ORDINANCE NO. 2008-004

AN ORDINANCE OF THE VILLAGE OF WIMBERLEY, TEXAS AMENDING TITLE III (ADMINISTRATION), CHAPTER 30 (CITY GOVERNMENT) OF THE CODE OF ORDINANCES IN ORDER TO ESTABLISH AND CREATE THE POSITION OF VILLAGE FIRE MARSHAL ESTABLISHING THE DUTIES AND COMPENSATION FOR THE OFFICE; AND PROVIDING FOR PENALTY; FINDINGS OF FACT; REPEALER, SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the Village is authorized by virtue of sections 22.071 and 22.072 of the Texas Local Government Code to authorize the appointment, powers and duties of municipal officers; and

WHEREAS, the City Council for the Village of Wimberley desires to authorize and establish the position of fire marshal in order to ensure the enforcement of its municipal ordinances, in the interest of protecting the health, safety and welfare of its citizens.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE VILLAGE 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 the Village 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 III (Administration), Chapter 30 (City Government) of the Code of Ordinances of the Village of Wimberley, is hereby amended by adding the following sections:

"Sec. 30.60 Office created.
The office of fire marshal of the city is hereby created.

Sec. 30.61 Appointment; qualifications; duties; pay.
The fire marshal shall be appointed by the City Administrator. The fire marshal shall be skilled in investigations, inspections and management and shall devote his time to educating the public in fire safety while enforcing federal, state and local laws as they pertain to fire prevention, and perform all such other duties as described in the job description adopted by the City Council. The fire marshal shall receive such compensation as provided for by the City's compensation plan.

Sec. 30.62 Authority to take testimony, summon witnesses, administer oaths.
(a) The fire marshal, when in his opinion further investigation of a fire is necessary, shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or

to have means of knowledge in relation to the matter under investigation and shall cause the same to be reduced to writing.
(b) The fire marshal shall have the power to summon witnesses before him to testify in relation to any matter which is, by the provisions of this chapter, a subject of inquiry and investigation, and may require the production of any book, paper or document deemed pertinent thereto. The fire marshal is hereby authorized and empowered to administer oaths and affirmation to any persons appearing as witnesses before him.

Sec. 30.63 Authority to order disconnection of utilities in case of serious fire hazard.
When the fire marshal or his agent determines that the condition of any premises creates a serious fire hazard dangerous to human life, he may order the utility company or companies to disconnect the utility service until the hazardous condition is removed. In cases of emergency or in situations where the utility company does not respond to or comply with the order of the fire marshal or his agent, the fire marshal or his agent shall have the authority to immediately disconnect or cause the disconnection of the utility service. Any person whose property is affected by the act or order of the fire marshal shall have the right of direct appeal to the office of the city administrator.

Sec. 30.64 Investigations–Private, separation of witnesses.
All investigations held by or under the direction of the fire marshal may, in his discretion, be private, and persons other than those required to be present may be excluded from the place where such investigations are held. Witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined.

Sec. 30.65 Same–Misconduct of witnesses.
Any witness who refuses to be sworn, or who refuses to appear or testify, or who disobeys any lawful order of the fire marshal, or who fails or refuses to produce any book, paper or document touching any matter under examination, or who is guilty of any contemptuous conduct during the investigation or inquiry, after being summoned to give testimony in relation to any matter under investigation as provided in this chapter, shall be deemed guilty of a misdemeanor and subject to the general penalty set forth in section 10.99 of the code. It shall be the duty of the fire marshal to cause all such offenders to be prosecuted.

Sec. 30.66 Fees.
Fire marshal inspection fees shall be determined by city council from time to time."

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

SECTION 3. RELATION TO OTHER ORDINANCES

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

SECTION 4. EFFECTIVE DATE

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

SECTION 5. 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 6. 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 7. 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 17th day of January, 2008, by a 5 to 0 vote of the City Council of the Village of Wimberley, Texas.

SECOND AND FINAL READING PASSED AND APPROVED this 7th day of February, 2008, by a 5 to 0 vote of the City Council of the Village of Wimberley, Texas.

VILLAGE OF WIMBERLEY

By: _____
Tom Haley
Mayor

ATTEST:

Cara McPartland
City Secretary

APPROVED AS TO FORM:

Carolyn J. Crosby
Assistant City Attorney