizens Association, Inc. and the Wimberley Valley Art League. Brief discussion addressed possible issues with the original construction and design that may affect the air conditioning system. Councilmember Thurber moved to approve the item as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

- F. Discuss and consider approval of a proposed amendment to the City of Wimberley Investment Policy (*City Administrator*).

City Administrator Ferguson outlined the following updates:

- Eliminates reference to Budget, Investment and Finance (BIF) Committee
- Eliminates reference to Investment Committee
- Designates the City Administrator as the Investment Officer
- Requires Investment Officer to undergo regular certification training and invest funds in accordance with the City Investment Policy
- Establishes quarterly reporting requirement to City Council rather than monthly and set forth the parameters for doing so

Brief discussion established that Mr. Ferguson has attended the required training. Councilmember

Flocke moved to approve the item as presented. Councilmember Larson seconded. Motion carried on a vote of 5-0.

- G. Discuss and consider approval of the routes for the *10K Spring Walk in Wimberley* scheduled for March 21st and 22nd, 2009 (*Mayor Pro-tem Bob Flocke*).

Mayor Pro-tem Flocke explained the dates and routes of this walk sponsored by New Braunfels Marsch-und Wandergruppe and the Wimberley Mayor's Fitness Council. Discussion addressed potential traffic problems, signage, and anticipated number of participants. Mayor Pro-tem Flocke moved to approve the item as presented. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

- H. Discuss and consider approval of a nomination to serve on the Capital Area Metropolitan Planning Organization (CAMPO) Board as the small cities representative for Hays County (*Mayor Tom Haley, City Administrator*).

In response to a call for nominations from Hays County Judge Elizabeth Sumter, Mayor Haley recommended Kyle Mayor Mike Gonzalez as a nominee for small cities representative on the CAMPO Board, with Mayor Pro-tem Bob Flocke nominated as an alternate. Councilmember Thurber moved to approve the nomination of Mayor Pro-tem Bob Flocke as an alternate. Councilmember Larson seconded. Motion carried on a vote of 5-0. After brief discussion of the nomination of Kyle Mayor Mike Gonzalez, Councilmember Thurber amended his motion to include the nomination of Kyle Mayor Mike Gonzalez as the CAMPO Board small cities representative for Hays County. Councilmember Larson seconded. Motion carried on a vote of 5-0.

- I. Discuss and consider action setting the date for a special City Council meeting to discuss and take possible action on the development of a joint governmental services facility in Wimberley (*City Administrator*).

Council discussion yielded agreement on Tuesday, February 17, 2009 as an acceptable date to hold a special meeting. Councilmember Thurber moved to hold a special meeting on Tuesday, February 17, 2009 at 6:00 p.m. to discuss and take possible action on the development of a joint governmental services facility in Wimberley. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

- J. Discuss and consider action approving a variance to the City of Wimberley sign regulations for a business located at 12605 Ranch Road 12 (*City Administrator*).

City Administrator Ferguson provided details on the existing/proposed signage and the applicant's reason for requesting the variance to allow a second 4 foot by 8 foot free-standing sign to advertise Craftmaster Custom Homes, which may be relocated when the business is moved to another future location. City Administrator Ferguson expressed concerns regarding the granting of variances for off-premise signs due to ongoing enforcement issues. He listed standards that must be met in order for Council to grant a sign variance.

Discussion among Council, City Administrator Ferguson, Assistant City Attorney Crosby, and the applicant addressed reasoning for the variance request, plans for signage should Craftmaster Homes relocate, alternate signage plans, current ordinance language prohibiting off-premise signs, effect of pending re-write of sign ordinance on off-premise signage, and possible refund of fees to applicant if variance is denied.

Councilmember Flocke moved to deny the variance and refund the applicant's fees because the applicant requested a variance for a sign specifically prohibited by ordinance. Councilmember Thurber seconded. Mayor Haley called for a vote as follows: Councilmember Roccaforte, aye; Councilmember Flocke, aye; Councilmember Xiques, nay; Councilmember Thurber, aye; Councilmember Larson, nay. Motion carried on a vote of 3-2.

City Administrator Ferguson clarified for Council that staff does not have the ability to deny acceptance of a variance request application and that Council must make a determination based on the specified standards. Brief discussion addressed signage alternatives available to the applicant, possible future amendments to sign ordinance language, and advisability of waiving fees.

- K. Discuss and consider action on a request for the City of Wimberley to support the efforts of Carson Properties to gain access to wastewater service for a planned mixed use development on property abutting Cypress Creek (City Administrator).

Discussion resulted in general agreement to direct staff to draft a resolution in support of access to wastewater service for all property owners, including but not limited to Carson Properties. Councilmember Roccaforte moved to direct staff to proceed with the drafting of said resolution. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

8. City Council Reports

- Announcements
- Future Agenda Items

Mayor Haley reminded that a public hearing will be held on January 28, 2009 at 6:30 p.m. at the Wimberley Community Center on downtown wastewater service.

Councilmembers Thurber and Flocke requested a future agenda item on the roles/functions of boards and commissions.

City Administrator Ferguson announced that the Transportation Advisory Board (TAB) quarterly report will be presented at Council's next meeting. He noted that City Hall offices will be closed on Monday, January 19, 2009 in observance of Martin Luther King, Jr. Day.

Hearing no further comments, Mayor Haley entertained a motion. Councilmember Larson moved to adjourn. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

Adjournment: Council meeting adjourned at 9:48 p.m.

Recorded by:

Cara McPartland

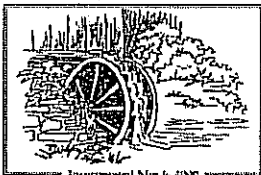
These minutes approved on the ____ of February, 2009.

APPROVED:

Tom Haley, Mayor

DRAFT

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: APPROVAL OF JANUARY
28, 2009 MINUTES OF SPECIAL CITY COUNCIL
MEETING

Funds Required:

Funds Available:

Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☒ Motion
- ☐ Discussion

Project/Proposal Summary:

Attached are minutes for the January 28, 2009 Special City Council Meeting for review and consideration.

MINUTES
SPECIAL CITY COUNCIL MEETING
JANUARY 28, 2009 – 6:30 P.M.

The City Council of the City of Wimberley, Texas met for the purpose of observing a public meeting located at 14068 Ranch Road 12, Wimberley, Hays County, Texas on Thursday, January 28, 2009 at 6:30 p.m. regarding the possible development of a centralized wastewater system in Wimberley, Texas.

Those present were: Mayor Tom Haley, Presiding; Council Members Charles Roccaforte, Bob Flocke, Jeri Xiques, Steve Thurber, and Dick Larson.

Members of the City of Wimberley City Council attended the special meeting for the purpose of observing the public meeting. No action was taken during the meeting that began at 6:30 p.m. and ended at 8:30 p.m.

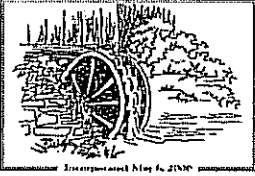
DATE APPROVED: February 5, 2009

Tom Haley, Mayor

ATTEST:

Cara McPartland, City Secretary

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CITY ADMINISTRATOR'S
REPORT

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

☐ Motion

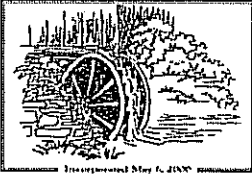
☒ Discussion

Project/Proposal Summary:

The City Administrator will present a report on the following items:

- Status report on efforts underway to secure federal funding for the Downtown Wastewater Project
- Status report on the Texas Parks and Wildlife Grant Application for the development of the Blue Hole Regional Park
- Status report on the coordinated compliance review of septic systems in Downtown Wimberley
- Status report on activities of the Wimberley Municipal Court
- Status report on activities of the City Marshal

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: QUARTERLY REPORT
FROM TRANSPORTATION ADVISORY BOARD

Funds Required:

Funds Available:

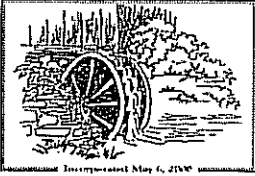
Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☐ Motion
- ☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow the Chairman of the Wimberley Transportation Advisory Board to brief City Council on the Board's various activities.

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: PRESENTATION ON
CITYWIDE ZONING PROJECT

Funds Required:

Funds Available:

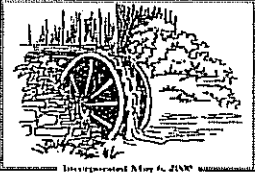
Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☐ Motion
- ☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow City staff to brief City Council on the efforts that are underway to zone all real property within the City limits.

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER SECOND READING OF AN ORDINANCE RELATING TO THE MEMBERSHIP QUALIFICATIONS FOR THE PLANNING AND ZONING COMMISSION

Council Action Requested:

- ☒ Ordinance
- ☐ Resolution
- ☒ Motion
- ☒ Discussion

Project/Proposal Summary:

On January 15, 2009, the City Council considered the first reading of an ordinance changing the qualifications for membership on the following City boards and commissions:

- Transportation Advisory Board
- Water/Wastewater Advisory Board
- Parks and Recreation Advisory Board
- Building Code Board of Review
- Planning and Zoning Commission

The proposed ordinance required all members of the above mentioned Boards, with the exception of the Parks and Recreation Board, to reside within the City limits.

After considerable discussion, the City Council agreed to not change the qualifications for membership on the Transportation Advisory Board, Water/Wastewater Advisory Board, Parks and Recreation Advisory Board and Building Code Board of Review. However, the Council did vote to change the membership qualifications for the Planning and Zoning Commission.

Specifically, the Council approved the first reading of an ordinance that would allow up to two members of the seven members Planning and Zoning Commission to reside in the City's Extra Territorial Jurisdiction (ETJ) provided the individuals are the owners and operators of a business located inside the city limits of Wimberley.

A revised copy of the ordinance to reflect the changes approved by City Council on January 15th is included in your agenda packet for review and consideration on second reading.

ORDINANCE NO. _____

AN ORDINANCE AMENDING SUBSECTION 155.107(B)(1) (PLANNING AND ZONING COMMISSION), OF THE CODE OF ORDINANCES OF THE CITY OF WIMBERLEY, TEXAS, IN ORDER TO REVISE THE MEMBERSHIP REQUIREMENTS; PROVIDING FOR AN EFFECTIVE DATE; PROPER NOTICE AND MEETING, SEVERABILITY AND REPEALER.

WHEREAS, the City of Wimberley ("City") is authorized to establish boards and commissions to receive public input and provide recommendations to the City Council; and,

WHEREAS, the City Council strives to consider qualified individuals who represent a broad sampling of the community when appointing members to the City's boards and commissions; and the Planning and Zoning Commission reviewed the proposed code amendment; and,

WHEREAS, the City Council of the City of Wimberley, Texas desires to amend the membership requirements for members of the Planning and Zoning Commission; and finds that such amendments will enhance the membership of the City's Planning and Zoning Commission.

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

I. FINDINGS OF FACT

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

II. AMENDMENT

1. THAT § 155.107(B)(1) (PLANNING AND ZONING COMMISSION) of the Wimberley Code of Ordinances shall be amended in its entirety to read as follows:

"(B) Creation; membership; officers; rules and bylaws.

(1) There is created, in accordance with Tex. Loc. Gov't Code, Chapter 211, the Planning and Zoning Commission, hereafter sometimes referred to as the "Commission," which shall consist of 7 members who are either resident citizens of the city or are residents of the extraterritorial jurisdiction of the city, provided that no more than 2 members shall reside in the extraterritorial jurisdiction of the city, and these 2 members must be owners and operators of a business located inside the city limits of Wimberley."

Except as provided herein, of the Code of Ordinances of the City of Wimberley shall remain in full force and effect.

III. SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

IV. EFFECTIVE DATE

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

V. 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, and the Standard Zoning Enabling Act, Chapter 211 of the Texas Local Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

FIRST READING PASSED AND APPROVED on this _____ day of _____, 2009, by a ____ (Ayes) ____ (Nays) ____ (Abstain) vote of the City Council of the City of Wimberley, Texas.

SECOND READING PASSED AND APPROVED on this _____ day of _____, 2009, by a ____ (Ayes) ____ (Nays) ____ (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY

By: _____
Tom Haley, Mayor

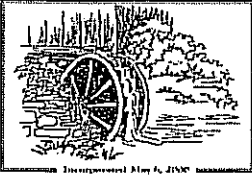
ATTEST:

Cara McPartland, City Secretary

APPROVED AS TO FORM:

Carolyn J. Crosby, Assistant City Attorney

City Council Agenda Form



Date Submitted: February 2, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER APPROVAL OF AN AMENDING PLAT OF LOTS 5 AND 6, FLITE ACRES/LITTLE RANCHES

Funds Required:
Funds Available:

Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☒ Motion
- ☒ Discussion

Project/Proposal Summary:

The purpose of this agenda item is to allow the City Council to consider approval of an Amending Plat of Lots 5 and 6, Flite Acres/Little Ranches located off Hoots Holler Road in the City of Wimberley. A PDF copy of the proposed subdivision will be sent out under separate cover. A larger scale copy of the plat is available for inspection at City Hall.

This Amending Plat, as proposed, repartitions the original Lots 5 and 6 of Flite Acres/Little Ranches into Lot 5R (9.020 acres) and Lot 6R (8.00 acres) out of an original 17.185 acre area located within the City of Wimberley. Lot 6 was originally platted with an area of 10.976 acres with approximately 92.73 feet of frontage on Hoots Holler Road (a public road with right-of-way width of 50') and frontage of approximately 960 feet along University Road (private easement road). Lot 5 was originally platted with an area of 6.209 acres with approximately 709 feet of frontage on Flite Acres Road (40' road easement) and frontage of approximately 870 feet along University Road. This Amending Plat dedicates an additional 10 feet on right-of-way of Flite Acres Road. Both Lots are within the certified service area of Wimberley Water Supply Corporation and a water line is within the Hoots Holler and Flite Acres Road rights-of-way.

Lots 5 and 6 are currently zoned RA. The area for each of proposed Lots 5R and 6R is greater than 5.0 acres and continues to qualify for RA as presently zoned. The average slope of both lots is less than 15 percent and the application of steep slope lot size multiplier to minimum lot size is not applicable. Lots 5R and 6R are exempt from the shape criteria since each lot is bounded by existing lot configuration on all sides except the common boundary line.

Section 154.063(C) of City Code requires conformance with a minimum and maximum range of average depth to average width ratios, unless the lot is at least 1.5 times the lot size required for the applicable zoning district, both the depth and width of the lot exceed the minimum required, and the City finds the proposed lot dimensions are consistent with surrounding development and the Comprehensive Plan.

Both Lots 5R and 6R meet the lot size criteria for RA (greater than 1.5 multiple of 5.0 acres). However, Lot 6R does not meet the minimum width (295') and maximum depth (737') ratio relative to Hoots Holler Road frontage. As such, the applicant is seeking an exception to the ratio requirement for Lot 6R.

On January 22, 2009, the Planning and Zoning Commission held a public hearing on the application and requested exception. Afterwards, the Commission voted unanimously to recommend approval of the proposed plat with the requested exception.

AMENDING PLAT OF LOTS 5 AND 6,
FLITE ACRES LITTLE RANCHES

VOLUME 165, PAGE 285, DEED RECORDS OF HAYS COUNTY, TEXAS

KNOW ALL MEN BY THESE PRESENTS, That the Edward Brillbach and Edw Brillbach, the owners of LOTS 5 and 6, FIVE ACRES LITTLE RANCHES, a subdivision as recited in Volume 163, Page 233, Deed Records of Hyde County, Oregon, do hereby award said lots to be known as THE LITTLE RANCHES, to the following persons, to wit: JOHN A. ANDERSON, in accordance with the ASSIGNING PLAT OF LOTS 5 AND 6, FIVE ACRES LITTLE RANCHES, in accordance with the foregoing plat when same was subject to any and all assessments or restrictions hereinafter granted, and do hereby dedicate to the public, a 1/2' wide strip of land for the widening of Tillamook Avenue Road.

WITNES MY HAND, this _____ day of _____ A.D. 1909

EDWARD BRODEBACH
1900 HILTOP DRIVE
WALTERLEY, TEXAS 75070

ERIN DREYERDACH
1900 HILLTOP DRIVE
WINTERHURST, TEXAS 75979

STATE OF TEXAS

KEPTON MC, the undersigned authority, on this day personally appeared, Edward Brinkmeyer and John Brinkmeyer, known to me as the persons whose name is subscribed to the foregoing instrument and acknowledged to me that each has executed the same for the purpose and consideration therein stated.

RECEIVED UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____ A.D. 2008

ADJUTANT PUBLIC in and for Harp County, Texas

I, Under Fritzsche, Clerk of Hays County, Texas, do hereby certify foregoing instrument of _____
 _____, with its certificate of authentication was filed for record in my office on the _____
 day of _____ A.D. 2009 at _____ o'clock _____ and duly recorded on the _____
 day of _____ A.D. 2009 _____ at _____ o'clock _____ in the first
 records of said County and State, in Plat Book No. _____ Page(s) _____

Witness my hand and seal of office at the County Clerk, this the ____ day of _____ A.D. 1908.

Juda Fritzsche, County Clerk, Hays County, Texas

UTILITY CORPORATION
Member of Water Supply Corporation (COP) (COP), an approved public water supply system, shall provide adequate water quantity to supply this amended joint subdivision in accordance with the tariff/policies of the water supply system.

由「臺灣省教育廳」頒布「臺灣省立第一女子高級中學」

L. Don Ferguson, City Administrator of the City of Windsor, Texas hereby certifies that this Amending Plat conforms to all requirements of the Subdivision Regulations as is which approved is required.

Date	Item
10/1/19	Don Ferguson, City Administrator

Based upon the representations of the supplier or supplier agent and a signed receipt, and after a review of the accompanying data as represented by the said supplier or supplier, I find that this data is in accordance with the requirements of the City of Berkeley. This certification is made with understanding that any person who knowingly furnishes false information to the City of Berkeley shall be liable for the same. The City of Berkeley's records and should not be relied upon for verifications of the facts represented herein. The City of Berkeley's records are not intended to be used for the purpose of independent verifications of the representations, facts or otherwise, contained in this accompanying data.

Date
Don Ferguson, City Administrator City of Minnetonka, Texas

L. Paul C. Weidner, City Engineer of the City of Berkeley, Texas, do hereby certify that this amendment meets and conforms to the requirements of the Subdivision Regulations in which approved is required.

John C. MacIntosh, City Engineer City of Birmingham, Texas	Deals
--	---------------------

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS, That I, Rudolf A. Peis, Jr., a Registered Professional Land Surveyor in the State of Texas, do hereby certify that this SURVEYING PLAN is true and correctly made and is prepared from an actual survey of the property made under my supervision on the ground and the corner monuments were found as properly placed under my supervision.

RANDI L. PATA, Jr.
 REPUBLICAN STATE OF TEXAS



Scale: 1"=1000'

FLAT NOTES

1. This amending plat lies within the boundaries of the Edwards Aquifer Contributing Zone, as designated on the map titled "Edwards Aquifer Contributing Zone Map", dated September 2, 2003.
2. This amending plat does not appear to be within the boundaries of the 100-year floodplain as designated on the map titled "100-year Floodplain Map", dated September 2, 2003.
3. This amending plat lies within the City of Wrentham, Texas.
4. The provisions of the City of Wrentham Comprehensive Plan will not prevent this amending plat.
5. Land primarily classifications:
Lot 50 and 60 will be R-1C Residential Single (4 acres or more)
Lot 51 will be R-1C Residential Single (4 acres or more)
6. This amending plat lies within the Wrentham Independent School District.
7. No other services for this amending plat is provided by Wrentham Water Supply.
8. No structure in this amending plat will be connected by a public water supply system or to an on-site wastewater system which has been approved and permitted by the City of Wrentham Health.
9. Exclusively for this amending plat is provided by Pedernales Electric Cooperative, Inc.
10. Telephone services for this amending plat is provided by Verizon.
11. When improved, this plat has a minimum driveway width size of 18".
12. School requirements:
207 P.U.L.L. along road
207 P.U.L.L. along road
107 P.U.L.L. at other sides
13. This amending plat contains two lots: Lot 50 (1.2225 acres) and Lot 60 (1.0000 acres) for a total of 2.2225 acres.
14. The Average Slope Percentages was confirmed on the ground and calculates as:
Lot 50 = 2.51 percent based on a 30' vertical change over 1239' horizontal run
Lot 60 = 8.23 percent based on a 137' vertical change over 1537' horizontal run
15. Access to Lots 50 and 60 from University Road (public easement) is prohibited.
16. This amending plat is subject to all general rules and regulations appearing on the Plat of Full Area Wrentham as recorded in Vol. 162, Pg. 251, H.C.232.
17. No buildings or structures shall be constructed which would interfere or prevent and legal use and enjoyment of the subject land of this plat.

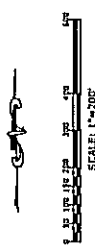
Driftwood Surveying

P.O. Box 379
Wichita, KS 67201
913/261-1222 FAX (913) 941-1372

PROJECT NO. H01308
PAGE 1 OF 2

PLOTTED 01/19/2003 10:59

A SUBDIVISION IN HAYS COUNTY, TEXAS
VOLUME 165, PAGE 285, DEED RECORDS OF HAYS COUNTY, TEXAS



LEGEND
 ● — 1/2" BOM NOT FOUND
 ○ — 1/2" BOM NOT SET OR FOUND (POTENTIAL SUNKEN)
 ◆ — OTHER DOCUMENTATION NOTED
 — SERVICE OF UTILITY POLES
 — OVERHEAD UTILITIES
 — EASEMENT
 — FENCE
 — SETBACK
 HAYS COUNTY OFFICIAL
 PUBLIC RECORDS
 HAYS COUNTY PROPERTY
 IDENTIFICATION NUMBER
 PLACES

[illegible]

3RD MILLSTONE QUARRY

HOOTS HOLLOW ROAD

30' WIDTH

1" = 100'

3RD MILLSTONE QUARRY

3RD MILLSTONE QUARRY

Driftwood Surveying

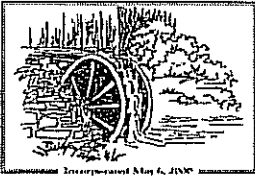
P.O. Box 379
 Monterey, CA 93978
 916 (312) 843-7333 FAX (312) 843-7332

24.2

PROJECT NAME: WCH1908

01/20/2008 13:58

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER APPROVAL OF A RESOLUTION SUPPORTING THE USE OF ALTERNATE METHODS, OTHER THAN SEPTIC SYSTEMS, TO DISPOSE OF WASTEWATER

Council Action Requested:

- ☐ Ordinance
- ☒ Resolution
- ☒ Motion
- ☒ Discussion

Project/Proposal Summary:

This item has been placed on the agenda to allow the City Council to discuss and consider action on a resolution supporting the use by property owners of alternate methods other than septic systems to dispose of wastewater, so long as no laws or property rights of the City or others are violated. The resolution comes in response to a request from Carson Properties to gain access to wastewater service for a mixed use development on property abutting Cypress Creek.

Attached is a copy of the resolution for your review and consideration along with background information relating to the Carson Properties request.

RESOLUTION _____

A RESOLUTION OF THE CITY OF WIMBERLEY, TEXAS IN SUPPORT OF THE CREATION AND IMPLEMENTATION OF A WASTEWATER SYSTEM

WHEREAS, currently septic tanks are utilized to manage and dispose of wastewater in the City; and,

WHEREAS, in order to maintain a high quality of life for the citizens of the City of Wimberley and protect the numerous watersheds in the area from contamination, the City Council recognizes the need for a centralized wastewater system to serve the public; and,

WHEREAS, the City Council in is support of individual property owners pursuing wastewater system alternatives rather than individual septic systems, so long as all actions are taken in accordance with local, state and federal environmental laws, and do not interfere or violate the property rights of the City or others.

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

I. FINDINGS OF FACT

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

II. RESOLUTION

THAT, in general, without specifying certain projects, the City is in support of the use by property owners of alternate methods other than septic systems to dispose of wastewater, so long as no laws or property rights of the City or others are violated.

PASSED AND APPROVED this 5th February, 2009, by a ____ (Ayes) ____ (Nays) ____ (Abstain) vote of the City Council of the City of Wimberley, Texas.

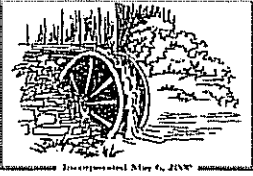
CITY OF WIMBERLEY

By: _____
Tom Haley, Mayor

ATTEST:

Cara McPartland, City Secretary

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2008

Project/Proposal Title: CONSIDER ADOPTION OF THE SECOND READING OF A WATER UTILIZATION AND CONSERVATION ORDINANCE

Council Action Requested:

- ☒ Ordinance
- ☐ Resolution
- ☒ Motion
- ☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda by the Place Four City Council Member Steve Thurber to allow City Council to consider a revised version of the proposed ordinance regulating water utilization to promote water conservation in Wimberley that was previously rejected by Council last year.

Much like the original ordinance, the revised ordinance prohibits water waste, and establishes regulations relating to the watering of landscaping, athletic fields and golf courses. The ordinance places certain restrictions on irrigation system operations and vehicle car wash facilities along with requiring local builders to offer xeriscape and rainwater harvesting options to their clients.

The revised ordinance places year round restrictions on landscape watering and allows charity car washes, except in times of drought as defined in the ordinance.

It should be noted that the proposed ordinance does not contain a shading requirement for pools and it does not include a requirement that restaurants serve water to customers only on request.

Violators of the proposed ordinance face a graduating schedule of fines depending on the frequency of violations. The ordinance identifies a series of acceptable defenses for violation of the ordinance which include the use of gray water and water from rainwater harvesting systems. In addition, the water conservation ordinance allows for variance appeals to be considered only by City Council instead of going through the Water Wastewater Advisory Board as originally proposed.

On January 15, 2009, the City Council approved the first reading of the ordinance and requested staff to modify the hours when landscape watering is restricted.

City staff revised the ordinance, as requested for second and final reading, so that it prohibits landscape watering between the hours of 10 a.m. and 6 p.m. on any day during Daylight Savings Time and between the hours of 11 a.m. and 7 p.m. the remainder of the year.

ORDINANCE NO. 2009-_____

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS AMENDING TITLE V (PUBLIC WORKS) BY CREATING CHAPTER 51 (WATER CONSERVATION) OF THE CODE OF ORDINANCES IN ORDER TO ESTABLISH REGULATIONS TO CONSERVE WATER; PROVIDING FOR A PENALTY FOR VIOLATIONS OF THE ORDINANCE; FINDINGS OF FACT; REPEALER, SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Wimberley ("City") is located in a region of the State of Texas where precipitation is frequently limited, and measures must be taken to conserve water; and

WHEREAS, the City Council has deemed it necessary to reduce the potential effect of a water shortage on those who live, work and visit Wimberley, Texas; and

WHEREAS, the City Council believes it is necessary to minimize the potential for water shortage through the practice of water conservation and the enactment of these regulations; and

WHEREAS, the City Council of the City of Wimberley finds there is a need to adopt provisions that will significantly reduce the inefficient consumption of water, thereby extending the available water resources necessary for the domestic sanitation and fire protection of the community to the greatest extent possible; and

WHEREAS, the following enactments are a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to Texas Local Government Code Chapters 51 and 52; and

WHEREAS, the City Council finds that the provisions of this Ordinance are the minimum requirements necessary to promote the public health, safety, morals and general welfare, and are not in conflict with any state provisions.

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

SECTION 1. FINDINGS OF FACT

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

SECTION 2. AMENDMENT

That Title V (Public Works) of the Code of Ordinances of Wimberley, is hereby amended to create Chapter 51 "Water Conservation", to read as follows:

"Chapter 51 Water Conservation.

§ 51.01. Purpose.

§ 51.02. Jurisdiction.

§ 51.03. Definitions.

§ 51.04. Activities to be Regulated.

- § 51.05. Landscape watering.
- § 51.06. Swimming pools.
- § 51.07. Vehicle Wash Fundraisers.
- § 51.08. Washing of Impervious Surface Areas.
- § 51.09. Irrigation System Operations.
- § 51.10. Minimum irrigation area and flow direction.
- § 51.11. Irrigation System Rain Sensors.
- § 51.12. Zonal Irrigation System.
- § 51.13. Irrigation Tailwater.
- § 51.14. Water Leaks.
- § 51.15. Golf Courses.
- § 51.16. Annual irrigation system analysis for athletic fields, and large properties.
- § 51.17. Commercial Dining Facilities.
- § 51.18. Ice Machines.
- § 51.19. Vehicle Wash Facilities.
- § 51.20. Condensate Collection.
- § 51.21. Xeriscape Option.
- § 51.22. Model Home Xeriscape.
- § 51.23. Rainwater Harvesting Option.
- § 51.24. Water Purveyors.
- § 51.25. Implementation of additional water use reduction measures, ("aquifer risk").
- § 51.26. Nuisance Declared.
- § 51.27. Presumption and Exception.
- § 51.28. Variance.
- § 51.29. Access to Premises.
- § 51.30. Authorization to Enforce.

§ 51.31. Administrative Action To Abate Violations.

§ 51.32. Abatement of Nuisance or Violation.

§ 51.33. Enforcement.

§ 51.34. Defenses.

§ 51.01. Purpose.

As the City is located in a region of the State of Texas where precipitation is frequently limited, the purpose of the regulations herein are to provide the minimum restrictions on the use and conservation of water within the City limits. The provisions are designed to significantly reduce the inefficient consumption of water, thereby extending the available water resources necessary for the domestic sanitation and fire protection of the community to the greatest extent possible; and further promote the public health, safety, morals and general welfare of the citizens of Wimberley.

§ 51.02. Jurisdiction.

The provisions of this chapter shall apply within the City limits.

§ 51.03. Definitions.

Words and phrases used in this Chapter shall have the meanings set forth in this section. Words and phrases which are not defined in this Chapter but are defined in other provisions in the Code of Ordinances of Wimberley shall be given the meanings set forth in the Code. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Chapter.

Air conditioning system(s). A mechanical system generally consisting of a compressor, thermostat and duct work permanently installed in a building for the purpose of controlling humidity and temperature. For the purposes of this chapter, an air conditioning system does not include window units.

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Agricultural irrigation. Irrigation for the purpose of growing crops commercially for human consumption or to use as feed for livestock or poultry.

Athletic field. A sports playing field, the essential feature of which is turf grass, used primarily for organized sports for schools, professional sports, or organized league play.

Automatic irrigation controller. A device that automatically activates and deactivates an irrigation system at times selected by the operator.

Beneficial use. The amount of water that is economically necessary for a purpose not otherwise prohibited by the city, state or federal law or regulation, when reasonable intelligence and reasonable diligence is used in applying water for that purpose.

Bucket. Bucket or other container holding five gallons or less, used singly by one person.

City Administrator. The employee serving in the capacity of the City Administrator of this city, or his or her designee authorized to implement and enforce this chapter.

Commercial dining facility. A business that serves prepared food and beverages to be consumed on the premises.

Computer controlled irrigation system (CCIS). A system comprised of a computer controller (digital operating system), software, interface modules, satellite field controllers, soil sensors, weather station, or similar devices which is capable of achieving maximum efficiency and conservation in the application of water for irrigation. A CCIS, at a minimum, should be designed to (i) prevent over watering, flooding, pooling, evaporation and run-off; and, (ii) prohibit sprinkler heads from applying water at an intake rate exceeding the capability of the soil.

Cooling Tower. An open water recirculation device that uses fans or natural draft to draw or force air to contact and cool water through the evaporative process.

Day. A twenty-four (24) hour period beginning at midnight.

Drought Management Plan. A plan for management of available water resources as prescribed by the Hays Trinity Groundwater Conservation District, Wimberley Water Supply Corporation and/or other authorized water purveyors operating within the Wimberley city limits, and as may be amended from time to time.

Essential use. A use of water which is:

(1) Essential to the protection of public health, safety, or welfare, including but not limited to use for drinking, food preparation, personal hygiene, public sanitation, control or prevention of disease and firefighting; or

(2) Essential to an industrial use or agricultural or military activity which directly supports gainful employment, unless the use is specifically defined in this chapter as a discretionary use; or

(3) Essential to irrigation use; or

(4) Watering of livestock.

Evapotranspiration rate (ET Rate). The rate which the combination of evaporation from soil surface and transpiration from vegetation will occur for specific climatic conditions.

Existing landscaping plant. A landscaping plant existing after such period of time as to accomplish an establishment and maintenance of growth.

Golf Course. An irrigated and landscaped playing area made up of greens, tees, fairways and roughs and related areas used for the playing of golf.

Gray Water. Water after use in bath and utility sinks, tubs, showers and washing machines.

Hand-held hose. A hose attended by one person, fitted with a manual or automatic shutoff nozzle.

Hose-end sprinkler. A sprinkler that applies water to landscape plants that is piped through a flexible, movable hose.

Household use. The use of water, other than uses in the outdoor category, for personal needs or for household purposes, such as drinking, bathing, heating, cooking, sanitation or cleaning, whether the use occurs in a residence or in a commercial or industrial facility.

Impervious surface area. Any structure or any street, driveway, sidewalk, patio or other surface area covered with asphalt, concrete, brick, paving, tile or other material preventing water to penetrate the ground.

Industrial use. The use of water for or in connection with commercial or industrial activities, including manufacturing, bottling, brewing, food processing, scientific research and technology, recycling, production of concrete, asphalt, and cement, commercial uses of water for tourism, entertainment, and hotel or motel lodging, generation of power other than hydroelectric, and other business activities.

Irrigation system. Also referred to as an in-ground or permanent irrigation system, being a system with fixed pipes and emitters or heads that apply water to landscape plants or turf grass.

Irrigation system analysis. A zone-by-zone analysis of an irrigation system that, at a minimum, includes a review of the following elements:

- (1) design appropriateness for current landscape requirements;
- (2) irrigation spray heads and valves;
- (3) precipitation rates expressed in inches per hour; and
- (4) annual maintenance plan that includes irrigation system maintenance, landscape maintenance, and a basic summer and winter irrigation scheduling plan.

Landscape renovation. The removal and replacement of existing landscape plants with new landscape plants.

Landscape watering. The application of water to grow or maintain landscaping plants, such as flowers, ground covers, turf or grasses (other than golf courses or athletic fields), shrubs, and trees, but for purposes of this chapter does not include:

- (1) Essential use without waste of water by a commercial nursery to the extent the water is used for production rather than decorative landscaping;
- (2) Application of water without waste to a noncommercial family garden or orchard the produce of which is for household consumption only; and
- (3) Except when certain stages of a Drought Management Plan are in effect, application of water at any time on any day by means of a bucket, hand-held hose, soaker hose (but not one that sprays water in the air), or properly installed drip irrigation system.

Landscaping plant. Any member of the kingdom plantae, including any tree, shrub, vine, herb, flower, succulent, groundcover or grass species that grows or has been planted out-of-doors.

Large property. A land tract owned by a general customer that equals or exceeds five acres in size and has an irrigation system.

Livestock. Cattle, sheep, goats, hogs, poultry, horses, and game, domestic, exotic and other animals and birds, including zoo animals, used for commercial or personal purposes.

Livestock use. The use of water for drinking by or washing of livestock.

Make-up Meter. A meter that measures the amount of water entering a cooling tower system.

Other outdoor use. The use of water outdoors for the maintenance, cleaning and washing of structures and mobile equipment, including automobiles and boats, or the washing of streets, driveways, sidewalks, patios and other similar areas.

Park. A tract of land maintained by a city, private organization, or individual, as a place of beauty or of public recreation.

Person. Any individual, corporation (including a government corporation), organization, state or federal governmental subdivision or agency, political subdivision of a state, interstate agency or body, business, trust, partnership, limited partnership, association, firm, company, joint stock company, joint venture, commission or any other legal entity.

Pervious surface. Any ground surface which can absorb water or other liquids.

Precipitation rate. The speed at which a sprinkler or irrigation system applies water. Precipitation rates are measured in inches per hour or inches per minute.

Property address. The street address of a property, unless multiple street addresses are served by a single meter, in which case the billing address will be used.

Public facilities. Municipally-owned or operated facilities.

Rain sensor. A device designed to stop the flow of water to an automatic irrigation system when rainfall has been detected.

Recycled or Reuse Water. Domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use in accordance with applicable law.

Requestor. A person who requests a variance under this chapter.

Residential Customer. A single or multi-family dwelling unit containing two (2) or fewer family units.

Soil holding capacity. The amount of moisture in the soil that can occur without becoming saturated.

Sprinkler. An emitter that applies water to the landscape plants in a stream that travels through the air. Sprinkler irrigation can be applied by an irrigation system or hose-end sprayer or a soaker hose that sprays water in the air.

Swimming pool. Any structure, basin, chamber, or tank, including hot tubs, containing an artificial body of water for swimming, diving, or recreational bathing, and having a depth of two (2) feet or more at any point.

TCEQ. Texas Commission on Environmental Quality, and its successor agency.

TDS. Total dissolved solids.

Turf. A surface layer of earth containing mowed grass with roots.

Deleted: Prescribed hours for sprinkling. Between the hours of 6 p.m. and 10 a.m. every day, when a Drought Management Plan is not in effect, and during the hours specified therein when a Drought Management Plan is in effect.†

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Turf grass. Perennial ground cover plants and grasses that are adapted to regular mowing and traffic through management.

Vacuum system. A system, often consisting of a pump, chamber, and tubes, that is used to create a vacuum for any of a variety of purposes, including but not limited to medical, dental and industrial applications.

Vegetable garden. Any "non-commercial" vegetable garden planted primarily for household use; "noncommercial" includes incidental direct selling of produce from such a vegetable garden to the public.

Vehicle wash facility. A permanently-located business that washes vehicles with water or water-based product, including but not limited to self-service car washes, full-service car washes, roll-over/in-bay style car washes, and fleet maintenance wash facilities.

Vehicle wash fundraiser. Any special-purpose vehicle wash event for which a fee is charged or donation accepted.

Water. Includes, but is not limited to potable or recycled water supplied by the Wimberley Water Supply Corporation or other water purveyor, or potable water withdrawn from any groundwater well, surface water from any river, creek, natural watercourse, pond, lake or reservoir.

Deleted: , and recycled water supplied by a water purveyor

Water Waste. Use of water without obtaining maximum beneficial use thereof. Waste shall also include, but not be limited to, causing, suffering, or permitting a flow of water used for landscape watering to run into any river, creek or other natural water course or drain, superficial or underground channel, bayou, or unto any sanitary or storm sewer, any street, road or highway or other impervious surface area, or upon the lands of another person or upon public lands. Waste shall also include, but not be limited to, any discharge of water used for commercial, industrial, municipal or domestic purposes to any storm, sanitary sewer, or septic system without the user first having obtained maximum beneficial use thereof. Waste shall also include, but not be limited to, failure to repair any controllable leak on property,

Deleted: owned by any registered meter holder

Water flow restrictor. An orifice or other device through which water passes at a restricted rate.

Water purveyor use. Water used for withdrawal, treatment, remediation, transmission and distribution by a potable water purveyor.

Xeriscape. A landscape consisting of a maximum of 50% turf grass, with the remaining percentage of landscape incorporating low water use plants and/or pervious hardscape. The approved low water use plant list, as may be amended from time to time, shall be available from the City of Wimberley and located at the City or City web site.

Zonal irrigation system. An irrigation system that segregates by station areas of shrubs, ground cover, bedding plants, and turf to accommodate a diversity of watering requirements.

§ 51.04. Activities to be Regulated.

The following activities shall be regulated in the manner set out herein. A person affected by such regulations may request a variance in the manner set out in Section 51.28. A violation of this Chapter shall be subject to the enforcement provisions set out in Section 51.33. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this Chapter.

§ 51.05. Landscape watering.

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It is the policy of the City to promote the efficient use of water without waste at all times on a year round basis. It is unlawful for any person to perform or permit landscape watering on any property within the city between the hours of 10 o'clock a.m. and 6 o'clock p.m. on any day during Daylight Savings Time, and between the hours of 11 o'clock a.m. and 7 p.m. the remainder of the year, except as expressly provided herein. Landscape watering is also restricted further during the times the Drought Management Plan of the Hays Trinity Ground Water Conservation District, Wimberley Water Supply Corporation and/or any other authorized public water purveyor within the city limits is in effect, and the stricter provisions shall prevail and control. Irrigating any turf grass, tree, plant, or other vegetation, or otherwise utilizing the water supply system to permit or cause water to pond, or to flow, spray or otherwise move or be discharged from the premises of any person responsible for any property within the corporate limits of the city to or upon any street, alley, gutter or ditch, or other public right-of-way, or into a storm water drainage system or facility shall be prohibited.

§ 51.06. Swimming pools.

Draining water from a swimming pool onto an impervious surface shall be prohibited.

§ 51.07. Vehicle Wash Fundraisers.

Vehicle wash fundraisers shall be allowed except when prohibited by the provisions of a Drought Management Plan. Such fundraisers shall be operated in such a manner so as to limit water waste.

§ 51.08. Washing of Impervious Surface Areas.

Washing driveways, sidewalks, parking areas, or other impervious surface areas on a commercial property with an open hose, or a spray nozzle attached to an open hose, or under regular or system pressure, except when required to eliminate conditions that threaten public health, safety or welfare, shall be prohibited. This restriction does not apply to residential customers except when such activity is prohibited by the provisions of a Drought Management Plan.

§ 51.09. Irrigation System Operations.

It shall be unlawful to operate a permanently installed irrigation system with a broken head or emitter, or with a head that is spraying more than 10 percent of the spray onto the street, parking lot, or sidewalk. This prohibition does not apply unless the head or emitter was designed to deliver more than one gallon of water per hour during normal use.

§ 51.10. Minimum irrigation area and flow direction.

- (A) Effective March 1, 2009, newly installed irrigation systems using pop-up spray or rotor technology shall not be used in landscaped areas which have both:
 - (1) dimensions less than five feet in length and/or width; and
 - (2) impervious pedestrian or vehicular traffic surfaces along two (2) or more perimeters.
- (B) Where pop-up spray and rotor heads are allowed in newly installed irrigation systems, they:
 - (1) must direct flow away from any adjacent impervious surface; and

(2) shall not be placed within four (4) inches from an impervious surface.

§ 51.11. Irrigation System Rain Sensors.

Effective March 1, 2009, rain sensors shall be installed and maintained on all irrigation systems equipped with automatic irrigation controllers on irrigation systems installed after March 1, 2009.

§ 51.12. Zonal Irrigation System.

In-ground irrigation systems installed on and after March 1, 2009, shall be zonal irrigation systems.

§ 51.13. Irrigation Tailwater.

The escape of irrigation tailwater, as that term is commonly used in the agricultural community, shall be prohibited. In addition, water loss through percolation in transmission canals shall be prohibited.

§ 51.14. Water Leaks.

Failing to repair a controllable leak, including a broken sprinkler head, a leaking valve, or a leaking faucet shall be unlawful.

§ 51.15. Golf Courses.

No golf courses located within the city limits shall be allowed to irrigate the greens, tees, roughs or fairways with potable water. Use of potable water for landscape irrigation in and around the club house will be permitted but must conform to all other requirements for landscape irrigation.

§ 51.16. Annual irrigation system analysis for athletic fields, and large properties.

- (A) An annual irrigation system analysis demonstrating no water waste shall be required for all athletic fields and large properties shall be submitted in writing to the City of Wimberley on or before May 1st of each year, beginning on May 1, 2009; and
- (B) Municipal tenants and lessees of sports and athletic playing fields, and any other municipally owned properties, shall be responsible for compliance with this section. The City shall look directly to such tenants and lessees for compliance unless the municipality concedes by contractual agreement with the tenant/ lessee to assume the tenant / lessee's responsibility for compliance.

§ 51.17. Commercial Dining Facilities.

Effective March 1, 2009, commercial dining facilities shall:

- (a) Utilize positive shut-offs for hand-held dish-rinsing wands.
- (b) Utilize water flow restrictors for all garbage disposals.
- (c) Not operate a misting system in unoccupied areas.

§ 51.18. Ice Machines.

Effective March 1, 2009, newly installed ice machines shall not be single pass water-cooled.

§ 51.19. Vehicle Wash Facilities.

- (A) Vehicle wash facilities, commencing operation on or after March 1, 2009, using conveyORIZED, touchless, and / or rollover in-bay technology shall reuse a minimum of fifty percent (50%) of water from previous vehicle rinses in subsequent washes.
- (B) Vehicle wash facilities, commencing operation on or after March 1, 2009, using reverse osmosis to produce water rinse with a lower mineral content, shall incorporate the unused concentrate in subsequent vehicle washes.
- (C) Regardless of date of operation commencement, from and after March 1, 2009, self-service spray wands used shall emit no more than three gallons of water per minute.

§ 51.20. Condensate Collection.

- (A) Newly constructed commercial buildings installing air conditioning systems on and after March 1, 2009, shall have a single and independent condensate wastewater line to collect condensate wastewater to provide for future utilization as (i) process water and cooling tower make-up and/or (ii) landscape irrigation water.
- (B) Condensate wastewater shall not be allowed to drain into a storm sewer, roof drain overflow piping system public way or impervious surface.

§ 51.21. Xeriscape Option.

Effective March 1, 2009, homebuilders and/or developers subdividing lots and/or constructing new single family residential homes shall offer a xeriscape option in any series of landscaping options offered to prospective home buyers.

§ 51.22. Model Home Xeriscape.

Effective March 1, 2009, homebuilders and/or developers who construct one or more model homes for a designated subdivision shall have at least one (1) model home per subdivision landscaped according to a xeriscape design.

§ 51.23. Rainwater Harvesting Option.

Effective March 1, 2009, homebuilders and/or developers subdividing lots and/or constructing new single family residential homes shall offer a rainwater harvesting option in any series of design options offered to prospective home buyers.

§ 51.24. Water Purveyors.

Water purveyors operating within the city limits shall be required to implement programs, such as leak detection surveys and repair programs and stabilizing and equalizing system pressure to limit water waste.

§ 51.25. Implementation of additional water use reduction measures, ("aquifer risk").

- (A) Implementation of additional water use reduction measures may occur based on consideration of aquifer water quality or on other aquifer, seasonal or weather conditions.
- (B) Whenever the aquifer quality measures thirty percent (30%) TDS above the historical average and above the maximum TDS value for any public supply water well, the City Council, may declare additional measures to protect the aquifer as necessary.
- (C) Regardless of consideration of aquifer quality, in consultation with the Hays Trinity Groundwater Conservation District, Wimberley Water Supply Corporation and/or other authorized water purveyor determine that other aquifer, seasonal, or weather conditions warrant, the City Council may also impose additional restrictions for all water uses.

§ 51.26. Nuisance Declared.

The violation of any part of this chapter is deemed a nuisance which may be abated and enjoined by the city. Any person creating a public nuisance shall be subject to the provisions of the Code of Ordinances of the City of Wimberley and other applicable law governing such nuisances, including reimbursing the City for any costs incurred in removing, abating or remedying such nuisance. The owner of any property where such nuisance has occurred shall be liable to the City for the cost of such abatement, removal or remediation, and shall pay such cost on demand, and the City acting for itself shall have the right to file a lien on the property to secure payment of the cost of such abatement, removal or remediation of the nuisance.

§ 51.27. Presumption and Exception.

For purposes of this chapter, it shall be presumed that the person owning the property on which the violation occurred or in whose name a water meter connection is registered with the water purveyor servicing the property, is the responsible party who has made, caused, allowed or permitted a violation of the provisions of this chapter. Proof that the particular premises had a water meter connection registered in the name of the defendant cited in a criminal or civil complaint filed pursuant to this chapter shall constitute a *prima facie* presumption that the defendant is a person who made, caused, allowed or permitted a violation pursuant to the provisions of this chapter.

§ 51.28. Variance.

- (A) Owners of newly seeded or sodded turf grass and landscaping and new residential and commercial developments may receive a landscape watering permit upon application and approval by the City Administrator allowing for daily watering of the same until the turf grass and landscaping are established, which shall not exceed thirty days.
- (B) A person who is affected by these provisions may seek a variance in the manner set out herein. A person shall request a variance within thirty (30) days of the date a provision becomes apparently applicable to that person's activities and/or properties. For example, a person will have standing to seek a variance within thirty (30) days following receipt of a formal (citation) or informal notice of violation; prior to a notice of violation; or at the discretion of the City Administrator or his designee when, in the City Administrator's judgment, to deny standing to pursue a variance

would clearly deny the applicant an opportunity to have justice and equity done for the applicant's case.

- (C) Time, date, place. A person seeking a variance under these provisions shall make such request in writing to the City Administrator. Such request shall be reviewed by the City Administrator. If the application, on its face, warrants a variance, the City Administrator may grant the request without hearing. Otherwise, the City Administrator shall review such request within thirty (30) days of receipt and shall inform the requestor in writing of the time, date and place for variance hearing if necessary.
- (D) Representation and notice of City's response; First Hearing. The requestor may be represented by a duly authorized representative and may introduce such evidence as the requestor believes to be relevant. The City Administrator shall hear the request. The requestor shall receive written notification by the City Administrator within thirty (30) days of the date of the hearing whether such variance is granted or denied.
- (E) Appeal. In the event the variance is granted, the decision of the City Administrator shall be final. Should the variance be denied, however, the requestor shall have ten (10) days from receipt of the denial of the variance to seek an appeal in writing. Within thirty (30) days of the written request for an appeal from the denial of a variance, the City Council shall hear the appeal. The requestor shall be informed in writing of the time, date and place where such appeal shall be heard. The requestor and/or his authorized representatives may present evidence to the City Council about why such appeal should be granted. The City Council shall make a determination and inform the requestor within ten (10) days of the date of the hearing of the appeal whether the appeal has been granted or denied. The determination of the City Council shall be final and shall be in writing.
- (F) Variance Qualifications. Variances to the regulated activities in this chapter may be issued by the City Administrator provided that the general intent of the provisions of this chapter have been met, and strict compliance with this chapter is proven to be impracticable to accomplish and to cause unnecessary hardship. The criteria to determine hardship shall include, but not be limited to, a showing of level of capital outlay and technical complexity in relation to conservation benefit to be derived, and time and effort required to accomplish compliance with this chapter.
- (G) Variance Criteria. The City Administrator shall also develop specific criteria to be used for the granting of variances from the provisions of this chapter which are appropriate to the provision for which a variance is being sought. Such criteria shall be applied equally to each request for variance under a particular provision. A requestor shall be furnished with the criteria to be utilized by the City Administrator prior to his/her variance application and/or appeal being heard.

§ 51.29. Access to Premises.

The City and its employees shall make every effort to contact the property owner or authorized occupant prior to entering the premises. Authorized persons or agents employed by the City, at all reasonable hours, have access to properties to ascertain if water is being wasted and whether provisions of this chapter have been and are being complied with in all aspects, however, this section does not authorize entry into a residence without consent of the owner or occupant.

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§ 51.30. Authorization to Enforce.

The City Administrator is authorized and directed to commence any action, in law or in equity, including the filing of criminal charges deemed necessary for the purpose of enforcing this chapter. The City Administrator may seek civil penalties or impose surcharges as may be allowed by statute and this ordinance and any other legal or equitable relief available under common law or this ordinance, under Chapter 54 of the Texas Local Government Code as it may be amended to address the subject matter of this chapter, or any other applicable city, state or federal code, ordinance, statute, rule or regulation.

§ 51.31 Administrative Action To Abate Violations.

- (A) The City Administrator may proceed administratively to remove an alleged violation of this Chapter by giving notice to the owner of the property where the alleged violation occurred, in accordance with the following procedures:
 - (1) The notice shall inform the property owner of the alleged violation and state that the owner has seven (7) days from receipt of the notice to comply with this Chapter, and if such action is not taken, the City Administrator may, but is not obligated to:
 - (a) authorize that the necessary work be done or improvements made;
 - (b) pay for the expenses incurred in having the work done or improvements made; and
 - (c) charge the expenses to the property owner.
 - (2) Notice must be given personally to the property owner in writing or by certified mail return receipt requested addressed to the owner at the owner's address as recorded in the records of the Hays County Central Appraisal District.
 - (3) If notice by personal service cannot be obtained, the City Administrator may give notice by:
 - (a) publication of the notice, at least once, in a newspaper of general circulation, as defined by Subchapter C, Chapter 2051, Texas Government Code;
 - (b) posting the notice on or near the front door of each building on the property to which the violation relates; or
 - (c) posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.
 - (4) If notice by letter is mailed to the owner and the U.S. Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected and the notice is considered as delivered.
- (B) If the City incurs expenses for the work done or improvements made, the Council may assess the expenses and create a lien, including possible foreclosure, against the property as follows and in the manner provided by law:

- (1) The City Administrator shall send a statement of expenses to the owner, requesting that payment be made to the City Secretary within twenty (20) days after receipt of the statement. The expenses to be charged to the owner of the property shall include:
 - (a) the amount paid by the City for the work done or improvements made;
 - (b) the costs of inspection;
 - (c) the costs of providing notice;
 - (d) the costs of identifying and notifying the owner of the property; and
 - (e) any incidental expenses.
 - (2) If the violator does not pay the expenses within twenty (20) days of receipt of the statement, the City Secretary shall file a statement of expenses with the Hays County Clerk, including the owner's name, if known, and the legal description of the property. A lien attaches upon the filing of the expense statement with the Hays County Clerk.
 - (3) The lien is security for the expenses incurred by the City and interest accruing at the rate of ten (10) percent per year on the amount due from the date of payment by the City.
 - (4) The lien is inferior only to tax liens and liens for street improvements.
 - (5) The Council may bring a suit for foreclosure in the name of the City to recover the expenses and interest due.
 - (6) The Council may foreclose the lien in a proceeding brought under the Tax Code, Chapter 33, Subchapter E.
 - (7) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the City in doing the work or making the improvements.
- (C) The City, in the notice of violation, may inform the owner by regular mail and a posting on the property that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the City without further notice may correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice occurs within the one-year period, and the City has not been informed in writing by the owner of an ownership change, then the City without notice may take any action permitted by this Section.

§ 51. 32 **Abatement of Nuisance or Violation.**

- (A) The City Administrator may, without notice, abate the waste of water or other violation of this chapter on any lot parcel, or tract of land, or part thereof, within the City in accordance with the procedures in this Section.
- (B) If the City pays the cost of abating the nuisance or violation, the Council shall assess the expenses and, if necessary, create a lien against the lot or parcel of

land, including foreclosure on the property, in the same manner and subject to the same conditions as that described in Section 51.31 of this Chapter.

- (C) Not later than the tenth (10th) day after the date the Council or its designee has abated the nuisance or violation, the City Secretary shall give written notice to the owner of the lot or parcel of land in the manner required by Section 51.31 this Chapter. The notice shall contain:
- (1) an identification, which is not required to be a legal description, of the property;
 - (2) a description of the violations that occurred on the property;
 - (3) a statement that the City has abated the nuisance or violation; and
 - (4) an explanation of the property owner's right to request an administrative hearing regarding the abatement.
- (D) If, not later than the thirtieth (30th) day after the date of the abatement of the nuisance or violation, the property owner files with the City Administrator a written request for an administrative hearing, the Council shall hold and conduct the hearing.
- (1) The hearing shall be held no later than the twentieth (20th) day after the filing of the written request for a hearing.
 - (2) At the administrative hearing:
 - (a) parties are not required to follow formal rules of evidence;
 - (b) the owner may testify or present any witnesses or written information relating to the abatement of the nuisance or violation; and
 - (c) the City may call the City Administrator or other individuals deemed appropriate to testify.

§ 51.33. Enforcement.

- (A) Violations. It shall be a violation of this chapter for any person in the corporate limits of the city that receives water service from a water purveyor authorized to supply water within the city limits, to intentionally, knowingly, recklessly or criminally negligently to allow or cause water waste, to allow landscape watering outside the prescribed hours for sprinkling, or to allow or cause any violation of any provision of this chapter.
- (B) Penalties; surcharges.
- (1) *Criminal.* Any person violating any provision of this chapter shall be guilty of a misdemeanor, and upon citation and conviction, shall be punished by a fine not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00) for the first offense; a fine not less than two hundred dollars (\$200.00) and not more than five hundred dollars (\$500.00) for the second offense; a fine of not less than four hundred dollars (\$400.00) and not more than five hundred dollars (\$500.00) for the third and additional offenses. If the court determines the offense

relates to public health or sanitation, the maximum fine is \$2,000.00, regardless of the number of offenses. Each violation of a particular section of this chapter shall constitute a separate offense, and each day an offense continues shall be considered a new violation for purposes of enforcing this chapter. All fines collected under this section shall be remitted to the City of Wimberley and used by the City for the furtherance of water conservation programs and to help defray the cost of enforcement of this chapter.

(2) *Civil.* Civil penalties, imposed by courts of competent jurisdiction in civil actions for violations of this chapter, may also be assessed as may be allowed by applicable state law in any amount to be authorized by the State of Texas. Under Chapter 54 of the Texas Local Government Code, the City Council may direct the City Attorney to pursue civil enforcement for injunctive relief and the imposition of up to \$1,000.00 per day civil penalties appropriately imposed by the Court. This statutory remedy is in addition to the City's common law right to bring civil actions for injunctive relief to stop harmful acts, independent of authority found in the Texas Local Government Code.

§ 51.34. Defenses.

- (A) It shall be a defense to prosecution or imposition of fines that landscape watering was performed on any plant or seed planted in or transplanted to an area within such period of time as to accomplish a reasonable establishment and maintenance of growth, generally three weeks.
- (B) It shall be a defense to prosecution or imposition of fines that landscape watering was performed by a commercial enterprise in the business of growing or maintaining plants for sale, such as plant nurseries; provided, however, that such landscape watering shall be performed solely for the establishment, growth, and maintenance of such plants and not wasted.
- (C) It shall be a defense to prosecution or imposition of fines that landscape watering was performed by a residential or commercial water customer utilizing water from an on-site rain water harvesting system.
- (D) Use of gray water, treated wastewater or reuse water is a defense to prosecution, Deleted: "

Except as expressly amended herein, the Wimberley Code of Ordinances shall remain in full force and effect.

SECTION 3. EFFECTIVE DATE

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

SECTION 4. NO VESTED INTEREST

No person shall acquire any vested interest in this Ordinance or any specific regulations contained herein. This Ordinance and any regulation enacted hereby may be amended or repealed by the City Council in the manner provided by law.

SECTION 5. SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

SECTION 6. 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.

FIRST READING PASSED AND APPROVED this _____ day of _____, 2009, by a _____ to _____ vote of the City Council of Wimberley, Texas.

SECOND READING PASSED AND APPROVED this _____ day of _____, 2009, by a _____ to _____ vote of the City Council of Wimberley, Texas.

WIMBERLEY, TEXAS

By: _____
Tom Haley
Mayor

ATTEST:

Cara McPartland, City Secretary

APPROVED AS TO FORM:

Carolyn J. Crosby, Assistant City Attorney

City Council Agenda Form



Date Submitted: February 2, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER APPROVAL OF
AN ORDINANCE CALLING THE MAY 9, 2009 JOINT
ELECTION FOR THE CITY OF WIMBERLEY

Funds Required:

Funds Available:

Council Action Requested:

☒ Ordinance

☐ Resolution

☒ Motion

☒ Discussion

Project/Proposal Summary:

The item was placed on the agenda to allow City Council to discuss and consider calling the Joint Election for the City of Wimberley in May 2009. Other entities participating in the election include the Wimberley ISD and Hays County.

In the City of Wimberley, voters will be electing Council Members for Places One, Three and Five. Wimberley ISD voters will be electing several trustees, and voters in Hays County Precinct Three will be voting on a proposal to allow the sale of all alcoholic beverages, including mixed drinks, within the precinct.

Election Day will be Saturday, May 9, 2009. The election day polling place will be the Wimberley Community Center where the polls will be open from 7 a.m. to 7 p.m.

Early voting by personal appearance will also be conducted at the Community Center on Monday, April 27, 2009 from 8 a.m. to 8 p.m.; Tuesday, April 28, 2009 through Friday, May 1, 2009 from 8 a.m. to 5 p.m.; Saturday, May 2, 2009 from 10 a.m. to 2 p.m.; Monday, May 4, 2009 from 8 a.m. to 8 p.m. and Tuesday, May 5, 2009 from 8 a.m. to 5 p.m.

All three entities are contracting with the Hays County Elections Division to conduct the election. The County Election Administrator will serve as the early voting clerk.

Approval of the attached ordinance is necessary to proceed with preparations for the election.

ORDINANCE NO. 2009-_____

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, ORDERING A GENERAL ELECTION ON MAY 9, 2009, FOR THE PURPOSE OF ELECTING CITY COUNCIL MEMBERS FOR PLACES ONE, THREE AND FIVE OF THE CITY OF WIMBERLEY CITY COUNCIL, SUCH ELECTION TO BE HELD JOINTLY WITH HAYS COUNTY AND WIMBERLEY ISD; ESTABLISHING EARLY VOTING LOCATIONS AND POLLING PLACES FOR THE ELECTION; MAKING OTHER PROVISIONS FOR THE CONDUCT OF THE ELECTION; AND PROVIDING FOR FINDINGS OF FACT, SEVERABILITY, CONFLICTING PROVISIONS, GOVERNING LAW, PROPER NOTICE AND OPEN MEETING, AND AN EFFECTIVE DATE.

WHEREAS, the City of Wimberley desires to hold a General Election on May 9, 2009 for the purpose of electing Council Members for Places One, Three and Five; and

WHEREAS, the Wimberley Independent School District desires to hold an election on May 9, 2009 for the purpose of electing trustees; and

WHEREAS, Hays County desires to hold an election on May 9, 2009 for the purpose of whether or not to allow the sale of all alcoholic beverages in Precinct Three; and

WHEREAS, the City, the Wimberley Independent School District and Hays County have or will enter into agreements to agree to hold a Joint Election for the purpose of combining the elections of the three entities and agree that a joint election will lead to efficiency; and

WHEREAS, this ordinance is in furtherance of the public interest, for the good of government, peace and order of the City, and necessary and proper for carrying out the power granted by law to the City.

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

SECTION 1. Call of Election; Date; Eligible Electors; and Hours. A General Election ("election") is ordered to be held, at a polling place and election precincts within the corporate limits of the City of Wimberley, as hereinafter designated, on Saturday, May 9, 2009, from the hours of 7:00 a.m. to 7:00 p.m., at which election there shall be elected one (1) City Councilmember for Place One, one (1) City Councilmember for Place Three and one (1) City Councilmember for Place Five (5) for the City of Wimberley. The Council Members shall be elected to serve a term of two (2) years. All residents, qualified electors of the City shall be entitled to vote in the election.

SECTION 2. Voting Precincts. The boundaries and territory of the respective Hays County Election Precincts that are partially within the territorial boundaries of the City are hereby designated as the voting precincts of the City for the election. The precinct numbers for

the City's election precincts shall be the corresponding Hays County Election Precinct Number of each precinct.

The Council finds that combination of the territory of the three Hays County Election Precincts (election precincts 333, 335 and 337) that are partially within the City into one voting precinct of the City served by a single polling place for the purposes of this election will result in a more convenient voting opportunity for the voters and a more efficient and cost effective administration of this election and such voting precincts are hereby combined and are designated with the corresponding numbers of the three Hays County Election Precinct Numbers of the underlying precincts (Precinct No. 333/335/337).

SECTION 3. Voting Locations. The polling place for the combined election precincts for this election shall be as follows:

City of Wimberley
Community Center
14068 Ranch Road 12
Wimberley, Texas 78676

SECTION 4. Conduct of Election and Election Services Contract. Pursuant to Subchapter D of Chapter 31 of the Texas Election Code and Chapter 791 of the Texas Government Code, the City Council orders that this election be conducted under the terms and conditions of a Contract for Election Services between the City and County of Hays ("County"), attached as "Exhibit A" and incorporated herein for all purposes. Pursuant to Chapter 271 of the Texas Election Code, the City election shall be conducted by Hays County Elections Administrator under the terms and conditions of an Election Services Contract. The election shall be held under, and in accordance with the laws of the State of Texas. Pursuant to Chapter 271 of the Texas Election Code, the Council orders that the election be conducted under the terms and conditions of the joint election agreement between the City and Wimberley Independent School District.

SECTION 5. Appointment of Election Officers. The City Council shall appoint the persons described on Exhibit "B", attached and incorporated by reference, for purposes of presiding judge and alternate presiding judge to serve for this election including early voting, which shall act in accordance with the Texas Election Code and all applicable ordinances. The presiding judge may appoint up to two clerks to serve and assist in conducting the election.

Each presiding and alternate presiding judge shall be given written notice of the appointment in accordance with Texas Election Code Section 32.009. Each presiding judge shall be served with a writ of election (notice of election) in accordance with Texas Election Code Section 4.007.

The Presiding Election Judge shall be compensated at the rate of \$7.00 per hour and election clerks shall be compensated at the rate of \$7.00 per hour. In addition, election judges responsible for delivering the ballots and other election materials and records to the Return Center shall be paid \$25.00 for such delivery. Compensable hours shall be determined in

accordance with the provisions of the Texas Election Code, as amended (the "Election Code") and other applicable laws.

SECTION 6. Early Voting. Joyce A. Cowan is appointed joint early voting clerk for early voting for the City.

SECTION 7. Early Voting by Personal Appearance. The polling place for early voting by personal appearance for the City election is:

City of Wimberley
Community Center
14068 Ranch Road 12
Wimberley, Texas 78676

Early voting by personal appearance shall be conducted on Monday, April 27, 2009 from 7 a.m. to 7 p.m.; Tuesday, April 28, 2009 through Friday, May 1, 2009 from 8 a.m. to 5 p.m.; Saturday, May 2, 2009 from 10 a.m. to 2 p.m.; Monday, May 4, 2009 from 7 a.m. to 7 p.m. and Tuesday, May 5, 2009 from 8 a.m. to 5 p.m.

SECTION 8. Early Voting by Mail. Early voting by mail shall be conducted in accordance with applicable provisions of the Texas Election Code. Ballot applications and ballots voted by mail shall be sent to: Hays County Elections Administrator, 401 Broadway Street, San Marcos, Texas, 78666. Applications for ballot by mail must be received no later than the close of business on Friday, May 1, 2009.

SECTION 9. Early Voting Ballot Board. The City Council will appoint the Presiding Judge of the Early Voting Ballot Board at a subsequent meeting. The Presiding Judge shall appoint two or more election clerks, and such judge and clerks shall constitute the Early Voting Ballot Board. All early votes and other votes to be processed in accordance with early voting procedures pursuant to the Texas Election Code shall be delivered to the Early Voting Ballot Board at the Hays County Election Administrator's Office, 401-C Broadway Street in the City of San Marcos, Texas in accordance with the Election Code. The Early Voting Ballot Board shall perform its duties in accordance with applicable provisions of the Election Code.

SECTION 10. Ballots and Election Expenditures Authorized. All ballots shall be prepared in accordance with the Texas Election Code. Paper ballots shall be used for early voting by mail and eSlate Direct Recording Electronic (DRE) Voting System shall be used for early voting by personal appearance and voting on Election Day, both of which are part of the eSlate DRE Voting System. The Board hereby adopts for use in early and Election Day the eSlate Direct Recording Electronic (DRE) Voting System as approved by the Secretary of State. All expenditures necessary for the conduct of the election, the purchase of materials, the securing of election services from the Hays County Elections Administrator pursuant to an Election Service Contract and the employment of all election officials is hereby authorized.

SECTION 11. The election shall be held under, and in accordance with the laws of the State of Texas.

SECTION 12. Notice. Notice of the election, including a Spanish translation thereof, shall be published at least once in a newspaper published within the territory of the City of Wimberley on or before April 17, 2009, and shall be posted on the bulletin board at City Hall on or before April, 17, 2009.

SECTION 13. Election Information to be provided in Spanish. Election notices, instructions, orders, ballots and other written material pertaining to the Election shall be translated into and furnished to voters in both the English and the Spanish language.

SECTION 14. Severability. If any portion of this Ordinance or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance and the application of such provision to other persons and circumstances shall remain valid and in full force and effect, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 15. Conflicting Provisions. All orders and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Order shall be and remain controlling as to the matters ordered herein.

SECTION 16. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 17. Proper Notice and Open Meeting. It is hereby officially found and determined that the meeting at which this Ordinance was acted upon 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.

SECTION 18. Authorization to Execute. The Mayor is authorized to execute and the City Secretary is authorized to attest this Ordinance on behalf of the Board; and the Mayor is authorized to do all other things legal and necessary in connection with the holding and consummation of the Election.

SECTION 19. Effective Date. This Ordinance is effective immediately upon its passage and approval.

PASSED AND APPROVED by the City of Wimberley City Council on the 5th day of February, 2009 by a vote of ____ (Ayes) and ____ (Nayes).

CITY OF WIMBERLEY

By: _____
Tom Haley, Mayor

ATTEST:

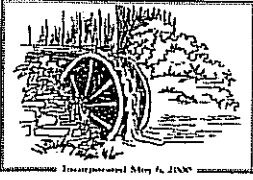
Cara Mc Partland, City Secretary

(SEAL)

APPROVED AS TO FORM:

Carolyn J. Crosby, Assistant City Attorney

City Council Agenda Form



Date Submitted: February 2, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER APPROVAL OF
THE AUDITED FINANCIAL STATEMENT FOR THE
FISCAL YEAR ENDED SEPTEMBER 30, 2008

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

☒ Motion

☒ Discussion

Project/Proposal Summary:

In January 2009, Mr. Preston Singleton - the City's outside auditor - completed the audited annual financial report for the fiscal year ended September 30, 2008. Mr. Singleton will be present at the City Council meeting to answer questions regarding the report.

CITY OF WIMBERLEY, TEXAS

**ANNUAL FINANCIAL AND
COMPLIANCE REPORT**

**FOR THE YEAR ENDED
SEPTEMBER 30, 2008**

Singleton, Moore & Co., LLP
Certified Public Accountants

**930 South Bell Boulevard, Suite 404
Cedar Park, Texas 78613
Phone (512) 310-5600 Fax (512) 310-5689**

**CITY OF WIMBERLEY, TEXAS
ANNUAL FINANCIAL REPORT
FOR THE YEAR ENDED SEPTEMBER 30, 2008**

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930 S. Bell Blvd., Suite 404 Cedar Park, Texas 78613
phone (512) 310-5600 fax (512) 310-5689

Independent Auditors' Report

Honorable Mayor and City Council
City of Wimberley, Texas

Mayor and Members of the Council:

We have audited the accompanying financial statements of the governmental activities, each major fund, and the aggregate remaining fund information of the City of Wimberley, Texas, (the "City") as of and for the year ended September 30, 2008, which collectively comprise the City's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the City's administrators. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, each major fund, and the aggregate remaining fund information of the City of Wimberley, Texas, as of September 30, 2008, and the respective budgetary comparison for the General Fund for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Management's Discussion and Analysis on pages 2-7 of this report is not a required part of the basic financial statements but is supplementary information required by the Government Accounting Standards Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

In accordance with *Government Auditing Standards*, we have also issued our report dated January 9, 2009, on our consideration of the City's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grants. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

Singleton, Moore & Company, LLP

Singleton, Moore & Co., LLP
Cedar Park, Texas
January 9, 2009

CITY OF WIMBERLEY, TEXAS

MANAGEMENT'S DISCUSSION AND ANALYSIS

MANAGEMENT'S DISCUSSION AND ANALYSIS

This section of the City of Wimberley's annual financial report presents our discussion and analysis of the financial performance of the City during the fiscal year ended September 30, 2008. Please read it in conjunction with the financial statements, which follow this section.

FINANCIAL HIGHLIGHTS

- For the year ended September 30, 2008, the City of Wimberley's General Fund realized a fund balance increase of \$233,179 to end the year at \$868,714.
- Total governmental-type funds (the General Fund plus the Cypress Creek Nature Trail and the Blue Hole Park Funds) of the City of Wimberley reported an overall fund balance increase of \$278,681, to end at \$1,098,644.
- The total cost of the City of Wimberley's programs and services was \$705,256. This amount is inclusive of depreciation expense recorded on the City's capital assets.

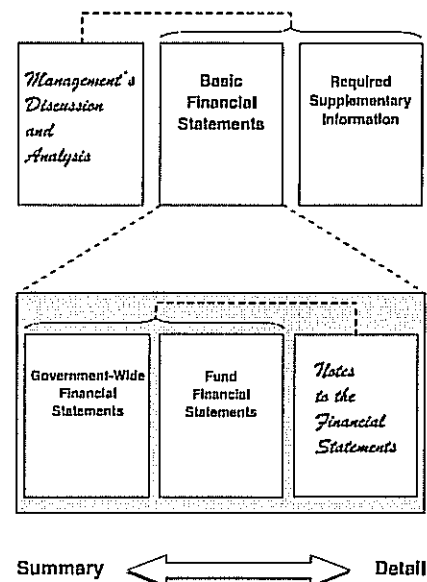
OVERVIEW OF THE FINANCIAL STATEMENTS

This annual report consists of three parts - *management's discussion and analysis* (this section), the *basic financial statements*, and *required supplementary information*. The basic financial statements include two types of statements that present different views of the City of Wimberley:

- The first two statements are government-wide financial statements that provide both long-term and short-term information about the City of Wimberley's overall financial status.
- The remaining statements are fund financial statements that focus on individual parts of the government, reporting the City of Wimberley's operations in more detail than the government-wide statements.
- The governmental funds statements tell how general government services were financed in the short-term as well as what remains for future spending.

The financial statements also include notes that explain some of the information in the financial statements and provide more detailed data. The statements are followed by a section of required supplementary information that further explains and supports the information in the financial statements. Figure A-1 shows how the required parts of this annual report are arranged and related to one another.

Figure A-1. Required Components of the City's Annual Financial Report



Government-wide Statements

The government-wide statements report information about the City of Wimberley as a whole using accounting methods similar to those used by private-sector companies. The Statement of Net Assets includes all of the government's assets and liabilities. All of the current year's revenues and expenses are accounted for in the Statement of Activities regardless of when cash is received or paid.

The two government-wide statements report the City of Wimberley's net assets and how they have changed. Net assets - the difference between the City of Wimberley's assets and liabilities - is one way to measure the City of Wimberley's financial health or position. Over time, increases or decreases in the City of Wimberley's net assets are an indicator of whether its financial health is improving or deteriorating, respectively.

The government-wide financial statements of the City of Wimberley include the *governmental activities*. All of the City of Wimberley's basic services are included here, such as general government services, public safety, street repairs, and parks services. Sales taxes, franchise taxes, and user charges finance most of these activities.

FINANCIAL ANALYSIS OF THE CITY OF WIMBERLEY AS A WHOLE

Our analysis here focuses on the net assets (Table I) and changes in net assets (Table II) of the City's governmental activities.

Table I
Net Assets

	Governmental Activities		
	2008	2007	Change
Assets			
Current and other assets	\$ 1,154,143	\$ 865,911	\$ 288,232
Capital assets	5,641,880	5,656,970	(15,090)
Total Assets	6,796,023	6,522,881	273,142
Liabilities			
Current liabilities	55,499	45,948	9,551
Total Liabilities	55,499	45,948	9,551
Non-current liabilities	23,335	-	23,335
Total Liabilities	78,834	45,948	32,886
Net Assets			
Invested in capital assets, net of debt	5,618,545	5,656,970	(38,425)
Restricted	576,702	365,000	211,702
Unrestricted	521,942	454,963	66,979
Total Net Assets	\$ 6,717,189	\$ 6,476,933	\$ 240,256

FINANCIAL ANALYSIS OF THE CITY OF WIMBERLEY AS A WHOLE (continued)

Table II
Changes in Net Assets

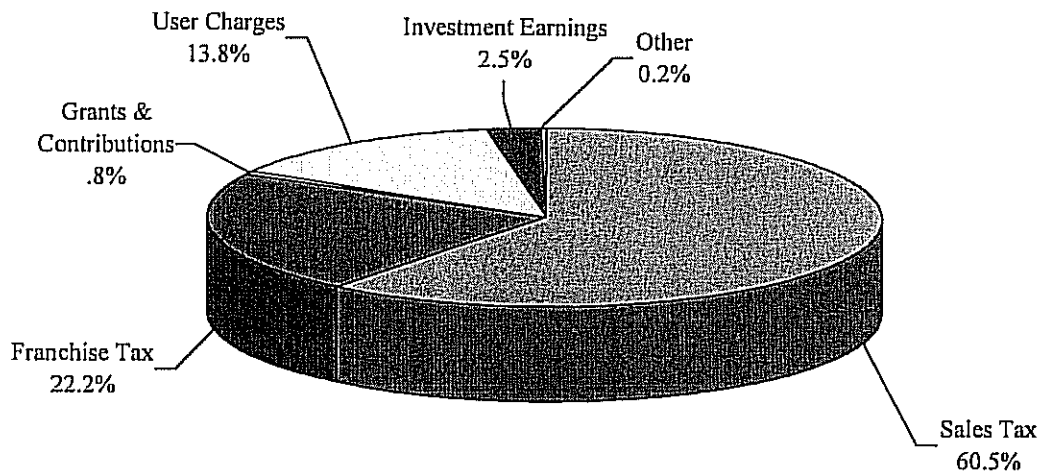
	<u>Governmental Activities</u>		
	<u>2008</u>	<u>2007</u>	<u>Change</u>
Revenues			
Program Revenues:			
Charges for services	\$ 130,762	\$ 90,485	\$ 40,277
Operating and capital grants	7,000	46,127	(39,127)
General Revenues:			
Sales taxes	572,120	531,421	40,699
Franchise taxes	209,880	173,043	36,837
Grants and contr., not restricted	-	124,127	(124,127)
Investment earnings	23,912	27,065	(3,153)
Other	1,838	8,252	(6,414)
Total Revenues	<u>945,512</u>	<u>1,000,520</u>	<u>(55,008)</u>
Expenses			
General government	388,720	395,257	(6,537)
Public safety	68,236	13,442	54,794
Highways and streets	233,118	299,053	(65,935)
Parks and recreation	15,182	34,715	(19,533)
Total Expenses	<u>705,256</u>	<u>742,467</u>	<u>(37,211)</u>
Change in Net Assets	<u>240,256</u>	<u>258,053</u>	<u>(17,797)</u>
Beginning Net Assets	<u>6,476,933</u>	<u>6,218,880</u>	<u>258,053</u>
Ending Net Assets	<u>\$ 6,717,189</u>	<u>\$ 6,476,933</u>	<u>\$ 240,256</u>

Governmental Activities

As indicated by the chart on the following page, over half of the City of Wimberley's revenue stream for Fiscal Year 2007/2008 was composed of sales taxes. Other significant sources of revenues were, franchise taxes (22%), user charges (13%), and investment earnings (2%). The City did not levy or collect a property tax for Fiscal Year 2007-2008.

FINANCIAL ANALYSIS OF THE CITY OF WIMBERLEY AS A WHOLE (continued)

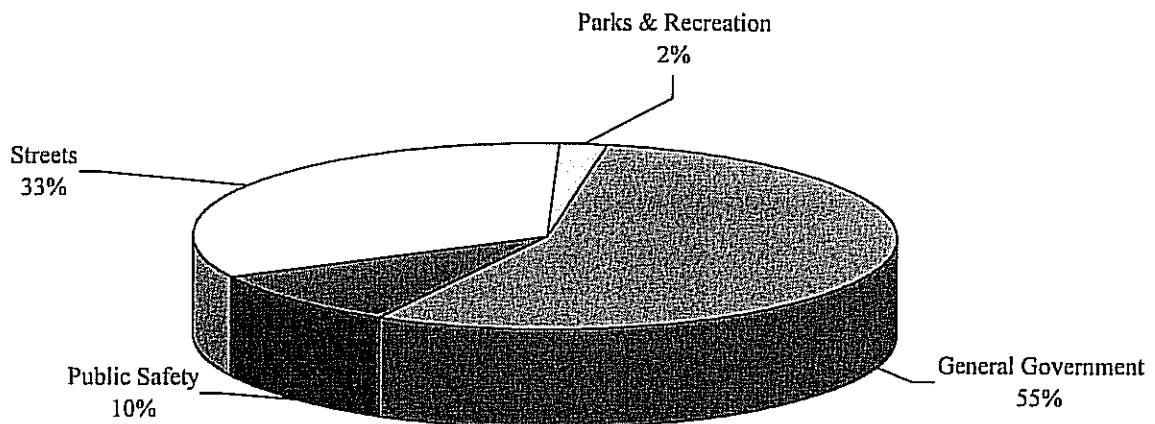
FY 2007-2008 Revenue Analysis



Program Expenses

The City of Wimberley's various program expenses totaled \$705,256 for the year ended September 30, 2008. The percentage distribution by program is illustrated in the table below.

FY 2007-2008 Expenditures



CAPITAL ASSETS AND DEBT ADMINISTRATION

Capital Assets

At the end of 2008 the City of Wimberley had invested approximately \$5.64 million in a broad range of capital assets, including land, buildings, and equipment. (See table below) This amount is net of accumulated depreciation and represents a decrease of approximately \$15,000 over the prior year. The decrease in capital asset balances over the prior year is primarily due to depreciation for the year exceeding new asset additions.

<u>Capital Assets</u>	<u>2008</u>	<u>2007</u>	<u>Change</u>
Land	\$ 3,386,499	\$ 3,386,499	\$ -
Buildings and improvements	2,243,321	2,213,275	30,046
Infrastructure	104,821	104,821	0
Furniture, equipment and vehicles	165,012	121,151	43,861
Total at Historical Cost	5,899,653	5,825,746	73,907
Less accumulated depreciation	(257,770)	(168,774)	(88,996)
Net Capital Assets	<u>\$ 5,641,883</u>	<u>\$ 5,656,972</u>	<u>\$ (15,089)</u>

Long-Term Debt

During 2008, the City entered into a lease agreement to finance the purchase of a police vehicle. The lease amount is \$23,335 and is payable over four years at an interest rate of 5.75% in annual amounts of \$6,696. This lease represents the only long-term debt of the City.

Financial Analysis of Governmental Funds

Fund balance of the General Fund increased during the year by \$233,179. This change reflects the effects of revenues being realized approximately 2% over budgeted amounts and expenditures arriving approximately 32% under budget.

In addition to the General Fund, the City maintains two special revenue funds; the Cypress Creek Nature Trail Fund and the Blue Hole Park Fund. These separate funds are maintained to segregate the financial transactions of the activities accounted for in those funds. The Blue Hole Fund experienced a fund balance increase of \$48,896 during the year as a result of revenues generated from the seasonal operation of the Blue Hole Park's swimming area. The Cypress Creek Nature Trail Fund experienced a fund balance decrease of \$3,394 due to expenditures associated with several capital improvements made in the Cypress Creek Nature Trail Park during the fiscal year. These special revenue funds are expected to continue in future years.

ECONOMIC FACTORS AND NEXT YEAR'S BUDGETS AND RATES

The City's elected and appointed officials considered many factors when setting the Fiscal Year 2009 Budget and fees to be charged. One of these factors is the slow economy. As a result of the financial challenges facing all municipalities, the City set goals to maintain its financial stability, a lean community services minded organization, a competitively paid staff and investment in capital outlay. These goals were taken into account when adopting the operating budget for Fiscal Year 2009. The Fiscal Year 2009 Budget is \$852,000. This represents a decrease of \$12,000, or 1.4 %, under the adopted budget of the previous fiscal year.

ECONOMIC FACTORS AND NEXT YEAR'S BUDGETS AND RATES (continued)

Professional service contracts for the cost of legal services have been increased to meet projected demands associated with the City's municipal court operation and planned downtown development. Decreases have been forecast for those professional service contracts which oversee new development as the City continues to experience limited growth. Fiscal Year 2009 projected capital outlay expenses remain focused on parks and infrastructure investment.

In the absence of a property tax, the General Fund's largest single revenue source is sales taxes which represent 56 percent of the total General Fund budgeted revenues for Fiscal Year 2009. The City collects a 1 percent sales tax on all taxable goods in the City. Projected sales tax revenue for Fiscal Year 2009 is \$476,400 – down 5 percent from the previous fiscal year.

CONTACTING THE CITY OF WIMBERLEY'S FINANCIAL MANAGEMENT

This financial report is designed to provide our citizens, taxpayers, customers, and investors and creditors with a general overview of the City of Wimberley's finances and to demonstrate the City of Wimberley's accountability for the money it receives. If you have questions about this report or need additional financial information, contact the City of Wimberley's Administrator, Don Ferguson at 512-847-0025. You may also visit the City of Wimberley's website at www.vil.wimberley.tx.us.

CITY OF WIMBERLEY, TEXAS
STATEMENT OF NET ASSETS
SEPTEMBER 30, 2008

EXHIBIT A-1

Data Control Codes		Primary Government
		Governmental Activities
ASSETS		
1010	Cash and Cash Equivalents	\$ 532,111
1030	Investments - Current	523,071
1150	Receivables (net of allowance for uncollectibles)	98,961
	Capital Assets:	
1710	Land	3,386,499
1720	Infrastructure, net	82,649
1730	Buildings, net	2,103,734
1750	Machinery and Equipment, net	68,998
1000	Total Assets	6,796,023
LIABILITIES		
2020	Accounts Payable	55,499
	Noncurrent Liabilities	
2501	Due Within One Year	6,696
2502	Due in More Than One Year	16,639
2000	Total Liabilities	78,834
NET ASSETS		
3200	Invested in Capital Assets, Net of Related Debt	5,618,545
	Restricted for:	
3810	Restricted for Soccer Fields	146,702
3820	Restricted for Public Works	300,000
3830	Restricted for Special Projects	130,000
3900	Unrestricted Net Assets	521,942
3000	Total Net Assets	\$ 6,717,189

The notes to the Financial Statements are an integral part of this statement.

CITY OF WIMBERLEY, TEXAS
STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED SEPTEMBER 30, 2008

EXHIBIT B-1

Data Control Codes	Program Revenues			Net (Expense) Revenue and Changes in Net Assets
	Expenses	Charges for Services	Operating Grants and Contributions	Primary Gov. Governmental Activities
Primary Government:				
GOVERNMENTAL ACTIVITIES:				
0010 General Government	\$ 388,720	\$ 106,745	\$ -	\$ (281,975)
0020 Public Safety	68,236	-	-	(68,236)
0031 Highways and Streets	233,118	-	-	(233,118)
0050 Parks and Recreation	15,182	24,017	7,000	15,835
TOTAL PRIMARY GOVERNMENT:	\$ 705,256	\$ 130,762	\$ 7,000	(567,494)
General Revenues:				
Taxes:				
5120 Sales Taxes				572,120
5170 Franchise Taxes				209,880
5700 Miscellaneous Revenue				1,838
5800 Investment Earnings				23,912
				807,750
				Change in Net Assets 240,256
				Net Assets—Beginning 6,476,933
				Net Assets—Ending \$ 6,717,189

The notes to the Financial Statements are an integral part of this statement.

CITY OF WIMBERLEY, TEXAS
BALANCE SHEET
GOVERNMENTAL FUNDS
SEPTEMBER 30, 2008

EXHIBIT C-1

Data Control Codes	General Fund	Cypress Creek Nature Trail Fund	Blue Hole Park Fund	Total Governmental Funds
ASSETS				
1010 Cash and Cash Equivalents	\$ 456,996	\$ 3,394	\$ 71,721	\$ 532,111
1030 Investments	360,632	-	162,439	523,071
1150 Receivables (Net)	98,961	-	-	98,961
1300 Due from Other Funds	5,444	-	-	5,444
1000 Total Assets	<u>\$ 922,033</u>	<u>\$ 3,394</u>	<u>\$ 234,160</u>	<u>\$ 1,159,587</u>
LIABILITIES AND FUND BALANCES				
Liabilities:				
2010 Accounts Payable	\$ 43,066	\$ -	\$ 2,065	\$ 45,131
2020 Wages and Salaries Payable	10,253	-	115	10,368
2080 Due to Other Funds	-	3,394	2,050	5,444
2000 Total Liabilities	<u>53,319</u>	<u>3,394</u>	<u>4,230</u>	<u>60,943</u>
Fund Balances:				
Reserved For:				
3420 Public Works	300,000	-	-	300,000
3430 Soccer Fields	-	-	146,702	146,702
3440 Encumbrances	130,000	-	-	130,000
Unreserved Designated For:				
3510 Parks	-	-	83,228	83,228
Unreserved and Undesignated:				
3600 Reported in the General Fund	438,714	-	-	438,714
3000 Total Fund Balances	<u>868,714</u>	<u>-</u>	<u>229,930</u>	<u>1,098,644</u>
4000 Total Liabilities and Fund Balances	<u>\$ 922,033</u>	<u>\$ 3,394</u>	<u>\$ 234,160</u>	<u>\$ 1,159,587</u>

The notes to the Financial Statements are an integral part of this statement.

CITY OF WIMBERLEY, TEXAS
RECONCILIATION OF THE GOVERNMENTAL FUNDS BALANCE SHEET TO THE
STATEMENT OF NET ASSETS
SEPTEMBER 30, 2008

EXHIBIT C-2

Total Fund Balances - Governmental Funds	\$ 1,098,644
Capital assets used in governmental activities are not financial resources and therefore are not reported in governmental funds. At the beginning of the year, the cost of these assets was \$5,825,745 and the accumulated depreciation was \$168,774. In addition, long-term liabilities, including bonds payable, are not due and payable in the current period, and, therefore are not reported as liabilities in the funds. The net effect of including the beginning balances for capital assets (net of depreciation) and long-term debt in the governmental activities is to increase (decrease) net assets.	5,656,970
Current year capital outlays and long-term debt principal payments are expenditures in the fund financial statements, but they should be shown as increases in capital assets and reductions in long-term debt in the government-wide financial statements. The net effect of including the 2008 capital outlays and debt principal payments is to increase (decrease) net assets.	50,572
The 2008 depreciation expense increases accumulated depreciation. The net effect of the current year's depreciation is to decrease net assets.	(88,997)
Net Assets of Governmental Activities	\$ 6,717,189

The notes to the Financial Statements are an integral part of this statement.

CITY OF WIMBERLEY, TEXAS
STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
GOVERNMENTAL FUNDS
FOR THE YEAR ENDED SEPTEMBER 30, 2008

Data Control Codes	General Fund	Cypress Creek Nature Trail Fund	Blue Hole Park Fund	Total Governmental Funds
REVENUES:				
Taxes:				
5120 General Sales and Use Taxes	\$ 572,120	\$ -	\$ -	\$ 572,120
5170 Franchise Tax	209,880	-	-	209,880
5200 Licenses and Permits	24,017	-	-	24,017
5300 Intergovernmental Revenue and Grants	-	-	7,000	7,000
5400 Charges for Services	51,897	-	54,848	106,745
5610 Investment Earnings	18,756	-	5,156	23,912
5700 Other Revenue	1,838	-	-	1,838
5020 Total Revenues	878,508	-	67,004	945,512
EXPENDITURES:				
Current:				
0010 General Government	386,903	-	-	386,903
0020 Public Safety	60,442	-	-	60,442
0030 Public Works	206,491	-	-	206,491
0050 Parks and Recreation	-	18,222	18,108	36,330
6030 Total Expenditures	653,836	18,222	18,108	690,166
1100 Excess (Deficiency) of Revenues Over (Under) Expenditures	224,672	(18,222)	48,896	255,346
OTHER FINANCING SOURCES (USES):				
7913 Proceeds from Capital Leases	23,335	-	-	23,335
7915 Transfers In	-	14,828	-	14,828
8911 Transfers Out (Use)	(14,828)	-	-	(14,828)
7080 Total Other Financing Sources (Uses)	8,507	14,828	-	23,335
1200 Net Change in Fund Balances	233,179	(3,394)	48,896	278,681
0100 Fund Balance - October 1 (Beginning)	635,535	3,394	181,034	819,963
3000 Fund Balance - September 30 (Ending)	\$ 868,714	\$ -	\$ 229,930	\$ 1,098,644

The notes to the Financial Statements are an integral part of this statement.

CITY OF WIMBERLEY, TEXAS
 RECONCILIATION OF THE GOVERNMENTAL FUNDS STATEMENT OF REVENUES, EXPENDITURES,
 AND CHANGES IN FUND BALANCES TO THE STATEMENT OF ACTIVITIES
 FOR THE YEAR ENDED SEPTEMBER 30, 2008

Total Net Change in Fund Balances - Governmental Funds	\$ 278,681
Current year capital outlays and long-term debt principal payments are expenditures in the fund financial statements, but they should be shown as increases in capital assets and reductions in long-term debt in the government-wide financial statements. The net effect of removing the 2008 capital outlays and debt principal payments is to increase (decrease) net assets.	50,572
Depreciation is not recognized as an expense in governmental funds since it does not require the use of current financial resources. The net effect of the current year's depreciation is to decrease net assets.	(88,997)
Change in Net Assets of Governmental Activities	<u><u>\$ 240,256</u></u>

The notes to the Financial Statements are an integral part of this statement.

CITY OF WIMBERLEY, TEXAS
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL - GENERAL FUND
FOR THE YEAR ENDED SEPTEMBER 30, 2008

Data Control Codes	Budgeted Amounts		Actual Amounts (GAAP BASIS)	Variance With Final Budget Positive or (Negative)	
	Original	Final			
REVENUES:					
Taxes:					
5120	General Sales and Use Taxes	\$ 507,000	\$ 507,000	\$ 572,120	\$ 65,120
5170	Franchise Tax	180,000	180,000	209,880	29,880
5200	Licenses and Permits	66,500	66,500	24,017	(42,483)
5400	Charges for Services	53,000	53,000	51,897	(1,103)
5510	Fines	35,000	35,000	-	(35,000)
5610	Investment Earnings	17,500	17,500	18,756	1,256
5700	Other Revenue	5,000	5,000	1,838	(3,162)
5020	Total Revenues	864,000	864,000	878,508	14,508
EXPENDITURES:					
Current:					
0010	General Government	378,139	405,179	386,903	18,276
0020	Public Safety	109,875	109,875	60,442	49,433
0030	Public Works	365,486	330,046	206,491	123,555
0050	Parks and Recreation	10,500	18,500	-	18,500
6030	Total Expenditures	864,000	863,600	653,836	209,764
1100	Excess (Deficiency) of Revenues Over (Under) Expenditures	-	400	224,672	224,272
OTHER FINANCING SOURCES (USES):					
7913	Proceeds from Capital Leases	-	-	23,335	23,335
8911	Transfers Out (Use)	-	-	(14,828)	(14,828)
7080	Total Other Financing Sources (Uses)	-	-	8,507	8,507
1200	Net Change	-	400	233,179	232,779
0100	Fund Balance - October 1 (Beginning)	635,535	635,535	635,535	-
3000	Fund Balance - September 30 (Ending)	\$ 635,535	\$ 635,935	\$ 868,714	\$ 232,779

The accompanying notes are an integral part of this statement.

CITY OF WIMBERLEY, TEXAS
NOTES TO THE FINANCIAL STATEMENTS
SEPTEMBER 30, 2008

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. REPORTING ENTITY

Wimberley, Texas was incorporated on May 5, 2000 as the "Village of Wimberley" under the provisions of the State of Texas. In June of 2008, the Village of Wimberley officially changed its name to the "City of Wimberley" (hereafter the "City"). The City, a general law municipality, operates as a Mayor/Council form of government and the Mayor is the executive officer of the City. With few exceptions, all powers of the City are vested in the Mayor and the elective Council, which enacts local legislation, adopts budgets, determines policies, and appoints the City Administrator, Attorney, and the Municipal Court Judge. The Mayor and Council also have the primary accountability for fiscal matters. The City provides the following services: public safety, street maintenance, recreation programs, community development, public improvements, and general administrative services.

The City prepares its basic financial statements in conformity with generally accepted accounting principles promulgated by the Governmental Accounting Standards Board and other authoritative sources identified in Statement on Auditing Standards No. 69 of the American Institute of Certified Public Accountants; and it complies with the requirements of the appropriate version of Texas's uniform accounting requirements and the requirements of contracts and grants of agencies from which it receives funds.

The City is a financial reporting entity as defined by the Governmental Accounting Standards Board ("GASB") in its Statement No. 14, "The Financial Reporting Entity." In addition, component units which may be included are organizations for which the nature and the significance of their operational or financial relationship with the City are such that the exclusion would cause the City's financial statements to be misleading or incomplete.

Based upon the foregoing criteria, no component units were required to be included within the financial statements of the City.

B. GOVERNMENT-WIDE AND FUND FINANCIAL STATEMENTS

The Statement of Net Assets and the Statement of Activities are government-wide financial statements. They report information on all of the City's activities with most of the interfund activities removed. Governmental activities include programs supported primarily by taxes, grants, and other intergovernmental revenues. The Statement of Activities demonstrates how other people or entities that participate in programs the City operates have shared in the payment of the direct costs. The "charges for services" column includes payments made by parties that purchase, use, or directly benefit from goods or services provided by a given function or segment of the City. The "grants and contributions" column include amounts paid by organizations outside the City to help meet the operational or capital requirements of a given function. If a revenue is not a program revenue, it is a general revenue used to support all of the City's functions. Taxes are always general revenues.

Interfund activities between governmental funds appear as due to/due froms on the governmental fund Balance Sheet and as other resources and other uses on the governmental fund Statement of Revenues, Expenditures and Changes in Fund Balances. All interfund transactions between governmental funds are eliminated on the government-wide statements.

The fund financial statements provide reports on the financial condition and results of operations for governmental funds. The City considers some governmental funds major and reports their financial condition and results of operations in a separate column.

CITY OF WIMBERLEY, TEXAS
NOTES TO THE FINANCIAL STATEMENTS
SEPTEMBER 30, 2008

C. MEASUREMENT FOCUS, BASIS OF ACCOUNTING, AND FINANCIAL STATEMENT PRESENTATION

The government-wide financial statements use the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of the related cash flows. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

Governmental fund financial statements use the current financial resources measurement focus and the modified accrual basis of accounting. With this measurement focus, only current assets, current liabilities and fund balances are included on the balance sheet. Operating statements of these funds present net increases and decreases in current assets (i.e., revenues and other financing sources and expenditures and other financing uses).

The modified accrual basis of accounting recognizes revenues in the accounting period in which they become both measurable and available, and it recognizes expenditures in the accounting period in which the fund liability is incurred, if measurable, except for the unmatured interest and principal on long-term debt, which is recognized when due. The expenditures related to claims and judgments are recognized when the obligations are expected to be liquidated with expendable available financial resources.

Miscellaneous revenues are recorded as revenue when received in cash because they are generally not measurable until actually received. Investment earnings are recorded as earned, since they are both measurable and available. Grant funds are considered to be earned to the extent of expenditures made under provisions of the grant. Accordingly, when such funds are received, they are recorded as deferred revenues until related and authorized expenditures have been made. If balances have not been expended by the end of the project period, grantors sometimes require the City to refund all or part of the unused amount.

D. FUND ACCOUNTING

Basis of Accounting

The accounts of the City are organized on the basis of funds or account groups, each of which is considered to be a separate fiscal and accounting entity. Each fund is accounted for by providing a separate set of self-balancing accounts recording cash and other financial resources together with all related liabilities and residual equities or balances and changes therein. They are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with specific regulations, restrictions, or limitations.

The City reports the following major governmental funds:

1. **General Fund** – The General Fund is the primary operating fund of the City. It accounts for all financial resources except those required to be accounted for in another fund.
2. **Cypress Creek Nature Trail Fund** – This fund is used to account for the proceeds of revenue sources that are legally restricted to expenditures for the Cypress Creek Nature Trail and for accounting for the nature trails general operations.
3. **Blue Hole Fund** – This fund is used to account for the proceeds of revenue sources that are legally restricted to expenditures for the Blue Hole Park and for accounting for this park's general operations.

CITY OF WIMBERLEY, TEXAS
NOTES TO THE FINANCIAL STATEMENTS
SEPTEMBER 30, 2008

E. OTHER ACCOUNTING POLICIES

Capital Assets

Capital assets, which include land, buildings and improvements, furniture and equipment, and infrastructure, are reported in the government-wide financial statements. Capital assets are defined by the City as assets with an initial, individual cost of more than \$1,000 and an estimated useful life in excess of one year. Such assets are recorded at historical cost or estimated historical cost if purchased or constructed. Donated capital assets are recorded at estimated fair market value at the date of donation.

The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend assets lives are not capitalized. Major outlays for capital assets and improvements are capitalized as projects are constructed.

Infrastructure and machinery and equipment of the City are depreciated using the straight-line method over the following estimated useful lives:

<u>Asset</u>	<u>Years</u>
Buildings	20-40
Infrastructure	40
Machinery and Equipment	5

Fund Balances

In the fund financial statements, governmental funds report reservations of fund balance for amounts that are not available for appropriation or are legally restricted by outside parties for use for a specific purpose. When the City incurs an expense for which it may use either restricted or unrestricted assets, it uses the restricted assets first whenever they will have to be returned if they are not used.

CITY OF WIMBERLEY, TEXAS
NOTES TO THE FINANCIAL STATEMENTS
SEPTEMBER 30, 2008

II. DETAILED NOTES ON ALL FUNDS

A. DEPOSITS AND INVESTMENTS

Legal and Contractual Provisions Governing Deposits and Investments

The funds of the City must be deposited and invested under the terms of a contract, contents of which are set out in the Depository Contract Law. The depository bank places approved pledged securities for safekeeping and trust with the City's agent bank in an amount sufficient to protect City funds on a day-to-day basis during the period of the contract. The pledge of approved securities is waived only to the extent of the depository bank's dollar amount of Federal Deposit Insurance Corporation ("FDIC") insurance.

At September 30, 2008, the carrying amount of the City's deposits (cash, certificates of deposit, money market, and interest-bearing savings accounts included in temporary investments) was \$532,111 and the bank balance was \$538,399.

The **Public Funds Investment Act** (Government Code Chapter 2256) contains specific provisions in the areas of investment practices, management reports and establishment of appropriate policies. Among other things, it requires the City to adopt, implement, and publicize an investment policy. That policy must address the following areas: (1) safety of principal and liquidity, (2) portfolio diversification, (3) allowable investments, (4) acceptable risk levels, (5) expected rates of return, (6) maximum allowable stated maturity of portfolio investments, (7) maximum average dollar-weighted maturity allowed based on the stated maturity date for the portfolio, (8) investment staff quality and capabilities, (9) and bid solicitation preferences for certificates of deposit. Statutes authorize the City to invest in (1) obligations of the U.S. Treasury, certain U.S. agencies, and the State of Texas; (2) certificates of deposit, (3) certain municipal securities, (4) money market savings accounts, (5) repurchase agreements, (6) bankers acceptances, (7) mutual funds (8) investment pools, (9) guaranteed investment contracts, (10) and common trust funds. The Act also requires the City to have independent auditors perform test procedures related to investment practices as provided by the Act. The City is in substantial compliance with the requirements of the Act and with local policies. The City's investments at September 30, 2008 were as follows:

<u>Investment</u>	<u>Carrying Amount</u>	<u>Fair Value</u>
TexPool	<u>\$ 523,071</u>	<u>\$ 523,071</u>
	<u>\$ 523,071</u>	<u>\$ 523,071</u>

Policies Governing Deposits and Investments

In compliance with the Public Funds Investments Act, the City has adopted a deposit and investment policy. That policy addresses the following risks:

Custodial Credit Risk – Deposits: This is the risk that in the event of bank failure, the City's deposits may not be returned to it. The City was not exposed to custodial credit risk since its deposits at year-end and during the year ended September 30, 2008 were covered by depository insurance or by pledged collateral held by the City's agent bank in the City's name.

CITY OF WIMBERLEY, TEXAS
NOTES TO THE FINANCIAL STATEMENTS
SEPTEMBER 30, 2008

Custodial Credit Risk – Investments: This is the risk that, in the event of the failure of the counterparty, the City will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party. Investments are subject to custodial credit risk only if they are evidenced by securities that exist in physical or book entry form. Thus positions in external investment pools are not subject to custodial credit risk because they are not evidenced by securities that exist in physical or book entry form.

Other Credit Risk: There is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. To minimize credit risk, investment policies of the City's investment pools allow the portfolio's investment manager to only invest in obligations of the U.S. Government, its agencies; repurchase agreements; and no-load AAAM money market mutual funds registered with the SEC. As of September 30, 2008, TexPool's investment credit quality rating was AAAM (Standard & Poor's).

B. INTERFUND BALANCES AND TRANSFERS

Short-term advances between funds are recorded as a receivable (Due From) and payable (Due To) between the funds involved in the transaction. As of September 30, 2008, the General Fund had recorded Due From amounts of \$3,394 and \$2,050, from the Cypress Creek Nature Trail fund and the Blue Hole Park fund, respectively.

Operating transfers are transactions of cash or other assets between funds that are intended to be permanent to serve operating needs. During the year the General Fund transferred \$14,828 to the Cypress Creek Nature Trail Fund for operations.

C. CAPITAL ASSETS

Capital asset activity for City of Wimberley for the year ended September 30, 2008, was as follows:

<u>Description</u>	<u>Balance</u> <u>9/30/2007</u>	<u>Additions</u>	<u>Retirements</u>	<u>Balance</u> <u>9/30/2008</u>
Land	\$ 3,386,499	\$ -	\$ -	\$ 3,386,499
Buildings & Improvements	2,213,275	30,046	-	2,243,321
Infrastructure	104,821	-	-	104,821
Machinery and Equipment	<u>121,151</u>	<u>43,861</u>	<u>-</u>	<u>165,012</u>
Total Historical Costs	<u>5,825,746</u>	<u>73,907</u>	<u>-</u>	<u>5,899,653</u>
Less Accumulated Depreciation	<u>(168,774)</u>	<u>(88,996)</u>	<u>-</u>	<u>(257,770)</u>
Governmental Activities Capital Assets, net	<u>\$ 5,656,972</u>	<u>\$ (15,089)</u>	<u>\$ -</u>	<u>\$ 5,641,883</u>

CITY OF WIMBERLEY, TEXAS
NOTES TO THE FINANCIAL STATEMENTS
SEPTEMBER 30, 2008

Depreciation expense was charged to general government departments as follows:

Depreciation expense was allocated to the governmental functions as follows:

<u>Function</u>	<u>Allocated Depreciation</u>
General Government	\$ 49,891
Public Safety	7,794
Public Works	26,627
Culture and Recreation	<u>4,685</u>
Total	<u>\$ 88,997</u>

D. CAPITAL LEASE

In July 2008, the City entered into a lease agreement with a bank to finance the purchase of a police vehicle. The police vehicle was purchased at a cost of \$30,031 and the City made a down payment in the amount of \$6,696 at closing and financed the remaining \$23,335 over a four year term. The lease interest rate is 5.75% per year and total payments of principal and interest are scheduled to be paid in July of each of the fiscal years 2009 through 2012 in set payments of \$6,696. Payments of principal over this four year term will be \$23,335 and interest payments will amount to \$3,448 for a total of \$26,783.

E. RISK MANAGEMENT

A public entity risk pool is a cooperative group of governmental entities joining together to finance an exposure, liability, or risk. The City participates in the Texas Municipal League Risk Pool, a risk-sharing pool, for property, liability, and worker's compensation, wherein member cities pool risks and funds and share in the costs of losses. Claims against the City are expected to be paid by that public entity risk pool. Should the risk pool become insolvent, or otherwise unable to pay claims, the City may have to pay the claims. There were no significant reductions in insurance coverage or insurance settlements exceeding insurance coverage during each of the past three years.

F. LITIGATION

Subsequent to the September 30, 2008 fiscal year end, a prior employee filed a lawsuit against the City with the Texas Workforce Commission (TWC) charging sex discrimination and retaliation. Because TWC only investigates complaints against employers having 15 or more employees, and the City has fewer, TWC will be closing its file on the charge. Subsequently, a lawsuit with the same allegations was filed against specific officials of the City in the 428th District Court of Hays County, Texas. The matter has been turned over to the City's liability carrier for review. Potential liability to the City in excess of insurance coverage has not yet been determined.



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phone (512) 310-5600 fax (512) 310-5689

REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE
AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN
ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

Honorable Mayor and City Council
City of Wimberley, Texas

Mayor and Members of the Council:

We have audited the financial statements of the City of Wimberley, Texas (the "City") as of and for the year ended September 30, 2008, and have issued our report thereon dated January 9, 2009. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the City's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements but not for the purpose of expressing an opinion on the effectiveness of the City's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the City's internal control over financial reporting.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency or combination of control deficiencies that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control.

A material weakness is a significant deficiency or combination of significant deficiencies that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the entity's internal control.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we considered to be material weaknesses as defined above.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the City's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion.

This report is intended for the information of the Mayor, City Council, and the City administrators, and is not intended to be used and should not be used by anyone other than these specified parties.

Singleton, Moore & Company, LLP

Singleton, Moore & Co., LLP
Cedar Park, Texas

January 9, 2009

CITY OF WIMBERLEY, TEXAS

FY 2007/2008 AUDIT REPORTING PACKAGE

January 9, 2009

CITY OF WIMBERLEY
FY 2007/2008 AUDIT REPORTING PACKAGE
January 9, 2009

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Section II	Summary of Audit Adjustments
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SECTION – I

Required Communications with the Governing Body, Including Internal Control Related Matters



930 S. Bell Blvd., Suite 404 Cedar Park, Texas 78613
phone (512) 310-5600 fax (512) 310-5689

January 9, 2009

To the Honorable Mayor and Council
City of Wimberley
Wimberley, Texas

We have audited the financial statements of the governmental activities, each major fund, and the aggregate remaining fund information of the City of Wimberley for the year ended September 30, 2008, and have issued our report thereon dated January 9, 2009. Professional standards require that we provide you with the following information related to our audit.

Our Responsibility under U.S. Generally Accepted Auditing Standards

As stated in our engagement letter dated May 12, 2008, our responsibility, as described by professional standards, is to express opinions about whether the financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit and subsequent preparation of the financial statements does not relieve you or management of your responsibilities.

Planned Scope and Timing of the Audit

We performed the audit according to the planned scope and timing previously communicated to you in our engagement letter.

Communication of Significant Audit Related Matters

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the City of Wimberley are described in Note I to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during Fiscal Year 2007/2008. We noted no transactions entered into by the governmental unit during the year for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the financial statements was:

Management's estimate of the estimated remaining useful lives of the City's facilities and equipment is based on prior experience and common life spans of the different categories of capital assets. We evaluated the key factors and assumptions used to develop the estimate of the remaining useful lives of facilities and equipment in determining that they are reasonable in relation to the financial statements taken as a whole.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. In addition, none of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to the financial statements taken as a whole. A listing of all adjustments made to the ending account balances of the City accompanies this reporting packet. Some of the entries contained on the listing represent closing entries required to prepare the financial statements from the audited account balances.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated January 9, 2009. That letter is contained within this reporting packet.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the governmental unit's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Communication of Internal Control Related Matters

In planning and performing our audit of the financial statements of the City, we considered the City's internal control over financial reporting ("internal control") as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

Control Deficiency

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis.

Significant Deficiency

A significant deficiency is a control deficiency, or a combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control.

Material Weakness

A material weakness is a significant deficiency, or a combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the entity's internal control.

Our consideration of internal control was for the limited purpose described in the first paragraph and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control that we consider to be material weaknesses, as defined above.

This information is intended solely for the use of the Mayor, Council, and management of the City of Wimberley and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,

Singleton, Moore & Company, LLP

Singleton, Moore & Company, LLP
Cedar Park, Texas

SECTION - II
SUMMARY OF AUDIT ADJUSTMENTS

Adjusting Entries By Entry Number

FY 2008

City of Wimberley, Texas

1/28/2009

Control Code:	Acct. Number		Adjustment		Adjusting Entries Must be Approved by Audit Client. APPROVED BY:
			Debit	Credit	
<u>Adjusting Entry Number: 1</u>					
100 20 6790 00 8 810	01-810.10	Capital Outlay- Vehicle	23,335.18		
100 00 7913 00 8 000	01-????.??	Proceeds from Capital Leases		(23,335.18)	
			<u>23,335.18</u>	<u>(23,335.18)</u>	
Remarks: To record the full amount of the police vehicle purchase as expense and record the financed portion to be paid in later fiscal years as capital lease revenue under governmental accounting standards.					
<u>Adjusting Entry Number: 2</u>					
201 00 3600 00 8 040	01-467.40	Fund Balance- Blue Hole		(20.00)	
201 00 5611 00 8 040	01-508.40	Interest Income- Blue Hole Parkland	20.00		
			<u>20.00</u>	<u>(20.00)</u>	
Remarks: To adjust beginning fund balance to correct variance compared to last year's ending.					
<u>Adjusting Entry Number: 3</u>					
200 00 7915 00 8 000	03-595	Operating Transfer In	3,394.17		
200 00 2081 00 8 305	03-305	Due to General Fund		(3,394.17)	
100 00 1302 20 8 112	01-112.20	Due from Cypress Creek	3,394.17		
100 00 8911 00 8 649	01-649	Operating Transfer-Out		(3,394.17)	
			<u>6,788.34</u>	<u>(6,788.34)</u>	
Remarks: To transfer the remaining equity in the Cypress Creek Fund to the General Fund and close out the Cypress Creek Fund. In FY09 the cash in the bank account of the Cypress Creek Fund should be transferred to the General Fund bank account.					
<u>Adjusting Entry Number: 4</u>					
100 10 6660 00 8 616	01-616.10	Office Supplies		(900.86)	
201 50 6610 00 8 864	01-864.40	Operating Supplies	900.86		
			<u>900.86</u>	<u>(900.86)</u>	
Remarks: To balance the General Fund and the Blue Hole Fund. Each was out of balance by an offsetting amount.					

SECTION - III

SUMMARY OF PROPOSED BUT UNRECORDED JOURNAL ENTRIES

(There were no proposed but unrecorded journal entries this year)

SECTION - IV
MANAGEMENT REPRESENTATION LETTER

City of Wimberley
12111 Ranch Road 12
Wimberley, Texas 78676
Phone (512) 847-0025 Fax (512) 847-0422

January 9, 2009

Singleton, Moore & Co., LLP
930 South Bell Blvd., Suite 404
Cedar Park, Texas 78613

Mr. Singleton:

We are providing this letter in connection with your audit of the financial statements of City of Wimberley as of September 30, 2008 and for the fiscal year then ended for the purpose of expressing opinions as to whether the financial statements present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the City of Wimberley and the respective changes in financial position and, where applicable, cash flows thereof in conformity with U.S. generally accepted accounting principles. We confirm that we are responsible for the fair presentation of the previously mentioned financial statements in conformity with U.S. generally accepted accounting principles. We are also responsible for adopting sound accounting policies, establishing and maintaining effective internal control over financial reporting, and preventing and detecting fraud.

We confirm, to the best of our knowledge and belief, as of January 9, 2009, the following representations made to you during your audit.

- 1) The financial statements referred to above are fairly presented in conformity with U.S. generally accepted accounting principles and include all properly classified funds and other financial information of the primary government and all component units required by generally accepted accounting principles to be included in the financial reporting entity.
- 2) We have made available to you all—
 - a) Minutes of the meetings of the governing board or summaries of actions of recent meetings for which minutes have not yet been prepared.
- 3) There have been no communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices.
- 4) We believe the effects of the uncorrected financial statement misstatements summarized in the attached schedule are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.
- 5) We acknowledge our responsibility for the design and implementation of programs and controls to prevent and detect fraud.
- 6) We have no knowledge of any fraud or suspected fraud affecting the entity involving:
 - a) Management,
 - b) Employees who have significant roles in internal control, or
 - c) Others where the fraud could have a material effect on the financial statements.
- 7) We have no knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, analysts, regulators, or others.
- 8) We have taken timely and appropriate steps to remedy fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse that you have reported to us.
- 9) We have a process to track the status of audit findings and recommendations.

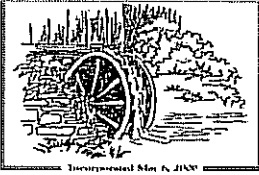
- 10) We have identified to you any previous financial audits, attestation engagements, performance audits, or other studies related to the objectives of the audit being undertaken and the corrective actions taken to address significant findings and recommendations.
- 11) We have provided our views on reported findings, conclusions, and recommendations, as well as our planned corrective actions, for the report.
- 12) The City has no plans or intentions that may materially affect the carrying value or classification of assets, liabilities, or equity.
- 13) The following, if any, have been properly recorded or disclosed in the financial statements:
 - a) Related party transactions, including revenues, expenditures/expenses, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties.
 - b) Guarantees, whether written or oral, under which the City is contingently liable.
 - c) All accounting estimates that could be material to the financial statements, including the key factors and significant assumptions underlying those estimates and measurements. We believe the estimates and measurements are reasonable in the circumstances, consistently applied, and adequately disclosed.
- 14) We are responsible for compliance with the laws, regulations, and provisions of contracts and grant agreements applicable to us, including tax or debt limits and debt contracts; and we have identified and disclosed to you all laws, regulations and provisions of contracts and grant agreements that we believe have a direct and material effect on the determination of financial statement amounts, or other financial data significant to the audit objectives, including legal and contractual provisions for reporting specific activities in separate funds.
- 15) There are no—
 - a) Violations or possible violations of budget ordinances, laws and regulations (including those pertaining to adopting, approving, and amending budgets), provisions of contracts and grant agreements, tax or debt limits, and any related debt covenants whose effects should be considered for disclosure in the financial statements, or as a basis for recording a loss contingency, or for reporting on noncompliance.
 - b) We are not aware of any pending or threatened litigation, claims, or assessments or unasserted claims or assessments that are required to be accrued or disclosed in the financial statements in accordance with *Financial Accounting Standards Board (FASB) Statement No. 5*, and we have not consulted a lawyer concerning litigation, claims, or assessments, that we have not discussed with you.
 - c) Other liabilities or gain or loss contingencies that are required to be accrued or disclosed by FASB Statement No. 5.
 - d) Reservations or designation of fund equity that were not properly authorized and approved.
- 16) As part of your audit, you prepared the draft financial statements and related notes and schedule of expenditure of federal awards. We have designated an individual with suitable skill, knowledge, or experience to oversee your services and have made all management decisions and performed all management functions. We have reviewed, approved, and accepted responsibility for those financial statements and related notes and schedule of expenditure of federal awards.
- 17) The City has complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance.
- 18) The financial statements include all component units as well as joint ventures with an equity interest, and properly disclose all other joint ventures and other related organizations.
- 19) The financial statements properly classify all funds and activities.
- 20) All funds that meet the quantitative criteria in GASB Statement Nos. 34 and 37 for presentation as major are identified and presented as such and all other funds that are presented as major are particularly important to financial statement users.

- 21) Net asset components (invested in capital assets, net of related debt; restricted; and unrestricted) and fund balance reserves and designations are properly classified and, if applicable, approved.
- 22) Provisions for uncollectible receivables have been properly identified and recorded.
- 23) Expenses have been appropriately classified in or allocated to functions and programs in the statement of activities, and allocations have been made on a reasonable basis.
- 24) Revenues are appropriately classified in the statement of activities within program revenues, general revenues, contributions to term or permanent endowments, or contributions to permanent fund principal.
- 25) Interfund, internal, and intra-entity activity and balances have been appropriately classified and reported.
- 26) Special and extraordinary items are appropriately classified and reported.
- 27) Deposits and investment securities are properly classified as to risk, and investments are properly valued.
- 28) Capital assets, including infrastructure assets, are properly capitalized, reported, and, if applicable, depreciated.
- 29) The government meets the GASB-established requirements for accounting for eligible infrastructure assets using the modified approach.
- 30) Required supplementary information (RSI) is measured and presented within prescribed guidelines.

Signed: _____

Title: City Manager

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER APPROVAL OF AN ELECTION SERVICES AGREEMENT WITH HAYS COUNTY

Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☒ Motion
- ☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow the City Council to discuss and consider approval of a proposed contract with the Hays County Elections Administrator to conduct the City's May 2009 election. The proposed agreement calls for the City to be responsible for the following:

- Preparing and adopting all orders and resolutions necessary to conduct the Election
- Preparing and publishing all required election notices
- Providing the ballot language including the list of candidates, or any measures that are to be printed on the ballot with the exact form, wording and spelling that is to be used
- Providing the services necessary to translate any election documents into Spanish.
- Providing technical assistance requested by the Elections Administrator

The Hays County Elections Administrator would be responsible for providing all equipment, supplies, manpower, and oversight for the election.

As for the cost, the agreement calls for the City to be responsible for all expenses incurred for the Election, or any runoff election that may be required. In addition, the City would be required to pay an administrative fee of 10% of the total cost of the Election.

CONTRACT FOR ELECTION SERVICES

THIS CONTRACT, made this ____ day of _____, 2009, by and between the City of Wimberley (the “**CITY**”), a political subdivision located in Hays County, Texas, and the Hays County Elections Officer (the “**OFFICER**”). The City and the Officer are sometimes hereinafter collectively referred to as the “**Parties**”.

WHEREAS, the Officer and the City, both of which are situated in Hays County, Texas, are authorized to execute this Contract pursuant to the provisions of the Texas Election Code, Chapter 31, Subchapter D, for the conduct and supervision of the City of Wimberley General Election to be held on May 9, 2009; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties hereby contract, covenant and agree as follows:

1. Prepare lists of persons to recommend for appointment as presiding election judges, alternate judges; recruit and train the judges and clerks; and arrange for the use of polling places. Such lists of election judges, alternates and polling locations shall be transmitted to the City with sufficient time to allow the City to take all necessary actions to authorize or approve the lists and to submit any required voting changes for preclearance by the Department of Justice in Washington, D.C. in a manner that will allow the election practices to be precleared in a timely manner prior to the Election.
2. Procure and distribute election supplies, including preparation, printing and distribution of ballots.
3. Compile lists of eligible registered voters to be used in conducting the Election, including lists for early voting and for each precinct established for the Election.

4. Procure, prepare, and distribute election equipment, transport equipment to and from the polling places, and issue election supplies to the precinct judges.
5. Supervise the conduct of early voting by personal appearance and by mail, and supply personnel to serve as deputy early voting clerks.
6. Assist in providing general overall supervision of the Election and provide advisory services in connection with the decisions to be made and actions to be taken by officers of the City who are responsible for holding the Election.
7. Other incidental related services as may be necessary to effectuate the Election.
8. Remit to the City a detailed listing of expenses incurred to conduct the Election for payment within the time period set forth in Article 4. (Cost of Services).

NOTHING IN THIS AGREEMENT IS INTENDED TO LIMIT THE DISCRETION OF THE OFFICER IN THE EXECUTION OF HER DUTIES. IT IS FOR THE OFFICER, IN THE EXERCISE OF REASONABLE DISCRETION, TO DETERMINE HOW THE EFFORTS OF HER OFFICE SHOULD BE ALLOCATED THROUGHOUT THE COUNTY.

Article 2. CITY'S DUTIES AND SERVICES. The City agrees to perform the following duties:

1. Prepare and adopt all orders and resolutions necessary to conduct the Election.
2. Prepare and publish all required election notices.
3. Deliver to the Officer as soon as possible, but not later than legally required before the Election, the ballot language including the list of candidates, or any measures that are to be printed on the ballot with the exact form, wording and spelling that is to be used.
4. Provide the services necessary to translate any election documents into Spanish.
5. Pay any additional costs incurred by the Officer if a recount for said Election is required, or the Election is contested in any manner.
6. Provide technical assistance requested by the Officer.

Article 3. ADMINISTRATION. The Officer will be responsible for administering this Agreement and providing supervisory control and command over all agents, officers, and other personnel performing services pursuant to this Agreement. The contact person and representative for the Elections Office is the Officer, or her designee, and the contact person and representative for the City is the City Administrator.

Article 4. COST OF SERVICES. The City shall reimburse the Officer for all expenses incurred for the Election, or any runoff election that may be required and which is conducted by the Officer and, in addition, the City shall pay an administrative fee of 10% of the total cost of the Election. An itemized list of estimated elections expenses is attached as Exhibit "A" and incorporated by reference for all purposes. In the event the services are provided for a joint election, the cost shall be equally prorated between the participating entities. A runoff election shall be treated as a separate election. Within 20 days of the completion of the Election, the Officer shall submit a statement to the City listing all of the expenses and the administrative fee. The City shall pay the total amount within 45 days of the Election or any runoff election.

Article 5. LIABILITY. The City shall be responsible for any actual expenses for repairs for any damage that occurs to the DRE machines by the City to the extent that any such repairs are not covered under the vendor's warranty. The City shall not be liable for any damage to a DRE machine that is caused by a third party outside of the control of the City.

Article 6. GENERAL CONDITIONS. The following general conditions shall apply:

1. Nothing contained in this contract shall authorize or permit a change in the office with whom or the place at which any document or record relating to the Election is to be filed, or place at which any function of the canvass of the election returns is to be performed, or the officer to serve as custodian of voted ballots or other election records.
2. The Officer may assign deputies to perform any of the contracted services.
3. The Officer may contract with third persons for Election services and supplies; and the Officer will pay the claims for those election expenses, and shall remain responsible for the supervision and conduct of such third parties.
4. This contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hays County, Texas.
5. In case any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
6. No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereof.

Article 7. MISCELLANEOUS. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defenses available at law or in equity to the County, the City or the Officer, or to create any legal rights or claim on behalf of any third party. Neither the County, the City,

nor the Officer waives any defenses whatsoever, including, but not limited to, governmental immunity.

Article 8. NOTICE. Any notice provided for under this Agreement shall be forwarded to the following addresses:

Hays County
Elections Administrator
401-C Broadway St.
San Marcos, TX 78666

City of Wimberley
City Administrator
PO Box 2027
Wimberley, TX 78676

SIGNED AND AGREED UPON THIS THE ____ DAY OF _____, 2009.

HAYS COUNTY

CITY OF WIMBERLEY

JOYCE A. COWAN
Elections Administrator

TOM HALEY
Mayor

EXHIBIT "A"
ESTIMATED ELECTION EXPENSES

THE COUNTY OF HAYS

Elections/Voter Registration
401 C Broadway St.
San Marcos, TX 78666-7751



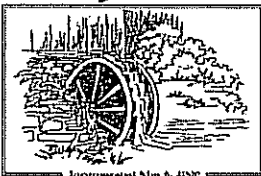
Phone: (512) 393-7310
Fax: (512) 393-7315
<http://elections.co.hays.tx.us>

Joyce A. Cowan
Elections Administrator/Voter Registrar

EXHIBIT "A" ESTIMATED COST FOR ELECTION EXPENSES City of Wimberley General Election, May 09, 2009

	Estimate	Actual
1. Electronic voting system programming and testing		
A. General	\$ 375.00	\$
2. Rental of voting equipment (Election Day & Early Voting)		
A. General		
a. Number of DREs/eSlate systems		
<u>6</u> X rental rate of <u>\$100.00</u> =	\$ 600.00	\$
b. Number of DAUs/Disable Access Units		
<u>2</u> X rental rate of <u>\$100.00</u> =	\$ 200.00	\$
c. Number of JBCs/ Judges Booth Comptroller		
<u>2</u> X rental rate of <u>\$100.00</u> =	\$ 200.00	\$
3. Election kits and other election supplies		
A. General	\$ 76.00	\$
4. Precinct election judges and clerks		
A. Election Day <u>4</u> X <u>130.00</u> =	\$ 520.00	\$
number of election judges and clerks hourly rate (max. \$10.00)		
B. Early Voting <u>3</u> X <u>760.00(7 days)</u> =	\$2,280.00	\$
number of early voting clerks hourly rate (max. \$10.00)		
5. Election judges/clerk's fee for pickup & delivery of supplies		
A. Election Day <u>1</u> X <u>25.00</u> =	\$ 25.00	\$
number of workers fee (max. \$25.00)		
6. Early Voting Ballot Board Personnel (\$ 81.121*)		
A. General <u>2</u> X <u>10.00</u> =	\$ 20.00	\$
number of workers hourly rate (\$10.00)		
7. Central Counting Station Personnel (\$ 81.121*)		
A. General <u>1</u> X <u>20.00</u> =	\$ 20.00	\$
number of workers hourly rate (\$10.00)		
a. Manager and technical support personnel	\$ 100.00	\$
8. Miscellaneous election costs		
A. General <u>(included is cost of recount)</u>	\$ 350.00	\$
<u>sample ballots, processing payroll, postage, telephone,</u>		
<u>travel, additional supplies, training poll workers, etc.</u>		
9. County Election Services Contract Administrative Fee (\$81.132)		
A. General	\$ 476.60	\$
10. Total Cost of General	\$ 5,242.60	\$

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER APPROVAL OF A JOINT ELECTION AGREEMENT BETWEEN THE CITY OF WIMBERLEY AND WIMBERLEY ISD

Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☒ Motion
- ☒ Discussion

Project/Proposal Summary:

The City of Wimberley and Wimberley ISD (WISD) will hold elections on May 9, 2009.

Like the City, the WISD will be contracting with the Hays County Elections Administrator to carry out its elections. As such, there is a need for the City and WISD to enter into a joint election agreement for the May election. The proposed agreement will allow the City and WISD to share polling places in the election, and appoint the same election officials to preside over the election. In return, the City and WISD will share equally the election expenses charged by the Hays County Elections Administrator for carrying out the elections.

Attached is the proposed joint election agreement for review and consideration.

**AGREEMENT BY THE CITY OF WIMBERLEY AND
WIMBERLEY INDEPENDENT SCHOOL DISTRICT
TO HOLD A JOINT ELECTION IN VOTING PRECINCTS
ON MAY 9, 2009**

WHEREAS, the Wimberley Independent School District ("DISTRICT") will hold a general election on May 9, 2009, for trustee positions for the board; and,

WHEREAS, the City of Wimberley ("CITY") will also hold a general election for City Council positions within the boundaries of the CITY on May 9, 2009; and,

WHEREAS, Texas Election Code, Chapter 271, authorizes political subdivisions of the State of Texas to hold elections jointly in voting precincts if it will be of benefit to the citizens and voters thereof to be served by common polling places and elections are ordered by the authorities of two or more political subdivisions to be held on the same day in all or part of the same territory; and,

WHEREAS, Texas Government Code, Chapter 791, authorizes local governments to contract with one another and with agencies of the state for various governmental functions including those in which the contracting parties are mutually interested.

NOW, THEREFORE, pursuant to Chapter 791 of the Texas Government Code and Sections 271.001 et. seq. of the Texas Election Code, the Joint Election Agreement set forth below is entered into by and between the Entities acting by and through their respective governing bodies, agree as follows:

1. The District and the City will share polling places during the election on May 9, 2009.
2. The District and the City will appoint the same election officials to preside over the election precinct in which a common election is held:
3. The District and the City will use a HAVA compliant voting system (DREs) in each election precinct in which a common election is held.
4. The expenses of the joint election will be divided equally between the entities having a common election. Expenses will be determined and divided based on each precinct. By way of example, where the entities hold a common election in a precinct, the expenses will be apportioned one-half each. Each entity will bear all expenses for equipment and supplies utilized in its election.
5. It is agreed that all entities will contract with Hays County Elections Administrator to provide all election services needed for these elections.
6. Early voting for District and City shall be conducted jointly per the election services contract with Hay County Elections Administrator in accordance with Title 7 of the Texas Election Code.

7. Each individual signing below represents and warrants the execution of this Agreement has been duly authorized by the respective entity they represent.

DATED this the _____ day of _____, 2009.

CITY OF WIMBERLEY

BY: _____
Tom Haley,
Mayor

ATTEST: _____

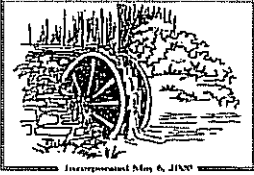
DATED this the _____ day of _____, 2009.

WIMBERLEY INDEPENDENT SCHOOL DISTRICT

BY: _____
Liz Tuttle,
President, Board of Trustees

ATTEST: _____

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER APPROVAL OF A JOINT ELECTION AGREEMENT BETWEEN THE CITY OF WIMBERLEY AND HAYS COUNTY

Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☒ Motion
- ☒ Discussion

Project/Proposal Summary:

The City of Wimberley and Hays County will hold elections on May 9, 2009.

As such, there is a need for the City and Hays County to enter into a joint election agreement for the May election. The proposed agreement will allow the City and Hays County to share polling places in the election, and appoint the same election officials to preside over the election. In return, the City and Hays County will share equally the election expenses charged by the Hays County Elections Administrator for carrying out the elections.

Attached is the proposed joint election agreement for review and consideration.

**AGREEMENT BY
THE CITY OF WIMBERLEY AND HAYS COUNTY
TO HOLD A JOINT ELECTION IN VOTING PRECINCTS
ON MAY 9, 2009**

WHEREAS, Hays County Elections Administrator ("COUNTY") also will hold a special election on May 9, 2009, for one local option proposal and;

WHEREAS, the City of Wimberley ("CITY") will hold a general election for City Council positions within the boundaries of the CITY on May 9, 2009; and,

WHEREAS, Texas Election Code, Chapter 271, authorizes political subdivisions of the State of Texas to hold elections jointly in voting precincts if it will be of benefit to the citizens and voters thereof to be served by common polling places and elections are ordered by the authorities of two or more political subdivisions to be held on the same day in all or part of the same territory; and,

WHEREAS, Texas Government Code, Chapter 791, authorizes local governments to contract with one another and with agencies of the state for various governmental functions including those in which the contracting parties are mutually interested.

NOW, THEREFORE, pursuant to Chapter 31 of the Texas Election Code, Chapter 791 of the Texas Government Code and Sections 271.002 and 271.003 of the Texas Election Code, the Joint Election Agreement set forth below is entered into by and between the Entities acting by and through their respective governing bodies, agree as follows:

1. Hays County and the City will share polling places during an election on May 9, 2009.
2. Hays County and the City will appoint the same election officials to preside over the election precinct in which a common election is held.
3. Hays County and the City will use a HAVA compliant voting system (DREs) in each election precinct in which a common election is held.
3. The expenses of the joint election will be divided equally between the entities having a common election. Expenses will be determined and divided based on each precinct. By way of example, where the entities hold a common election in a precinct, the expenses will be apportioned one-half each. Each entity will bear all expenses for equipment and supplies utilized in its election.

4. It is agreed that both entities will contract with Hays County Elections Administrator to provide all election services needed for these elections.
5. Early voting for Hays County and the Village of Wimberley shall be conducted jointly per the election services contract with Hay County Elections Administrator in accordance with Title 7 of the Texas Election Code.

DATED this the ____ day of _____, 2009.

CITY OF WIMBERLEY

BY: _____

ATTEST: _____

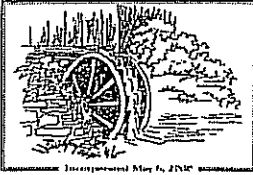
DATED this the ____ day of _____, 2009.

HAYS COUNTY

BY: _____
Elizabeth Sumter, Hays County Judge

ATTEST: _____

City Council Agenda Form



Date Submitted: February 2, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER ACTION ON
SIGN VARIANCE REQUEST FOR THE WIMBERLEY VET
CLINIC

Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☒ Motion
- ☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow the City Council to discuss and consider action on a request for a variance to the City of Wimberley Sign Ordinance for the Wimberley Vet Clinic at 12605 Ranch Road 12.

Currently, the applicant has a marquee sign that is approximately 72 square feet in size and 10 feet tall that advertises the Clinic, Bed and Biscuit Boarding and Craftmaster Custom Homes. The sign is classified as a non-conforming, pre-existing sign and is grandfathered from regulation in its current state.

However, the applicant desires to replace the aged sign with a new, free standing marquee sign, advertising the Clinic and Bed and Biscuit, which will be 64 square feet in size and 12 feet tall and complies with the City regulations. In addition, the applicant is seeking a variance to install a second 4' by 8' free standing sign on 5.5' tall cedar posts to advertise Craftmaster Custom Homes. The second sign would match the look and materials of the proposed marquee sign. City Code only allows one (1) free standing sign at a commercial complex. The applicant states the second sign is needed to increase visibility of the business. The applicant expects that Craftmaster will relocate in the future and at such time the second sign, if approved, will be moved to another location.

The City of Wimberley City Council has the ability to grant a sign variance if the following standards are met:

- The variance will not authorize a type of sign which is specifically prohibited
- The variance is not contrary to the goals and objectives outlined by the City of Wimberley Comprehensive Plan
- The variance is not contrary to the public interest
- Due to special conditions, a literal enforcement of the sign ordinance would result in unnecessary hardship. Ordinarily, hardship that is self-induced or that is common to other similarly classified properties will not satisfy this requirement. Financial or economic hardship alone will not ordinarily satisfy this requirement
- The spirit and purpose of the chapter will be observed, and substantial justice will be done.

Professional Graffiti
P.O. Box 832
Wimberley, Texas 78676
Ph. 512-847-3207
Fax 512-847-5368
(800) 337-4460



Lance Cawley
Owner

PROPOSED SIGNAGE For Wimberley Vet Clinic

Don Ferguson
Wimberley City Manager

January 9, 2009

Mr. Ferguson,

As per your instruction, following is a list of elements that Wimberley Vet Clinic proposes for new signage in hopes of recommendation for variance to be granted.

Requested Signage

1. New free standing marquee sign to adhere to ordinance, 64 Square feet total sign face and installed to 12' high (existing is non-complying grandfathered – approx 72Sq. Ft – 10' high).
2. Variance requested for additional 4' x 8' sign installed to 5.5' high on cedar posts to match proposed marquee sign.

Concessions Offered by Wimberley Vet Clinic

1. Additional 4' x 8' sign face is currently part of existing marquee sign. WVC would agree that this would be a temporary variance only until current tenant vacates. This will happen when WVC remodels building for the purpose of occupying total square footage of building.
2. Will attach to lot #2 a restriction prohibiting any signage as long they own property.
3. Will agree to leave all vegetation in "green belt" on lot 2.

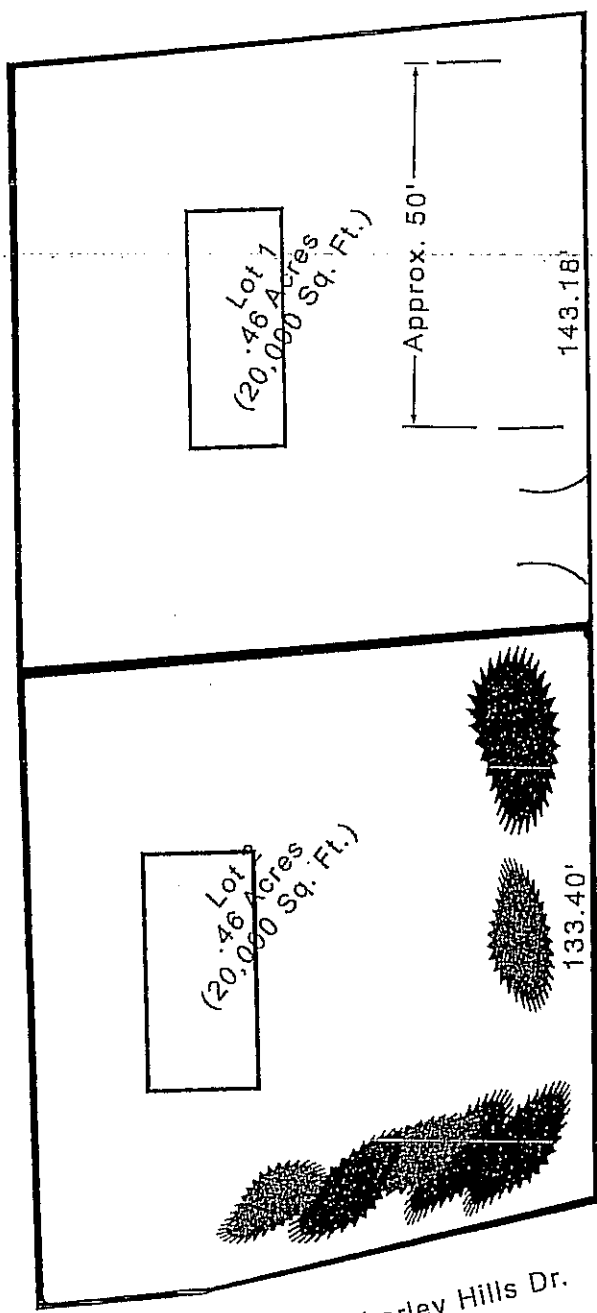
Alternative Signage

1. Permitting 64 Sq. Ft free standing marquee sign for two businesses on lot 1.
2. Permitting 64 Sq. Ft. free standing marquee sign for two businesses on lot 2.
This would require removing all vegetation along R.R. 12 frontage for visibility.

Thank you for your consideration.

Sincerely,

Lance Cawley



Lot 7
(20.46 Acres
(20,000 Sq. Ft.))

Approx. 50'

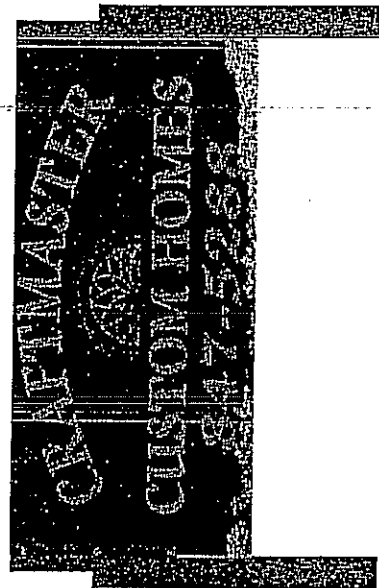
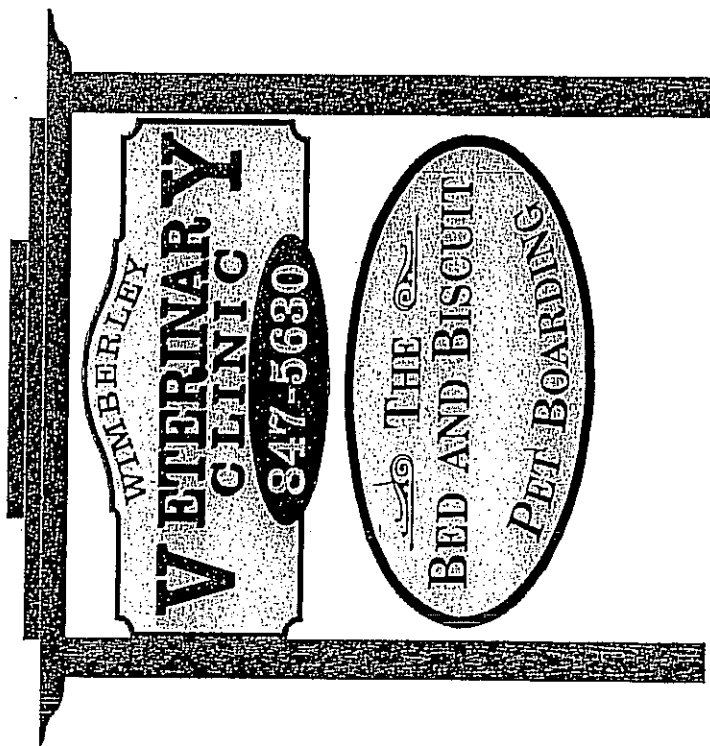
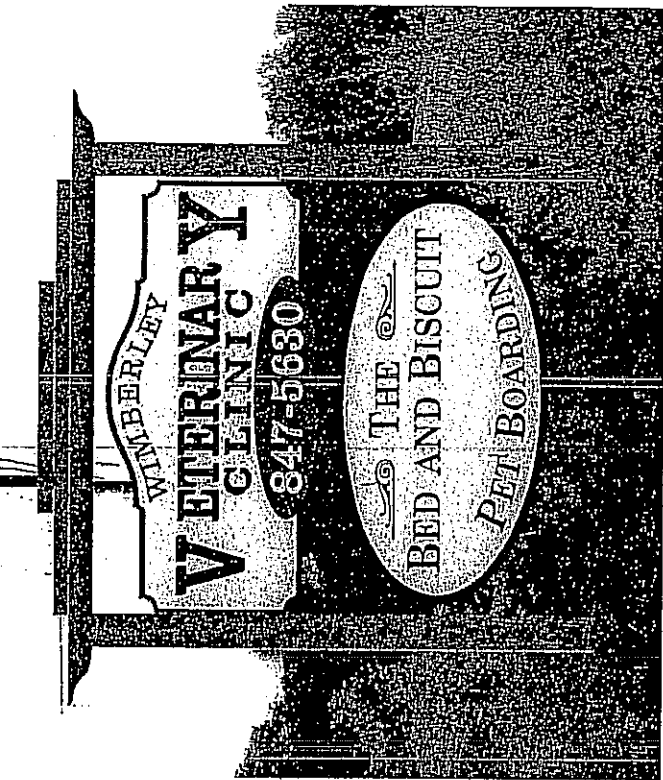
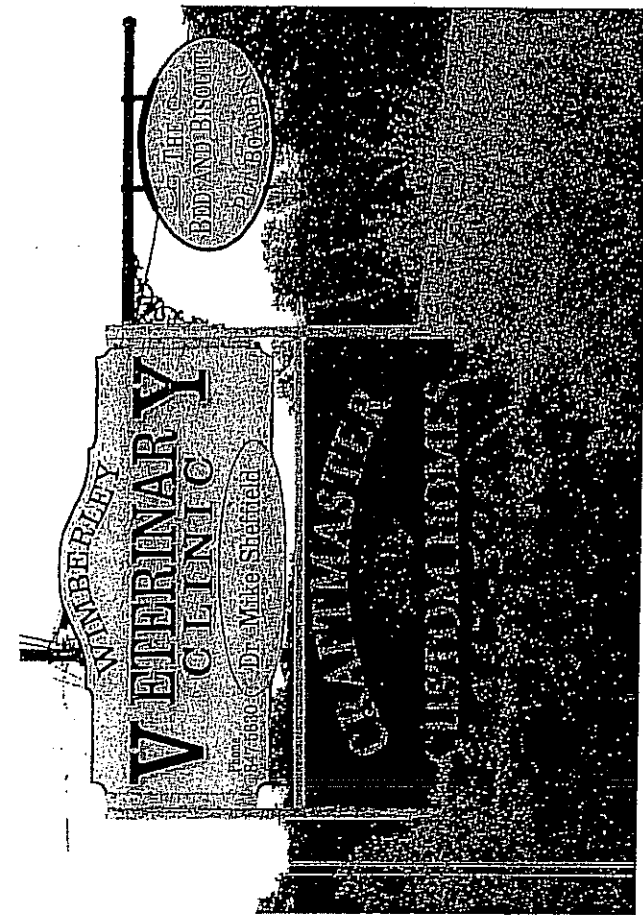
143.18'

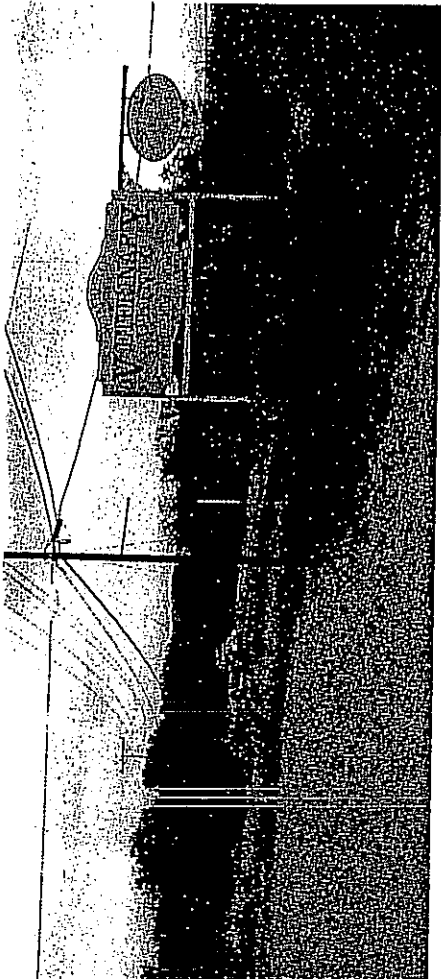
Lot 2
(20.46 Acres
(20,000 Sq. Ft.))

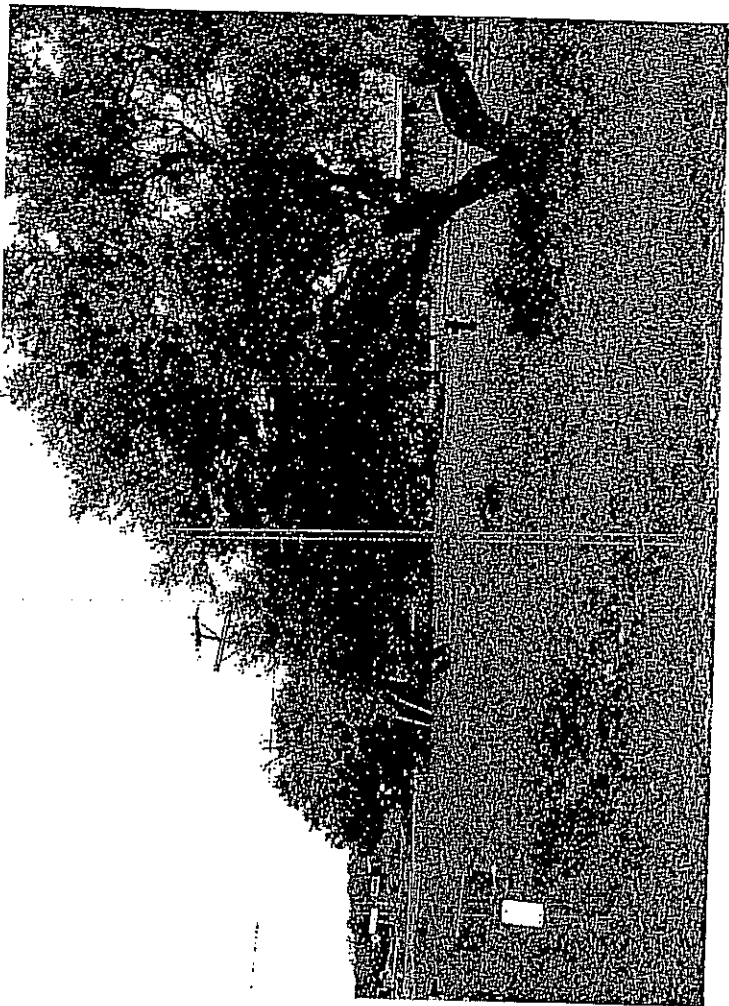
133.40'

R.R. 12
↔ S / N ↔

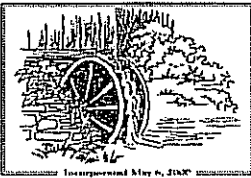
Wimberley Hills Dr.







City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER APPROVAL OF A SIGN VARIANCE REQUEST FOR STATE FARM OFFICE AT 14201 RANCH ROAD 12

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

☒ Motion

☒ Discussion

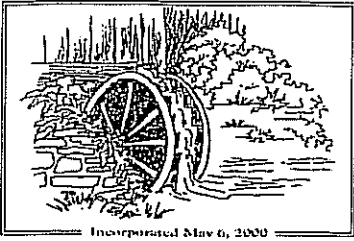
Project/Proposal Summary:

This item was placed on the agenda to allow the City Council to discuss and consider action on a request for a variance from the City of Wimberley Sign Ordinance for the State Farm Insurance Office located at 14201 Ranch Road 12.

Specifically, the applicant, Larry Williams, is seeking permission to install a red and white sign for his business on the existing free standing sign located along Ranch Road 12 in front of the office complex. The City of Wimberley Sign Ordinance requires each sign in a free standing sign that contains or supports more than one (1) sign to be of the same construction, coloring, design and style. The applicant's proposed sign is of the same construction, design and style as the other business signs on the free standing sign. However, the proposed color scheme of the sign is red and white instead of the common coloring of the existing signs on the free standing sign. The applicant is concerned that his corporate business logo is recognized by its colors and changing those colors will make it difficult for his business to be found.

The City of Wimberley City Council has the ability to grant a sign variance if the following standards are met:

- The variance will not authorize a type of sign which is specifically prohibited this chapter
- The variance is not contrary to the goals and objectives outlined by the City of Wimberley Comprehensive Plan; Section VII, D-2
- The variance is not contrary to the public interest
- Due to special conditions, a literal enforcement of the chapter would result in unnecessary hardship. Ordinarily, hardship that is self-induced or that is common to other similarly classified properties will not satisfy this requirement. Financial or economic hardship alone will not ordinarily satisfy this requirement
- The spirit and purpose of the chapter will be observed, and substantial justice will be done.



Village of Wimberley

12111 Ranch Road 12, P.O. Box 2027,
Wimberley, Texas, 78676
Phone: (512) 847-0025 - Fax: (512) 847-0422
E-mail: dferguson@anvilcom.com
Web: www.vil.wimberley.tx.us

Sign Variance Application

Sign Permit No. 5-2009-012Date: 1/23/09*Owner/Applicant: Larry WilliamsMailing Address: 9 Old Mine CtPhone: 512-847-9400 Fax: 512-847-0400Sign Address & Location 14201 RR 12 Type of Business: STATE Farm InsurancePlease include the \$50 application fee and a full description of the sign and its location on the property.Explain the condition which causes then need for a variance request: Color difference.STATE Farm requires us to have red on white. Corporation request

The Village Council may approve a variance only if it makes affirmative findings as to all of the following: (provide written explanation for meeting each of the following conditions)

1. The variance will not authorize a type of sign which is specifically prohibited; see §152.10
my landlord said he had no problem with the change of color
2. The variance is not contrary to the goals and objectives outlined by the Village of Wimberley Comprehensive Plan; Section VII, D-2;
"Ensure that signage is appropriate to the Village character and ambience.
 - a. The Village should establish standards for the size, location, illumination and other characteristics of permanent and temporary signs.
 - b. The Village should regulate signage design so that it is compatible with the scale, materials and character of the community."

I will stay within sign limits. STATE Farm is known for its name.
I don't want to be different for the sake, just for the trade-mark

3. The variance is not contrary to the public interest;
The public has been marketed to by surrounding community agents.
I want to bring Wimberley it's own agent. The variance request has been approved by surrounding people. I've talked to.
4. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. Ordinarily, hardship that is self-induced or that is common to other similarly classified properties will not satisfy this requirement. Financial or economic hardship alone will not ordinarily satisfy this requirement.

I have personally visited with others Around (Businesses) They had no problem with me coming in. Everyone seemed excited an insurance agent would be next to them.

5. The spirit and purpose of the ordinance will be observed, and substantial justice will be done.
I would sure appreciate the communities support. I have already advertised helping organizations out locally. I will continue. I want to be a positive difference in

The Village Council may impose such conditions or requirements in a variance as are necessary in the Village Council's judgment to achieve the fundamental purposes of the sign ordinance.

this community.APPLICANT Larry Williams Date 1-23-09overBack

The last State Farm Agent lasted 6 months. about 1 1/2 years ago. I was A H.S. COACH and MATH TEACHER for 14 years. I am very excited about this Company and what it can do for this Community. I want to retire here. I want my 3 young children to grow here. You will see my name on a lot of programs in the area. I would sure appreciate your support. We are a strong Christian family wanting a home.

Thank You very much,

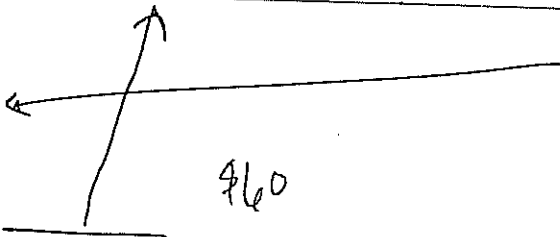
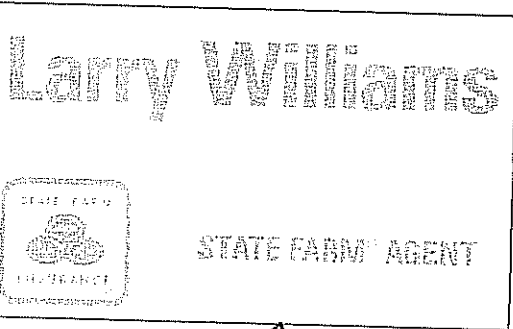
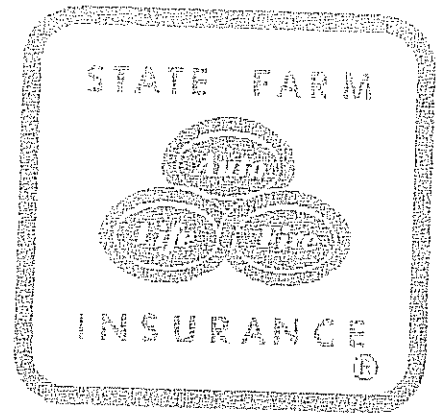
Larry Williams

Application

Larry Williams

STATE FARM® AGENT

580-799-2585



25" x 42"

\$60

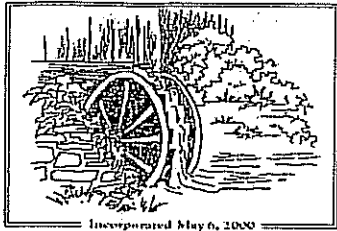
3' x 10'

↑
\$50 VARIANCE (APP)
Application

* MR. FERGUSON

length x width
(inning)

MARQUEE SIGN



Village of Wimberley

13210 Ranch Road 12, P.O. Box 2027,
Wimberley, Texas, 78676
Phone: (512) 847-0025 - Fax: (512) 847-0422
E-mail: village@wimberley-tx.com -
Web: www.vil.wimberley.tx.us

Sign Permit Application
Building Department

Permit No. 5-2009-012
Date: 1/23/09

Ordinance No. 2001-002, Section 11

(Each sign must have application)

APPLICATION PORTION WILL NOT BE ACCEPTED WITH INCOMPLETE INFORMATION OR BLANKS

Sign to be Permanent (☒) Temporary (☐) Install Date _____ Remove Date _____*Owner/Applicant: Larry Williams Mailing Address: 9 Old Mine CT Phone: 512-847-9400

*If applicant is not property owner, attach letter from property owner authorizing installation of sign.

Sign Location 14201 RR 12 Type of Business: STATE Farm Insurance Residential Non-Res. Area (☐) Area (☒)Sign Height 25' x 42' Width 42' Total square feet surface area 2100 Sq. ft.

If mounted on Wall or other structure--- Wall Height _____ Wall Width _____ Wall Area _____

Total height of sign and support structure from finish grade 20 ft. MARQUEEElectric Sign? Yes (☐) No (☒) - Lighting: External (☐); Internal (☐); None (☒)

If Electrical: Permit is Required & Inspections will be performed to comply with Sec. 10, Paragraph A.4 of Sign Ordinance.

Other signs on property? Yes (☒) No (☐) If yes, how many? 1 Type(s) Building Sign Total property frontage _____ feetSign construction material(s) Aluminum Sign type (Official use) _____

Attach drawings of property with measurements, including projection from mounting surface, building location, sign location, right-of-way lines. Include elevation views, sign wording and description/samples of sign color scheme. If the Applicant currently has an off-premise sign(s), attach a sheet showing the location of any such signs. All Over-Highway Banners to be installed by TxDOT must be constructed of mesh. A copy of TxDOT regulations may be obtained at City Hall.

NO SIGN SHALL BE INSTALLED WITHOUT A PERMIT. SIGNS INSTALLED PRIOR TO PERMIT BEING ISSUED WILL BE SUBJECT TO ADDITIONAL FEES/CHARGES AND/OR POSSIBLE REMOVAL.

Applicant warrants that the information provided herein is true and correct and agrees to erect/install the sign as described as submitted with any changes required by ordinances. Any changes during or after installation must be approved by the Village.

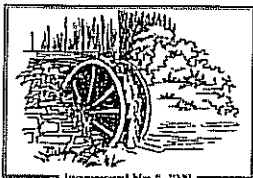
APPLICANT Larry Williams DATE 1-23-09APPLICATION ACCEPTED Edie Schaeffer DATE 1-23-09
Village Representative

OFFICIAL BUSINESS

PERMIT: (☐) Sign Approved as submitted FEES: \$ _____
(☐) Applicant may erect sign pursuant to this application with required Village modifications
(☐) Permit has been denied.
(☐) Applicant will appeal to City Council

Issued by _____ Date _____

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER A NEW LEASE AGREEMENT FOR CITY HALL SPACE AND STORAGE SPACE FOR THE CITY OF WIMBERLEY

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

☒ Motion

☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow City Council to consider approval of a new commercial lease agreement for the existing City Hall space in the Plaza Del Sol Center along with the City's storage space located behind the Center. The initial proposed agreement called for a five (5) percent increase in the City's monthly lease payment. At the direction of City Council, City staff contacted the property owner to negotiate the cost of the lease. As a result of negotiations, the property owner agreed to a 3.5 percent increase in the City's monthly lease payment. The new agreement is retroactive to November 1, 2008 and replaces the City's 2008 Lease Agreement. The term of the new agreement is for 12 months ending October 31, 2009.



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL LEASE

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
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(TAR-2101) 6-7-02 Initialed for Identification by Tenants: _____, _____, and Landlord: _____

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Kendall Campbell Realtors 7403 Guadalupe Street, Austin TX 78752

Phone: 5124582800

Fax:

Kendall Campbell Realtors

Village of Wim

Produced with ZipForm™ by RE FormsNet, LLC 18025 Fifteen Mile Road, Clinton Township, Michigan 48035 www.zipform.com



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL LEASE

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1. PARTIES: The parties to this lease are:

Tenant: Village of Wimberley
12111 Ranch Rd. 12, Suite 112-115, Wimberley, TX 78676; and
Landlord: Todd Routh; and
P.O. Box 204391, Austin, TX 78720-4391.

2. LEASED PREMISES:

A. Landlord leases to Tenant the following described real property, known as the "leased premises," along with all its improvements (Check only one box):

☒ (1) Multiple-Tenant Property: Suite or Unit Number 112-115 containing approximately 4,000 square feet of rentable area in Plaza Del Sol (building name) at 12111 RR 12, Space 112-115 (address) in Wimberley (city), Hays (county), Texas, which is legally described on attached Exhibit _____ or as follows:

_____.

☐ (2) Single-Tenant Property: The real property at: _____ (address) in _____ (city), _____ (county), Texas, which is legally described on attached Exhibit _____ or as follows: _____

_____.

B. If Paragraph 2A(1) applies:

- (1) "Property" means the building or complex in which the leased premises are located, inclusive of any common areas, drives, parking areas, and walks; and
- (2) the parties agree that the rentable area of the leased premises may not equal the actual or useable area within the leased premises and may include an allocation of common areas in the Property.

3. TERM:

A. Term: The term of this lease is 12 months and 0 days, commencing on:
November 1, 2008 (Commencement Date) and ending on
October 31, 2009 (Expiration Date).

B. Delay of Occupancy: If Tenant is unable to occupy the leased premises on the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Landlord will not be liable to Tenant for such delay and this lease will remain enforceable. In the event of such a delay, the Commencement Date will automatically be extended to the date Tenant is able to occupy the Property and the Expiration Date will also be extended by a like number of days, so that the length of this lease remains unchanged. If Tenant is unable to occupy the leased premises after the 90th day after the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Tenant may terminate this lease by giving written notice to Landlord before the leased premises become available to be occupied by Tenant and Landlord will refund to Tenant any amounts paid to Landlord by Tenant. This Paragraph 3B does not apply to any delay in occupancy caused by cleaning or repairs.

C. Unless the parties agree otherwise, Tenant is responsible for obtaining a certificate of occupancy for the leased premises if required by a governmental body.

4. RENT AND EXPENSES:

A. Base Monthly Rent: On or before the first day of each month during this lease, Tenant will pay Landlord base monthly rent as described on attached Exhibit 3,868.00 or as follows:

from <u>November 1, 2008</u>	to <u>October 31, 2009</u>	:	\$ <u>3,812</u>	
from _____	to _____	:	\$ <u>3,868.00</u>	
from _____	to _____	:	\$ _____	
from _____	to _____	:	\$ _____	
from _____	to _____	:	\$ _____	

B. First Full Month's Rent: The first full base monthly rent is due on or before November 1, 2008

C. Prorated Rent: If the Commencement Date is on a day other than the first day of a month, Tenant will pay Landlord as prorated rent, an amount equal to the base monthly rent multiplied by the following fraction: the number of days from the Commencement Date to the first day of the following month divided by the number of days in the month in which this lease commences. The prorated rent is due on or before the Commencement Date.

D. Additional Rent: In addition to the base monthly rent and prorated rent, Tenant will pay Landlord all other amounts, as provided by the attached (*Check all that apply*):

- ☐ (1) Commercial Expense Reimbursement Addendum
☐ (2) Commercial Percentage Rent Addendum
☐ (3) Commercial Parking Addendum
☐ (4) _____

All amounts payable under the applicable addenda are deemed to be "rent" for the purposes of this lease.

E. Place of Payment: Tenant will remit all amounts due Landlord under this lease to the following person at the place stated or to such other person or place as Landlord may later designate in writing:

Name: Todd Routh

Address: Todd Routh C/O Wells Fargo Bank, P.O. Box 260173, Dallas, TX
75326-0173

- F. Method of Payment: Tenant must pay all rent timely without demand, deduction, or offset, except as permitted by law or this lease. If Tenant fails to timely pay any amounts due under this lease or if any check of Tenant is returned to Landlord by the institution on which it was drawn, Landlord after providing written notice to Tenant may require Tenant to pay subsequent amounts that become due under this lease in certified funds. This paragraph does not limit Landlord from seeking other remedies under this Lease for Tenant's failure to make timely payments with good funds.
- G. Late Charges: If Landlord does not actually receive a rent payment at the designated place of payment within 5 days after the date it is due, Tenant will pay Landlord a late charge equal to 5% of the amount due. In this paragraph, the mailbox is not the agent for receipt for Landlord. The late charge is a cost associated with the collection of rent and Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 20.
- H. Returned Checks: Tenant will pay \$ 25.00 (not to exceed \$25) for each check Tenant tenders to Landlord which is returned by the institution on which it is drawn for any reason, plus any late charges until Landlord receives payment.

5. SECURITY DEPOSIT:

- A. Upon execution of this lease, Tenant will pay \$ _____ to Landlord as a security deposit.
- B. Landlord may apply the security deposit to any amounts owed by Tenant under this lease. If Landlord applies any part of the security deposit during any time this lease is in effect to amounts owed by Tenant, Tenant must, within 10 days after receipt of notice from Landlord, restore the security deposit to the amount stated.
- C. After Tenant surrenders the leased premises to Landlord and provides Landlord written notice of Tenant's forwarding address, Landlord will, not later than the time required by §93.005, Texas Property Code, refund the security deposit less any amounts applied toward amounts owed by Tenant or other charges authorized by this lease. The parties agree that Landlord acts in good faith if Landlord accounts for the security deposit within the time stated.
6. **TAXES**: Unless otherwise agreed by the parties, Landlord will pay all real property ad valorem taxes assessed against the leased premises.

7. UTILITIES:

- A. The party designated below will pay for the following utility charges to the leased premises and any connection charges for the utilities. (Check all that apply.)

	<u>NA</u>	<u>Landlord</u>	<u>Tenant</u>
(1) Water	☐	☐	☒
(2) Sewer	☐	☐	☒
(3) Electric	☐	☐	☒
(4) Gas	☐	☐	☒
(5) Telephone	☐	☐	☒
(6) Trash	☐	☐	☒
(7) Cable	☐	☐	☒
(8) _____	☐	☐	☒
(9) All other utilities	☐	☐	☒

- B. The party responsible for the charges under Paragraph 7A will pay the charges directly to the utility service provider. The responsible party may select the utility service provider except that if Tenant selects the provider any access or alterations to the Property or leased premises necessary for the utilities may be made only with Landlord's prior consent, which Landlord will not unreasonably withhold. If Landlord incurs any liability for utility or connection charges for which Tenant is responsible to pay and Landlord pays such amount, Tenant will immediately upon written notice from Landlord reimburse Landlord such amount.
- C. Notice: Tenant should determine if all necessary utilities are available to the leased premises and are adequate for Tenant's intended use.
- D. After-Hours HVAC Charges: "HVAC services" means the utility expenses to heat and cool the leased premises. *(Check one box only.)*
- ☐ (1) Landlord is obligated to provide the HVAC services to the leased premises only during the Property's operating hours specified under Paragraph 9C.
- ☐ (2) Landlord will provide the HVAC services to the leased premises during the operating hours specified under Paragraph 9C for no additional charge and will, at Tenant's request, provide HVAC services to the leased premises during other hours for an additional charge of \$ _____ per hour. Tenant will pay Landlord the charges under this paragraph immediately upon receipt of Landlord's invoice. Hourly charges are charged on a half-hour basis. Any partial hour will be rounded up to the next half hour. Tenant will comply with Landlord's procedures to make a request to provide the additional HVAC services under this paragraph.
- ☒ (3) Tenant will pay for the HVAC services under this lease.

8. INSURANCE:

- A. During all times this lease is in effect, Tenant must, at Tenant's expense, maintain in full force and effect from an insurer authorized to operate in Texas:
- (1) public liability insurance in an amount not less than \$1,000,000.00 on an occurrence basis naming Landlord as an additional insured; and
 - (2) personal property damage insurance for Tenant's business operations and contents on the leased premises in an amount sufficient to replace such contents after a casualty loss.
- B. Before the Commencement Date, Tenant must provide Landlord with a copy of the insurance certificates evidencing the required coverage. If the insurance coverage changes in any manner or degree at any time this lease is in effect, Tenant must, not later than 10 days after the change, provide Landlord a copy of an insurance certificate evidencing the change.
- C. If Tenant fails to maintain the required insurance in full force and effect at all times this lease is in effect, Landlord may:
- (1) purchase insurance that will provide Landlord the same coverage as the required insurance and Tenant must immediately reimburse Landlord for such expense; or
 - (2) exercise Landlord's remedies under Paragraph 20.
- D. Unless the parties agree otherwise, Landlord will, at Landlord's expense, maintain in full force and effect insurance for fire and extended coverage in an amount to cover the reasonable replacement cost of the improvements of the Property and public liability insurance in an amount that Landlord determines reasonable and appropriate.

- E. If there is an increase in Landlord's insurance premiums for the leased premises or Property or its contents that is caused by Tenant, Tenant's use of the leased premises, or any improvements made by or for Tenant, Tenant will, for each year this lease is in effect, pay Landlord the increase immediately after Landlord notifies Tenant of the increase. Any charge to Tenant under this Paragraph 8D will be equal to the actual amount of the increase in Landlord's insurance premium.

9. USE AND HOURS:

- A. Tenant may use the leased premises for the following purpose and no other: Office Space

_____.
- B. Unless otherwise specified in this lease, Tenant will operate and conduct its business in the leased premises during business hours that are typical of the industry in which Tenant represents it operates.
- C. The Property maintains operating hours of *(specify hours, days of week, and if inclusive or exclusive of weekends and holidays)*: Any

_____.

10. LEGAL COMPLIANCE:

- A. Tenant may not use or permit any part of the leased premises to be used for:
- (1) any activity which is a nuisance or is offensive, noisy, or dangerous;
 - (2) any activity that interferes with any other tenant's normal business operations or Landlord's management of the Property;
 - (3) any activity that violates any applicable law, regulation, zoning ordinance, restrictive covenant, governmental order, owners' association rules, tenants' association rules, Landlord's rules or regulations, or this lease;
 - (4) any hazardous activity that would require any insurance premium on the Property or leased premises to increase or that would void any such insurance;
 - (5) any activity that violates any applicable federal, state, or local law, including but not limited to those laws related to air quality, water quality, hazardous materials, wastewater, waste disposal, air emissions, or other environmental matters;
 - (6) the permanent or temporary storage of any hazardous material; or
 - (7) _____

_____.
- B. "Hazardous material" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent, or oil as defined by any federal, state, or local environmental law, regulation, ordinance, or rule existing as of the date of this lease or later enacted.
- C. Landlord does not represent or warrant that the leased premises or Property conform to applicable restrictions, zoning ordinances, setback lines, parking requirements, impervious ground cover ratio requirements, and other matters that may relate to Tenant's intended use. Tenant must satisfy itself that the leased premises may be used as Tenant intends by independently investigating all matters related to the use of the leased premises or Property. Tenant agrees that it is not relying on any warranty or representation made by Landlord, Landlord's agent, or any broker concerning the use of the leased premises or Property.

11. SIGNS:

- A. Tenant may not post or paint any signs at, on, or about the leased premises or Property without Landlord's written consent. Landlord may remove any unauthorized sign, and Tenant will promptly reimburse Landlord for its cost to remove any unauthorized sign.
- B. Any authorized sign must comply with all laws, restrictions, zoning ordinances, and any governmental order relating to signs on the leased premises or Property. Landlord may temporarily remove any authorized sign to complete repairs or alterations to the leased premises or the Property.
- C. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all signs that were placed on the Property or leased premises by or at the request of Tenant. Any signs that Landlord does not require Tenant to remove and that are fixtures, become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

12. ACCESS BY LANDLORD:

- A. During Tenant's normal business hours Landlord may enter the leased premises for any reasonable purpose, including but not limited to purposes for repairs, maintenance, alterations, and showing the leased premises to prospective tenants or purchasers. Landlord may access the leased premises after Tenant's normal business hours if: (1) entry is made with Tenant's permission; or (2) entry is necessary to complete emergency repairs. Landlord will not unreasonably interfere with Tenant's business operations when accessing the leased premises.
- B. During the last 60 days of this lease, Landlord may place a "For Lease" or similarly worded sign in the leased premises.

13. MOVE-IN CONDITION: Tenant has inspected the leased premises and accepts it in its present (as-is) condition unless expressly noted otherwise in this lease. Landlord and any agent have made no express or implied warranties as to the condition or permitted use of the leased premises or Property.

14. MOVE-OUT CONDITION AND FORFEITURE OF TENANT'S PERSONAL PROPERTY:

- A. At the time this lease ends, Tenant will surrender the leased premises in the same condition as when received, except for normal wear and tear. Tenant will leave the leased premises in a clean condition free of all trash, debris, personal property, hazardous materials, and environmental contaminants.
- B. If Tenant leaves any personal property in the leased premises after Tenant surrenders possession of the leased premises, Landlord may: (1) require Tenant, at Tenant's expense, to remove the personal property by providing written notice to Tenant; or (2) retain such personal property as forfeited property to Landlord.
- C. "Surrender" means vacating the leased premises and returning all keys and access devices to Landlord. "Normal wear and tear" means deterioration that occurs without negligence, carelessness, accident, or abuse.
- D. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all fixtures that were placed on the Property or leased premises by or at the request of Tenant. Any fixtures that Landlord does not require Tenant to remove become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

15. MAINTENANCE AND REPAIRS:

- A. Cleaning: Tenant must keep the leased premises clean and sanitary and promptly dispose of all garbage in appropriate receptacles. ☐ Landlord ☒ Tenant will provide, at its expense, janitorial services to the leased premises that are customary and ordinary for the Property type.
- B. Repairs of Conditions Caused by a Party: Each party must promptly repair a condition in need of repair that is caused, either intentionally or negligently, by that party or that party's guests, patrons, invitees, contractors or permitted subtenants.
- C. Repair and Maintenance Responsibility: Except as provided by Paragraph 15B, the party designated below, at its expense, is responsible to maintain and repair the following specified items in the leased premises. The specified items must be maintained in clean and good operable condition. If a governmental regulation or order requires a modification to any of the specified items, the party designated to maintain the item must complete and pay the expense of the modification. The specified items include and relate only to real property in the leased premises. Tenant is responsible for the repair and maintenance of its personal property. *(Check all that apply.)*

	<u>NA</u>	<u>Landlord</u>	<u>Tenant</u>
(1) Foundation, exterior walls, roof, and other structural components	☐	☒	☐
(2) Glass and windows	☐	☐	☒
(3) Fire protection equipment and fire sprinkler systems	☐	☐	☒
(4) Exterior & overhead doors, including closure devices, molding locks, and hardware	☐	☐	☒
(5) Grounds maintenance, including landscaping and ground sprinklers	☐	☒	☐
(6) Interior doors, including closure devices, frames, molding, locks, and hardware	☐	☐	☒
(7) Parking areas and walks	☐	☒	☐
(8) Plumbing systems, drainage systems, electrical systems, ballast and lamp replacement, and mechanical systems, except those specifically designated otherwise	☐	☐	☒
(9) Heating Ventilation and Air Conditioning (HVAC) systems	☐	☐	☒
(10) Signs and lighting:			
(a) Pylon	☐	☐	☒
(b) Facia	☐	☐	☒
(c) Monument	☐	☐	☒
(d) Door/Suite	☐	☐	☒
(11) Extermination and pest control, excluding wood-destroying insects	☐	☐	☒
(12) Storage yards and storage buildings	☐	☐	☒
(13) Wood-destroying insect treatment and repairs	☐	☐	☒
(14) Cranes and related systems	☐	☐	☒
(15) <u>N/A</u>	☒	☐	☐
(16) <u>N/A</u>	☒	☐	☐
(17) All other items and systems.	☐	☐	☒

- D. Repair Persons: Repairs must be completed by trained, qualified, and insured repair persons.

- E. HVAC Service Contract: If Tenant maintains the HVAC system under Paragraph 15C(9), Tenant ☒ is not required to maintain, at its expense, a regularly scheduled maintenance and service contract for the HVAC system. The maintenance and service contract must be purchased from a HVAC maintenance company that regularly provides such contracts to similar properties. If Tenant fails to maintain a required HVAC maintenance and service contract in effect at all times during this lease, Landlord may do so and charge Tenant the expense of such a maintenance and service contract or exercise Landlord's remedies under Paragraph 20.
- F. Common Areas: Landlord will maintain any common areas in the Property in a manner as Landlord determines to be in the best interest of the Property. Landlord will maintain any elevator and signs in the common area. Landlord may change the size, dimension, and location of any common areas, provided that such change does not materially impair Tenant's use and access to the leased premises. Tenant has the non-exclusive license to use the common areas in compliance with Landlord's rules and restrictions. Tenant may not solicit any business in the common areas or interfere with any other person's right to use the common areas. This paragraph does not apply if Paragraph 2A(2) applies.
- G. Notice of Repairs: Tenant must promptly notify Landlord of any item that is in need of repair and that is Landlord's responsibility to repair. All requests for repairs to Landlord must be in writing.
- H. Failure to Repair: Landlord must make a repair for which Landlord is responsible within a reasonable period of time after Tenant provides Landlord written notice of the needed repair. If Tenant fails to repair or maintain an item for which Tenant is responsible within 10 days after Landlord provides Tenant written notice of the needed repair or maintenance, Landlord may: (1) repair or maintain the item, without liability for any damage or loss to Tenant, and Tenant must immediately reimburse Landlord for the cost to repair or maintain; or (2) exercise Landlord's remedies under Paragraph 20.

16. ALTERATIONS:

- A. Tenant may not alter, improve, or add to the Property or the leased premises without Landlord's written consent. Landlord will not unreasonably withhold consent for the Tenant to make reasonable non-structural alterations, modifications, or improvements to the leased premises.
- B. Tenant may not alter any locks or any security devices on the Property or the leased premises without Landlord's consent. If Landlord authorizes the changing, addition, or rekeying of any locks or other security devices, Tenant must immediately deliver the new keys and access devices to Landlord.
- C. If a governmental order requires alteration or modification to the leased premises, the party obligated to maintain and repair the item to be modified or altered as designated in Paragraph 15 will, at its expense, modify or alter the item in compliance with the order.
- D. Any alterations, improvements, fixtures or additions to the Property or leased premises installed by either party during the term of this lease will become Landlord's property and must be surrendered to Landlord at the time this lease ends, except for those fixtures Landlord requires Tenant to remove under Paragraph 11 or 14 or if the parties agree otherwise in writing.

17. LIENS: Tenant may not do anything that will cause the title of the Property or leased premises to be encumbered in any way. If Tenant causes a lien to be filed against the Property or leased premises, Tenant will within 20 days after receipt of Landlord's demand: (1) pay the lien and have the lien released of record; or (2) take action to discharge the lien. Tenant will provide Landlord a copy of any release Tenant obtains pursuant to this paragraph.

18. **LIABILITY:** To the extent permitted by law, Landlord is NOT responsible to Tenant or Tenant's employees, patrons, guests, or invitees for any damages, injuries, or losses to person or property caused by:

- A. an act, omission, or neglect of: Tenant; Tenant's agent; Tenant's guest; Tenant's employees; Tenant's patrons; Tenant's invitees; or any other tenant on the Property;
- B. fire, flood, water leaks, ice, snow, hail, winds, explosion, smoke, riot, strike, interruption of utilities, theft, burglary, robbery, assault, vandalism, other persons, environmental contaminants, or other occurrences or casualty losses.

19. **INDEMNITY:** Each party will indemnify and hold the other party harmless from any property damage, personal injury, suits, actions, liabilities, damages, cost of repairs or service to the leased premises or Property, or any other loss caused, negligently or otherwise, by that party or that party's employees, patrons, guests, or invitees.

20. **DEFAULT;**

- A. If Landlord fails to comply with this lease within 30 days after Tenant notifies Landlord of Landlord's failure to comply, Landlord will be in default and Tenant may seek any remedy provided by law. If, however, Landlord's non-compliance reasonably requires more than 30 days to cure, Landlord will not be in default if the cure is commenced within the 30-day period and is diligently pursued.
- B. If Landlord does not actually receive at the place designated for payment any rent due under this lease within 5 days after it is due, Tenant will be in default. If Tenant fails to comply with this lease for any other reason within 10 days after Landlord notifies Tenant of its failure to comply, Tenant will be in default.
- C. If Tenant is in default, Landlord may: (i) terminate Tenant's right to occupy the leased premises by providing Tenant with at least 3 days written notice; and (ii) accelerate all rents which are payable during the remainder of this lease or any renewal period without notice or demand. Landlord will attempt to mitigate any damage or loss caused by Tenant's breach by using commercially reasonable means. If Tenant is in default, Tenant will be liable for:
 - (1) any lost rent;
 - (2) Landlord's cost of reletting the leased premises, including brokerage fees, advertising fees, and other fees necessary to relet the leased premises;
 - (3) repairs to the leased premises for use beyond normal wear and tear;
 - (4) all Landlord's costs associated with eviction of Tenant, such as attorney's fees, court costs, and prejudgment interest;
 - (5) all Landlord's costs associated with collection of rent such as collection fees, late charges, and returned check charges;
 - (6) cost of removing any of Tenant's equipment or fixtures left on the leased premises or Property;
 - (7) cost to remove any trash, debris, personal property, hazardous materials, or environmental contaminants left by Tenant or Tenant's employees, patrons, guests, or invitees in the leased premises or Property;
 - (8) cost to replace any unreturned keys or access devices to the leased premises, parking areas, or Property;
 - (9) any other recovery to which Landlord may be entitled under this lease or under law.

21. **ABANDONMENT, INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND LOCKOUT:** Chapter 93 of the Texas Property Code governs the rights and obligations of the parties with regard to: (a) abandonment of the leased premises; (b) interruption of utilities; (c) removal of Tenant's property; and (d) "lock-out" of Tenant.

22. **HOLDOVER:** If Tenant fails to vacate the leased premises at the time this lease ends, Tenant will become a tenant-at-will and must vacate the leased premises immediately upon receipt of demand from Landlord. No holding over by Tenant, with or without the consent of Landlord, will extend this lease. Tenant will indemnify Landlord and any prospective tenants for any and all damages caused by the holdover. Rent for any holdover period will be 2 times the base monthly rent plus any additional rent calculated on a daily basis and will be immediately due and payable daily without notice or demand.
23. **LANDLORD'S LIEN AND SECURITY INTEREST.** To secure Tenant's performance under this lease, Tenant grants to Landlord a lien and security interest against all of Tenant's nonexempt personal property that is in the leased premises or Property. This lease is a security agreement for the purposes of the Uniform Commercial Code. Landlord may file a copy of this lease as a financing statement.
24. **ASSIGNMENT AND SUBLETTING:** Landlord may assign this lease to any subsequent owner of the Property. Tenant may not assign this lease or sublet any part of the leased premises without Landlord's written consent. An assignment of this lease or subletting of the leased premises without Landlord's written consent is voidable by Landlord. If Tenant assigns this lease or sublets any part of the leased premises, Tenant will remain liable for all of Tenant's obligations under this lease regardless if the assignment or sublease is made with or without the consent of Landlord.
25. **RELOCATION:**
- ☐ A. By providing Tenant with not less than 90 days advanced written notice, Landlord may require Tenant to relocate to another location in the Property, provided that the other location is equal in size or larger than the leased premises then occupied by Tenant and contains similar leasehold improvements. Landlord will pay Tenant's reasonable out-of-pocket moving expenses for moving to the other location. "Moving expenses" means reasonable expenses payable to professional movers, utility companies for connection and disconnection fees, wiring companies for connecting and disconnecting Tenant's office equipment required by the relocation, and printing companies for reprinting Tenant's stationary and business cards. A relocation of Tenant will not change or affect any other provision of this lease that is then in effect, including rent and reimbursement amounts, except that the description of the suite or unit number will automatically be amended.
- ☒ B. Landlord may not require Tenant to relocate to another location in the Property without Tenant's prior consent.
26. **SUBORDINATION:**
- A. This lease and Tenant's leasehold interest are and will be subject, subordinate, and inferior to:
- (1) any lien, encumbrance, or ground lease now or hereafter placed on the leased premises or the Property that Landlord authorizes;
 - (2) all advances made under any such lien, encumbrance, or ground lease;
 - (3) the interest payable on any such lien or encumbrance;
 - (4) any and all renewals and extensions of any such lien, encumbrance, or ground lease;
 - (5) any restrictive covenant affecting the leased premises or the Property; and
 - (6) the rights of any owners' association affecting the leased premises or Property.
- B. Tenant must, on demand, execute a subordination, attornment, and non-disturbance agreement that Landlord may request that Tenant execute, provided that such agreement is made on the condition that this lease and Tenant's rights under this lease are recognized by the lien-holder.

27. **ESTOPPEL CERTIFICATES:** Within 10 days after receipt of a written request from Landlord, Tenant will execute and deliver to Landlord an estoppel certificate that identifies:
- A. any breach of the lease;
 - B. the then current rent payment and rent schedule;
 - C. the date the next rent payment is due;
 - D. any advance rent payments;
 - E. the amount of the security deposit;
 - F. any claims for any offsets;
 - G. the then current term of the lease;
 - H. any renewal options;
 - I. Tenant's possession and acceptance of the leased premises and improvements;
 - J. any ownership interest by Tenant; and
 - K. any other information reasonably requested in the certificate.
28. **CASUALTY LOSS:**
- A. Tenant must immediately notify Landlord of any casualty loss in the leased premises. Within 20 days after receipt of Tenant's notice of a casualty loss, Landlord will notify Tenant if the leased premises are less than or more than 50% unusable, on a per square foot basis, and if Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss.
 - B. If the leased premises are less than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord will restore the leased premises to substantially the same condition as before the casualty. If Landlord fails to substantially restore within the time required, Tenant may terminate this lease.
 - C. If the leased premises are more than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord may: (1) terminate this lease; or (2) restore the leased premises to substantially the same condition as before the casualty. If Landlord chooses to restore and does not substantially restore the leased premises within the time required, Tenant may terminate this lease.
 - D. If Landlord notifies Tenant that Landlord cannot substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss, Landlord may: (1) choose not to restore and terminate this lease; or (2) choose to restore, notify Tenant of the estimated time to restore, and give Tenant the option to terminate this lease by notifying Landlord within 10 days.
 - E. If this lease does not terminate because of a casualty loss, rent will be reduced from the date Tenant notifies Landlord of the casualty loss to the date the leased premises are substantially restored by an amount proportionate to the extent the leased premises are unusable.
29. **CONDEMNATION:** If after a condemnation or purchase in lieu of condemnation the leased premises are totally unusable for the purposes stated in this lease, this lease will terminate. If after a condemnation or purchase in lieu of condemnation the leased premises or Property are partially unusable for the purposes of this lease, this lease will continue and rent will be reduced in an amount proportionate to the extent the leased premises are unusable. Any condemnation award or proceeds in lieu of condemnation are the property of Landlord and Tenant has no claim to such proceeds or award. Tenant may seek compensation from the condemning authority for its moving expenses and damages to Tenant's personal property.
30. **ATTORNEY'S FEES:** Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this lease is entitled to recover prejudgment interest, reasonable attorney's fees, and all other costs of litigation from the nonprevailing party.

31. **REPRESENTATIONS:** Tenant's statements in this lease and any application for rental are material representations relied upon by Landlord. Each party signing this lease represents that he or she is of legal age to enter into a binding contract and is authorized to sign the lease. If Tenant makes any misrepresentation in this lease or in any application for rental, Tenant is in default. Landlord is not aware of any material defect on the Property that would affect the health and safety of an ordinary person or any environmental hazard on or affecting the Property that would affect the health or safety of an ordinary person, except: _____
- _____
- _____

32. **BROKERS:**

A. The brokers to this lease are:

<u>N/A</u>		<u>N/A</u>	
Cooperating Broker	License No.	Principal Broker	License No.
Address		Address	
Phone	Fax	Phone	Fax
E-mail		E-mail	
Cooperating Broker represents Tenant.		Principal Broker: <i>(Check only one box)</i> ☐ represents Landlord only. ☐ represents Tenant only. ☐ is an intermediary between Landlord and Tenant.	

B. Fees:

- ☐ (1) Principal Broker's fee will be paid according to: *(Check only one box)*.
- ☐ (a) a separate written commission agreement between Principal Broker and:
☐ Landlord ☐ Tenant.
- ☐ (b) the attached Addendum for Broker's Fee.
- ☐ (2) Cooperating Broker's fee will be paid according to: *(Check only one box)*.
- ☐ (a) a separate written commission agreement between Cooperating Broker and:
☐ Principal Broker ☐ Landlord ☐ Tenant.
- ☐ (b) the attached Addendum for Broker's Fee.

33. **ADDENDA:** Incorporated into this lease are the addenda, exhibits and other information marked in the Addenda and Exhibit section of the Table of Contents. If Landlord's Rules and Regulations are made part of this lease, Tenant agrees to comply with the Rules and Regulations as Landlord may, at its discretion, amend from time to time.

12111 RR 12, Space 112-115
Commercial Lease concerning: Wimberley, TX 78676

34. NOTICES: All notices under this lease must be in writing and are effective when hand-delivered, sent by mail, or sent by facsimile transmission to:

Tenant at the leased premises,

and a copy to: Village of Wimberley

Address: 12111 RR 12, Space 112-115, Wimberley, TX 78676

Phone: (512) 847-0025

Fax: _____

Landlord at: Todd Routh

Address: P.O. Box 204391, Austin, TX 78720-4391

Phone: (512) 452-8633

Fax: (512) 452-2622

and a copy to: _____

Address: _____

Phone: _____

Fax: _____

35. SPECIAL PROVISIONS:

36. AGREEMENT OF PARTIES:

- A. Entire Agreement: This lease contains the entire agreement between Landlord and Tenant and may not be changed except by written agreement.
- B. Binding Effect: This lease is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, successors, and permitted assigns.
- C. Joint and Several: All Tenants are jointly and severally liable for all provisions of this lease. Any act or notice to, or refund to, or signature of, any one or more of the Tenants regarding any term of this lease, its renewal, or its termination is binding on all Tenants.
- D. Controlling Law: The laws of the State of Texas govern the interpretation, performance, and enforcement of this lease.

(TAR-2101) 6-7-02 Initialed for Identification by Tenants: _____, _____, and Landlord: _____, _____

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- E. Severable Clauses: If any clause in this lease is found invalid or unenforceable by a court of law, the remainder of this lease will not be affected and all other provisions of this lease will remain valid and enforceable.
- F. Waiver: Landlord's delay, waiver, or non-enforcement of acceleration, contractual or statutory lien, rental due date, or any other right will not be deemed a waiver of any other or subsequent breach by Tenant or any other term in this lease.
- G. Quiet Enjoyment: Provided that Tenant is not in default of this lease, Landlord covenants that Tenant will enjoy possession and use of the leased premises free from material interference.
- H. Force Majeure: If Landlord's performance of a term in this lease is delayed by strike, lock-out, shortage of material, governmental restriction, riot, flood, or any cause outside Landlord's control, the time for Landlord's performance will be abated until after the delay.
- I. Time: Time is of the essence. The parties require strict compliance with the times for performance.

Brokers are not qualified to render legal advice, property inspections, surveys, engineering studies, environmental assessments, tax advice, or compliance inspections. The parties should seek experts to render such services. **READ THIS LEASE CAREFULLY.** If you do not understand the effect of this Lease, consult your attorney **BEFORE** signing.

Village of Wimberley
Tenant
By _____ Date _____
Printed Name Tom Haley
Title Mayor

Todd Routh
Landlord
By _____ Date _____
Printed Name Todd Routh
Title Managing Partner

Tenant
By _____ Date _____
Printed Name _____
Title _____

Landlord
By _____ Date _____
Printed Name _____
Title _____



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL LEASE

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Kendall Campbell Realtors 7403 Guadalupe Street, Austin TX 78752

Phone: 5124582800

Fax:

Kendall Campbell Realtors

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Village of Wim



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL LEASE

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1. PARTIES: The parties to this lease are:

Tenant: Village of Wimberley
12111 RR 12, Space B-204, Wimberley, TX 78676; and
Landlord: Todd Routh; and
P.O. Box 204391, Austin, TX 78720-4391.

2. LEASED PREMISES:

A. Landlord leases to Tenant the following described real property, known as the "leased premises," along with all its improvements (Check only one box):

☒ (1) Multiple-Tenant Property: Suite or Unit Number B-204 containing approximately 960 square feet of rentable area in Plaza Del Sol (building name) at 12111 RR 12, Space B-204 (address) in Wimberley (city), Hays (county), Texas, which is legally described on attached Exhibit _____ or as follows:

_____.

☐ (2) Single-Tenant Property: The real property at: _____ (address) in _____ (city), _____ (county), Texas, which is legally described on attached Exhibit _____ or as follows: _____

_____.

B. If Paragraph 2A(1) applies:

- (1) "Property" means the building or complex in which the leased premises are located, inclusive of any common areas, drives, parking areas, and walks; and
- (2) the parties agree that the rentable area of the leased premises may not equal the actual or useable area within the leased premises and may include an allocation of common areas in the Property.

3. TERM:

A. Term: The term of this lease is _____ months and _____ days, commencing on: November 1, 2008 (Commencement Date) and ending on Month to Month (Expiration Date).

B. Delay of Occupancy: If Tenant is unable to occupy the leased premises on the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Landlord will not be liable to Tenant for such delay and this lease will remain enforceable. In the event of such a delay, the Commencement Date will automatically be extended to the date Tenant is able to occupy the Property and the Expiration Date will also be extended by a like number of days, so that the length of this lease remains unchanged. If Tenant is unable to occupy the leased premises after the 90th day after the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Tenant may terminate this lease by giving written notice to Landlord before the leased premises become available to be occupied by Tenant and Landlord will refund to Tenant any amounts paid to Landlord by Tenant. This Paragraph 3B does not apply to any delay in occupancy caused by cleaning or repairs.

C. Unless the parties agree otherwise, Tenant is responsible for obtaining a certificate of occupancy for the leased premises if required by a governmental body.

4. RENT AND EXPENSES:

A. Base Monthly Rent: On or before the first day of each month during this lease, Tenant will pay Landlord base monthly rent as described on attached Exhibit 525.00 or as follows:

from <u>Month</u>	to <u>Month</u>	:	\$ <u>525.00</u> ;
from _____	to _____	:	\$ _____ ;
from _____	to _____	:	\$ _____ ;
from _____	to _____	:	\$ _____ ;
from _____	to _____	:	\$ _____ ;

B. First Full Month's Rent: The first full base monthly rent is due on or before November 1, 2008

C. Prorated Rent: If the Commencement Date is on a day other than the first day of a month, Tenant will pay Landlord as prorated rent, an amount equal to the base monthly rent multiplied by the following fraction: the number of days from the Commencement Date to the first day of the following month divided by the number of days in the month in which this lease commences. The prorated rent is due on or before the Commencement Date.

D. Additional Rent: In addition to the base monthly rent and prorated rent, Tenant will pay Landlord all other amounts, as provided by the attached (*Check all that apply.*):

- ☐ (1) Commercial Expense Reimbursement Addendum
☐ (2) Commercial Percentage Rent Addendum
☐ (3) Commercial Parking Addendum
☐ (4) _____

All amounts payable under the applicable addenda are deemed to be "rent" for the purposes of this lease.

E. Place of Payment: Tenant will remit all amounts due Landlord under this lease to the following person at the place stated or to such other person or place as Landlord may later designate in writing:

Name: Todd Routh

Address: Todd Routh C/O Wells Fargo Bank, P.O. Box 260173, Dallas, TX
75326

- F. Method of Payment: Tenant must pay all rent timely without demand, deduction, or offset, except as permitted by law or this lease. If Tenant fails to timely pay any amounts due under this lease or if any check of Tenant is returned to Landlord by the institution on which it was drawn, Landlord after providing written notice to Tenant may require Tenant to pay subsequent amounts that become due under this lease in certified funds. This paragraph does not limit Landlord from seeking other remedies under this Lease for Tenant's failure to make timely payments with good funds.
- G. Late Charges: If Landlord does not actually receive a rent payment at the designated place of payment within 5 days after the date it is due, Tenant will pay Landlord a late charge equal to 5% of the amount due. In this paragraph, the mailbox is not the agent for receipt for Landlord. The late charge is a cost associated with the collection of rent and Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 20.
- H. Returned Checks: Tenant will pay \$ 25.00 (not to exceed \$25) for each check Tenant tenders to Landlord which is returned by the institution on which it is drawn for any reason, plus any late charges until Landlord receives payment.

5. **SECURITY DEPOSIT:**

- A. Upon execution of this lease, Tenant will pay \$ _____ to Landlord as a security deposit.
- B. Landlord may apply the security deposit to any amounts owed by Tenant under this lease. If Landlord applies any part of the security deposit during any time this lease is in effect to amounts owed by Tenant, Tenant must, within 10 days after receipt of notice from Landlord, restore the security deposit to the amount stated.
- C. After Tenant surrenders the leased premises to Landlord and provides Landlord written notice of Tenant's forwarding address, Landlord will, not later than the time required by §93.005, Texas Property Code, refund the security deposit less any amounts applied toward amounts owed by Tenant or other charges authorized by this lease. The parties agree that Landlord acts in good faith if Landlord accounts for the security deposit within the time stated.

6. **TAXES**: Unless otherwise agreed by the parties, Landlord will pay all real property ad valorem taxes assessed against the leased premises.

7. **UTILITIES:**

- A. The party designated below will pay for the following utility charges to the leased premises and any connection charges for the utilities. (Check all that apply.)

	NA	Landlord	Tenant
(1) Water	☐	☐	☒
(2) Sewer	☐	☐	☒
(3) Electric	☐	☐	☒
(4) Gas	☐	☐	☒
(5) Telephone	☐	☐	☒
(6) Trash	☐	☐	☒
(7) Cable	☐	☐	☒
(8) _____	☐	☐	☒
(9) All other utilities	☐	☐	☒

- B. The party responsible for the charges under Paragraph 7A will pay the charges directly to the utility service provider. The responsible party may select the utility service provider except that if Tenant selects the provider any access or alterations to the Property or leased premises necessary for the utilities may be made only with Landlord's prior consent, which Landlord will not unreasonably withhold. If Landlord incurs any liability for utility or connection charges for which Tenant is responsible to pay and Landlord pays such amount, Tenant will immediately upon written notice from Landlord reimburse Landlord such amount.
- C. Notice: Tenant should determine if all necessary utilities are available to the leased premises and are adequate for Tenant's intended use.
- D. After-Hours HVAC Charges: "HVAC services" means the utility expenses to heat and cool the leased premises. (Check one box only.)
- ☐ (1) Landlord is obligated to provide the HVAC services to the leased premises only during the Property's operating hours specified under Paragraph 9C.
- ☐ (2) Landlord will provide the HVAC services to the leased premises during the operating hours specified under Paragraph 9C for no additional charge and will, at Tenant's request, provide HVAC services to the leased premises during other hours for an additional charge of \$ _____ per hour. Tenant will pay Landlord the charges under this paragraph immediately upon receipt of Landlord's invoice. Hourly charges are charged on a half-hour basis. Any partial hour will be rounded up to the next half hour. Tenant will comply with Landlord's procedures to make a request to provide the additional HVAC services under this paragraph.
- ☒ (3) Tenant will pay for the HVAC services under this lease.

8. INSURANCE:

- A. During all times this lease is in effect, Tenant must, at Tenant's expense, maintain in full force and effect from an insurer authorized to operate in Texas:
- (1) public liability insurance in an amount not less than \$1,000,000.00 on an occurrence basis naming Landlord as an additional insured; and
 - (2) personal property damage insurance for Tenant's business operations and contents on the leased premises in an amount sufficient to replace such contents after a casualty loss.
- B. Before the Commencement Date, Tenant must provide Landlord with a copy of the insurance certificates evidencing the required coverage. If the insurance coverage changes in any manner or degree at any time this lease is in effect, Tenant must, not later than 10 days after the change, provide Landlord a copy of an insurance certificate evidencing the change.
- C. If Tenant fails to maintain the required insurance in full force and effect at all times this lease is in effect, Landlord may:
- (1) purchase insurance that will provide Landlord the same coverage as the required insurance and Tenant must immediately reimburse Landlord for such expense; or
 - (2) exercise Landlord's remedies under Paragraph 20.
- D. Unless the parties agree otherwise, Landlord will, at Landlord's expense, maintain in full force and effect insurance for fire and extended coverage in an amount to cover the reasonable replacement cost of the improvements of the Property and public liability insurance in an amount that Landlord determines reasonable and appropriate.

- E. If there is an increase in Landlord's insurance premiums for the leased premises or Property or its contents that is caused by Tenant, Tenant's use of the leased premises, or any improvements made by or for Tenant, Tenant will, for each year this lease is in effect, pay Landlord the increase immediately after Landlord notifies Tenant of the increase. Any charge to Tenant under this Paragraph 8D will be equal to the actual amount of the increase in Landlord's insurance premium.

9. USE AND HOURS:

- A. Tenant may use the leased premises for the following purpose and no other: Storage
- B. Unless otherwise specified in this lease, Tenant will operate and conduct its business in the leased premises during business hours that are typical of the industry in which Tenant represents it operates.
- C. The Property maintains operating hours of (specify hours, days of week, and if inclusive or exclusive of weekends and holidays): Any

10. LEGAL COMPLIANCE:

- A. Tenant may not use or permit any part of the leased premises to be used for:
- (1) any activity which is a nuisance or is offensive, noisy, or dangerous;
 - (2) any activity that interferes with any other tenant's normal business operations or Landlord's management of the Property;
 - (3) any activity that violates any applicable law, regulation, zoning ordinance, restrictive covenant, governmental order, owners' association rules, tenants' association rules, Landlord's rules or regulations, or this lease;
 - (4) any hazardous activity that would require any insurance premium on the Property or leased premises to increase or that would void any such insurance;
 - (5) any activity that violates any applicable federal, state, or local law, including but not limited to those laws related to air quality, water quality, hazardous materials, wastewater, waste disposal, air emissions, or other environmental matters;
 - (6) the permanent or temporary storage of any hazardous material; or
 - (7) _____
- B. "Hazardous material" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent, or oil as defined by any federal, state, or local environmental law, regulation, ordinance, or rule existing as of the date of this lease or later enacted.
- C. Landlord does not represent or warrant that the leased premises or Property conform to applicable restrictions, zoning ordinances, setback lines, parking requirements, impervious ground cover ratio requirements, and other matters that may relate to Tenant's intended use. Tenant must satisfy itself that the leased premises may be used as Tenant intends by independently investigating all matters related to the use of the leased premises or Property. Tenant agrees that it is not relying on any warranty or representation made by Landlord, Landlord's agent, or any broker concerning the use of the leased premises or Property.

11. SIGNS:

- A. Tenant may not post or paint any signs at, on, or about the leased premises or Property without Landlord's written consent. Landlord may remove any unauthorized sign, and Tenant will promptly reimburse Landlord for its cost to remove any unauthorized sign.
- B. Any authorized sign must comply with all laws, restrictions, zoning ordinances, and any governmental order relating to signs on the leased premises or Property. Landlord may temporarily remove any authorized sign to complete repairs or alterations to the leased premises or the Property.
- C. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all signs that were placed on the Property or leased premises by or at the request of Tenant. Any signs that Landlord does not require Tenant to remove and that are fixtures, become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

12. ACCESS BY LANDLORD:

- A. During Tenant's normal business hours Landlord may enter the leased premises for any reasonable purpose, including but not limited to purposes for repairs, maintenance, alterations, and showing the leased premises to prospective tenants or purchasers. Landlord may access the leased premises after Tenant's normal business hours if: (1) entry is made with Tenant's permission; or (2) entry is necessary to complete emergency repairs. Landlord will not unreasonably interfere with Tenant's business operations when accessing the leased premises.
- B. During the last 30 days of this lease, Landlord may place a "For Lease" or similarly worded sign in the leased premises.

13. MOVE-IN CONDITION: Tenant has inspected the leased premises and accepts it in its present (as-is) condition unless expressly noted otherwise in this lease. Landlord and any agent have made no express or implied warranties as to the condition or permitted use of the leased premises or Property.

14. MOVE-OUT CONDITION AND FORFEITURE OF TENANT'S PERSONAL PROPERTY:

- A. At the time this lease ends, Tenant will surrender the leased premises in the same condition as when received, except for normal wear and tear. Tenant will leave the leased premises in a clean condition free of all trash, debris, personal property, hazardous materials, and environmental contaminants.
- B. If Tenant leaves any personal property in the leased premises after Tenant surrenders possession of the leased premises, Landlord may: (1) require Tenant, at Tenant's expense, to remove the personal property by providing written notice to Tenant; or (2) retain such personal property as forfeited property to Landlord.
- C. "Surrender" means vacating the leased premises and returning all keys and access devices to Landlord. "Normal wear and tear" means deterioration that occurs without negligence, carelessness, accident, or abuse.
- D. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all fixtures that were placed on the Property or leased premises by or at the request of Tenant. Any fixtures that Landlord does not require Tenant to remove become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

15. MAINTENANCE AND REPAIRS:

- A. Cleaning: Tenant must keep the leased premises clean and sanitary and promptly dispose of all garbage in appropriate receptacles. ☐ Landlord ☒ Tenant will provide, at its expense, janitorial services to the leased premises that are customary and ordinary for the Property type.
- B. Repairs of Conditions Caused by a Party: Each party must promptly repair a condition in need of repair that is caused, either intentionally or negligently, by that party or that party's guests, patrons, invitees, contractors or permitted subtenants.
- C. Repair and Maintenance Responsibility: Except as provided by Paragraph 15B, the party designated below, at its expense, is responsible to maintain and repair the following specified items in the leased premises. The specified items must be maintained in clean and good operable condition. If a governmental regulation or order requires a modification to any of the specified items, the party designated to maintain the item must complete and pay the expense of the modification. The specified items include and relate only to real property in the leased premises. Tenant is responsible for the repair and maintenance of its personal property. *(Check all that apply.)*

	<u>NA</u>	<u>Landlord</u>	<u>Tenant</u>
(1) Foundation, exterior walls, roof, and other structural components	☐	☒	☐
(2) Glass and windows	☐	☐	☒
(3) Fire protection equipment and fire sprinkler systems	☐	☐	☒
(4) Exterior & overhead doors, including closure devices, molding locks, and hardware	☐	☐	☒
(5) Grounds maintenance, including landscaping and ground sprinklers	☐	☒	☐
(6) Interior doors, including closure devices, frames, molding, locks, and hardware	☐	☐	☒
(7) Parking areas and walks	☐	☒	☐
(8) Plumbing systems, drainage systems, electrical systems, ballast and lamp replacement, and mechanical systems, except those specifically designated otherwise	☐	☐	☒
(9) Heating Ventilation and Air Conditioning (HVAC) systems	☐	☐	☒
(10) Signs and lighting:			
(a) Pylon	☐	☐	☒
(b) Facia	☐	☐	☒
(c) Monument	☐	☐	☒
(d) Door/Suite	☐	☐	☒
(11) Extermination and pest control, excluding wood-destroying insects	☐	☐	☒
(12) Storage yards and storage buildings	☐	☐	☒
(13) Wood-destroying insect treatment and repairs	☐	☐	☒
(14) Cranes and related systems	☐	☐	☒
(15) _____	☐	☐	☐
(16) _____	☐	☐	☐
(17) All other items and systems.	☐	☐	☒

- D. Repair Persons: Repairs must be completed by trained, qualified, and insured repair persons.

- E. HVAC Service Contract: If Tenant maintains the HVAC system under Paragraph 15C(9), Tenant ☒ is ☐ is not required to maintain, at its expense, a regularly scheduled maintenance and service contract for the HVAC system. The maintenance and service contract must be purchased from a HVAC maintenance company that regularly provides such contracts to similar properties. If Tenant fails to maintain a required HVAC maintenance and service contract in effect at all times during this lease, Landlord may do so and charge Tenant the expense of such a maintenance and service contract or exercise Landlord's remedies under Paragraph 20.
- F. Common Areas: Landlord will maintain any common areas in the Property in a manner as Landlord determines to be in the best interest of the Property. Landlord will maintain any elevator and signs in the common area. Landlord may change the size, dimension, and location of any common areas, provided that such change does not materially impair Tenant's use and access to the leased premises. Tenant has the non-exclusive license to use the common areas in compliance with Landlord's rules and restrictions. Tenant may not solicit any business in the common areas or interfere with any other person's right to use the common areas. This paragraph does not apply if Paragraph 2A(2) applies.
- G. Notice of Repairs: Tenant must promptly notify Landlord of any item that is in need of repair and that is Landlord's responsibility to repair. All requests for repairs to Landlord must be in writing.
- H. Failure to Repair: Landlord must make a repair for which Landlord is responsible within a reasonable period of time after Tenant provides Landlord written notice of the needed repair. If Tenant fails to repair or maintain an item for which Tenant is responsible within 10 days after Landlord provides Tenant written notice of the needed repair or maintenance, Landlord may: (1) repair or maintain the item, without liability for any damage or loss to Tenant, and Tenant must immediately reimburse Landlord for the cost to repair or maintain; or (2) exercise Landlord's remedies under Paragraph 20.

16. ALTERATIONS:

- A. Tenant may not alter, improve, or add to the Property or the leased premises without Landlord's written consent. Landlord will not unreasonably withhold consent for the Tenant to make reasonable non-structural alterations, modifications, or improvements to the leased premises.
- B. Tenant may not alter any locks or any security devices on the Property or the leased premises without Landlord's consent. If Landlord authorizes the changing, addition, or rekeying of any locks or other security devices, Tenant must immediately deliver the new keys and access devices to Landlord.
- C. If a governmental order requires alteration or modification to the leased premises, the party obligated to maintain and repair the item to be modified or altered as designated in Paragraph 15 will, at its expense, modify or alter the item in compliance with the order.
- D. Any alterations, improvements, fixtures or additions to the Property or leased premises installed by either party during the term of this lease will become Landlord's property and must be surrendered to Landlord at the time this lease ends, except for those fixtures Landlord requires Tenant to remove under Paragraph 11 or 14 or if the parties agree otherwise in writing.

17. LIENS: Tenant may not do anything that will cause the title of the Property or leased premises to be encumbered in any way. If Tenant causes a lien to be filed against the Property or leased premises, Tenant will within 20 days after receipt of Landlord's demand: (1) pay the lien and have the lien released of record; or (2) take action to discharge the lien. Tenant will provide Landlord a copy of any release Tenant obtains pursuant to this paragraph.

18. **LIABILITY:** To the extent permitted by law, Landlord is NOT responsible to Tenant or Tenant's employees, patrons, guests, or invitees for any damages, injuries, or losses to person or property caused by:

- A. an act, omission, or neglect of: Tenant; Tenant's agent; Tenant's guest; Tenant's employees; Tenant's patrons; Tenant's invitees; or any other tenant on the Property;
- B. fire, flood, water leaks, ice, snow, hail, winds, explosion, smoke, riot, strike, interruption of utilities, theft, burglary, robbery, assault, vandalism, other persons, environmental contaminants, or other occurrences or casualty losses.

19. **INDEMNITY:** Each party will indemnify and hold the other party harmless from any property damage, personal injury, suits, actions, liabilities, damages, cost of repairs or service to the leased premises or Property, or any other loss caused, negligently or otherwise, by that party or that party's employees, patrons, guests, or invitees.

20. **DEFAULT;**

- A. If Landlord fails to comply with this lease within 30 days after Tenant notifies Landlord of Landlord's failure to comply, Landlord will be in default and Tenant may seek any remedy provided by law. If, however, Landlord's non-compliance reasonably requires more than 30 days to cure, Landlord will not be in default if the cure is commenced within the 30-day period and is diligently pursued.
- B. If Landlord does not actually receive at the place designated for payment any rent due under this lease within 5 days after it is due, Tenant will be in default. If Tenant fails to comply with this lease for any other reason within 10 days after Landlord notifies Tenant of its failure to comply, Tenant will be in default.
- C. If Tenant is in default, Landlord may: (i) terminate Tenant's right to occupy the leased premises by providing Tenant with at least 3 days written notice; and (ii) accelerate all rents which are payable during the remainder of this lease or any renewal period without notice or demand. Landlord will attempt to mitigate any damage or loss caused by Tenant's breach by using commercially reasonable means. If Tenant is in default, Tenant will be liable for:
 - (1) any lost rent;
 - (2) Landlord's cost of reletting the leased premises, including brokerage fees, advertising fees, and other fees necessary to relet the leased premises;
 - (3) repairs to the leased premises for use beyond normal wear and tear;
 - (4) all Landlord's costs associated with eviction of Tenant, such as attorney's fees, court costs, and prejudgment interest;
 - (5) all Landlord's costs associated with collection of rent such as collection fees, late charges, and returned check charges;
 - (6) cost of removing any of Tenant's equipment or fixtures left on the leased premises or Property;
 - (7) cost to remove any trash, debris, personal property, hazardous materials, or environmental contaminants left by Tenant or Tenant's employees, patrons, guests, or invitees in the leased premises or Property;
 - (8) cost to replace any unreturned keys or access devices to the leased premises, parking areas, or Property;
 - (9) any other recovery to which Landlord may be entitled under this lease or under law.

21. **ABANDONMENT, INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND LOCKOUT:** Chapter 93 of the Texas Property Code governs the rights and obligations of the parties with regard to: (a) abandonment of the leased premises; (b) interruption of utilities; (c) removal of Tenant's property; and (d) "lock-out" of Tenant.

22. **HOLDOVER:** If Tenant fails to vacate the leased premises at the time this lease ends, Tenant will become a tenant-at-will and must vacate the leased premises immediately upon receipt of demand from Landlord. No holding over by Tenant, with or without the consent of Landlord, will extend this lease. Tenant will indemnify Landlord and any prospective tenants for any and all damages caused by the holdover. Rent for any holdover period will be 2 times the base monthly rent plus any additional rent calculated on a daily basis and will be immediately due and payable daily without notice or demand.
23. **LANDLORD'S LIEN AND SECURITY INTEREST.** To secure Tenant's performance under this lease, Tenant grants to Landlord a lien and security interest against all of Tenant's nonexempt personal property that is in the leased premises or Property. This lease is a security agreement for the purposes of the Uniform Commercial Code. Landlord may file a copy of this lease as a financing statement.
24. **ASSIGNMENT AND SUBLETTING:** Landlord may assign this lease to any subsequent owner of the Property. Tenant may not assign this lease or sublet any part of the leased premises without Landlord's written consent. An assignment of this lease or subletting of the leased premises without Landlord's written consent is voidable by Landlord. If Tenant assigns this lease or sublets any part of the leased premises, Tenant will remain liable for all of Tenant's obligations under this lease regardless if the assignment or sublease is made with or without the consent of Landlord.
25. **RELOCATION:**
- ☐ A. By providing Tenant with not less than 90 days advanced written notice, Landlord may require Tenant to relocate to another location in the Property, provided that the other location is equal in size or larger than the leased premises then occupied by Tenant and contains similar leasehold improvements. Landlord will pay Tenant's reasonable out-of-pocket moving expenses for moving to the other location. "Moving expenses" means reasonable expenses payable to professional movers, utility companies for connection and disconnection fees, wiring companies for connecting and disconnecting Tenant's office equipment required by the relocation, and printing companies for reprinting Tenant's stationary and business cards. A relocation of Tenant will not change or affect any other provision of this lease that is then in effect, including rent and reimbursement amounts, except that the description of the suite or unit number will automatically be amended.
- ☒ B. Landlord may not require Tenant to relocate to another location in the Property without Tenant's prior consent.
26. **SUBORDINATION:**
- A. This lease and Tenant's leasehold interest are and will be subject, subordinate, and inferior to:
- (1) any lien, encumbrance, or ground lease now or hereafter placed on the leased premises or the Property that Landlord authorizes;
 - (2) all advances made under any such lien, encumbrance, or ground lease;
 - (3) the interest payable on any such lien or encumbrance;
 - (4) any and all renewals and extensions of any such lien, encumbrance, or ground lease;
 - (5) any restrictive covenant affecting the leased premises or the Property; and
 - (6) the rights of any owners' association affecting the leased premises or Property.
- B. Tenant must, on demand, execute a subordination, attornment, and non-disturbance agreement that Landlord may request that Tenant execute, provided that such agreement is made on the condition that this lease and Tenant's rights under this lease are recognized by the lien-holder.

27. **ESTOPPEL CERTIFICATES:** Within 10 days after receipt of a written request from Landlord, Tenant will execute and deliver to Landlord an estoppel certificate that identifies:
- A. any breach of the lease;
 - B. the then current rent payment and rent schedule;
 - C. the date the next rent payment is due;
 - D. any advance rent payments;
 - E. the amount of the security deposit;
 - F. any claims for any offsets;
 - G. the then current term of the lease;
 - H. any renewal options;
 - I. Tenant's possession and acceptance of the leased premises and improvements;
 - J. any ownership interest by Tenant; and
 - K. any other information reasonably requested in the certificate.
28. **CASUALTY LOSS:**
- A. Tenant must immediately notify Landlord of any casualty loss in the leased premises. Within 20 days after receipt of Tenant's notice of a casualty loss, Landlord will notify Tenant if the leased premises are less than or more than 50% unusable, on a per square foot basis, and if Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss.
 - B. If the leased premises are less than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord will restore the leased premises to substantially the same condition as before the casualty. If Landlord fails to substantially restore within the time required, Tenant may terminate this lease.
 - C. If the leased premises are more than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord may: (1) terminate this lease; or (2) restore the leased premises to substantially the same condition as before the casualty. If Landlord chooses to restore and does not substantially restore the leased premises within the time required, Tenant may terminate this lease.
 - D. If Landlord notifies Tenant that Landlord cannot substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss, Landlord may: (1) choose not to restore and terminate this lease; or (2) choose to restore, notify Tenant of the estimated time to restore, and give Tenant the option to terminate this lease by notifying Landlord within 10 days.
 - E. If this lease does not terminate because of a casualty loss, rent will be reduced from the date Tenant notifies Landlord of the casualty loss to the date the leased premises are substantially restored by an amount proportionate to the extent the leased premises are unusable.
29. **CONDEMNATION:** If after a condemnation or purchase in lieu of condemnation the leased premises are totally unusable for the purposes stated in this lease, this lease will terminate. If after a condemnation or purchase in lieu of condemnation the leased premises or Property are partially unusable for the purposes of this lease, this lease will continue and rent will be reduced in an amount proportionate to the extent the leased premises are unusable. Any condemnation award or proceeds in lieu of condemnation are the property of Landlord and Tenant has no claim to such proceeds or award. Tenant may seek compensation from the condemning authority for its moving expenses and damages to Tenant's personal property.
30. **ATTORNEY'S FEES:** Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this lease is entitled to recover prejudgment interest, reasonable attorney's fees, and all other costs of litigation from the nonprevailing party.

- 31. REPRESENTATIONS:** Tenant's statements in this lease and any application for rental are material representations relied upon by Landlord. Each party signing this lease represents that he or she is of legal age to enter into a binding contract and is authorized to sign the lease. If Tenant makes any misrepresentation in this lease or in any application for rental, Tenant is in default. Landlord is not aware of any material defect on the Property that would affect the health and safety of an ordinary person or any environmental hazard on or affecting the Property that would affect the health or safety of an ordinary person, except: _____
- _____
- _____

32. BROKERS:**A. The brokers to this lease are:**

<u>N/A</u>	<u>N/A</u>
Cooperating Broker	Principal Broker
License No. _____	License No. _____
Address _____	Address _____
Phone _____	Phone _____
Fax _____	Fax _____
E-mail _____	E-mail _____

Cooperating Broker represents Tenant.

Principal Broker: *(Check only one box)*☐ represents Landlord only.☐ represents Tenant only.☐ is an intermediary between Landlord and Tenant.**B. Fees:**

- ☐ (1) Principal Broker's fee will be paid according to: *(Check only one box)*.
- ☐ (a) a separate written commission agreement between Principal Broker and:
☐ Landlord ☐ Tenant.
- ☐ (b) the attached Addendum for Broker's Fee.
- ☐ (2) Cooperating Broker's fee will be paid according to: *(Check only one box)*.
- ☐ (a) a separate written commission agreement between Cooperating Broker and:
☐ Principal Broker ☐ Landlord ☐ Tenant.
- ☐ (b) the attached Addendum for Broker's Fee.

- 33. ADDENDA:** Incorporated into this lease are the addenda, exhibits and other information marked in the Addenda and Exhibit section of the Table of Contents. If Landlord's Rules and Regulations are made part of this lease, Tenant agrees to comply with the Rules and Regulations as Landlord may, at its discretion, amend from time to time.

34. NOTICES: All notices under this lease must be in writing and are effective when hand-delivered, sent by mail, or sent by facsimile transmission to:

Tenant at the leased premises,

and a copy to: Village of Wimberley

Address: 12111 RR 12, Space B-204, Wimberley, TX 78676

Phone: (512) 634-7149 Fax: (512) 847-0422

Landlord at: Todd Routh

Address: P.O. Box 204391, Austin, TX 78720-4391

Phone: (512) 452-8633 Fax: (512) 452-2622

and a copy to: _____

Address: _____

Phone: _____

Fax: _____

35. SPECIAL PROVISIONS:

36. AGREEMENT OF PARTIES:

- A. Entire Agreement: This lease contains the entire agreement between Landlord and Tenant and may not be changed except by written agreement.
- B. Binding Effect: This lease is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, successors, and permitted assigns.
- C. Joint and Several: All Tenants are jointly and severally liable for all provisions of this lease. Any act or notice to, or refund to, or signature of, any one or more of the Tenants regarding any term of this lease, its renewal, or its termination is binding on all Tenants.
- D. Controlling Law: The laws of the State of Texas govern the interpretation, performance, and enforcement of this lease.

- E. Severable Clauses: If any clause in this lease is found invalid or unenforceable by a court of law, the remainder of this lease will not be affected and all other provisions of this lease will remain valid and enforceable.
- F. Waiver: Landlord's delay, waiver, or non-enforcement of acceleration, contractual or statutory lien, rental due date, or any other right will not be deemed a waiver of any other or subsequent breach by Tenant or any other term in this lease.
- G. Quiet Enjoyment: Provided that Tenant is not in default of this lease, Landlord covenants that Tenant will enjoy possession and use of the leased premises free from material interference.
- H. Force Majeure: If Landlord's performance of a term in this lease is delayed by strike, lock-out, shortage of material, governmental restriction, riot, flood, or any cause outside Landlord's control, the time for Landlord's performance will be abated until after the delay.
- I. Time: Time is of the essence. The parties require strict compliance with the times for performance.

Brokers are not qualified to render legal advice, property inspections, surveys, engineering studies, environmental assessments, tax advice, or compliance inspections. The parties should seek experts to render such services. READ THIS LEASE CAREFULLY. If you do not understand the effect of this Lease, consult your attorney BEFORE signing.

Village of Wimberley

Tenant

By _____ Date _____

Printed Name Tom A. Haley

Title Mayor

Tenant

By _____ Date _____

Printed Name _____

Title _____

Todd Routh

Landlord

By _____ Date _____

Printed Name Todd Routh

Title Managing Partner

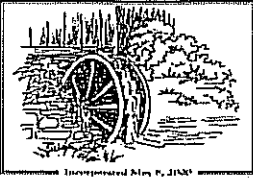
Landlord

By _____ Date _____

Printed Name _____

Title _____

City Council Agenda Form



Date Submitted: February 2, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER ISSUES
RELATING TO THE ROLES AND RESPONSIBILITIES
OF THE CITY'S BOARDS AND COMMISSIONS

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

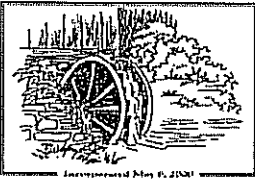
☒ Motion

☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda at the request of Mayor Pro-tem Bob Flocke to allow City Council to discuss and consider action on issues relating to the roles and responsibilities of the City's boards and commissions.

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER ESTABLISHING
A PROCESS TO HELP DETERMINE THE USE OF THE
RECENTLY DONATED PEC TRACT

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

☒ Motion

☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow City Council to establish a process that will be used to determine how the property recently donated to the City by the Pedernales Electric Cooperative will be used. The vacant tract is a very small, less than one-sixth of an acre, triangular piece of property located at the junction of FM 2325 and Ranch Road 12.

City staff recommends the appointment of an ad hoc study committee to examine the possible uses and make a recommendation to the City Council on what the City should do with the property.

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CONSIDER ACTION
RELATING TO THE ANNUAL PERFORMANCE REVIEW
FOR THE CITY ADMINISTRATOR

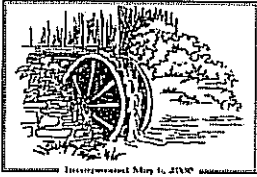
Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☒ Motion
- ☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow the City Council to conduct the annual performance review for the City Administrator and consider any action relating to the review.

City Council Agenda Form



Date Submitted: January 31, 2009

Agenda Date Requested: February 5, 2009

Project/Proposal Title: CITY COUNCIL REPORTS

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

☐ Motion

☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow for reports to be presented by the Mayor and members of City Council and for future agenda item requests.