ORDINANCE NO. 2023-997

AN ORDINANCE OF THE VILLAGE OF WIMBERLEY, TEXAS AMENDING TITLE IX GENERAL OFFENSES, CHAPTER 93 (FIREWORKS) OF THE CODE OF ORDINANCES IN ORDER TO PROHIBIT THE SALE, POSSESSION AND USE OF FIREWORKS IN THE CITY EXCEPT DURING AUTHORIZED PUBLIC DISPLAYS; PROVIDING A PENALTY OF NO MORE THAN $2,000 PER VIOLATION OF THE ORDINANCE; FINDINGS OF FACT; REPEALER, SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the Village is authorized by virtue of sections 217.002 and 217.003 of the Texas Local Government Code to define and prohibit nuisances and disorderly conduct; and

WHEREAS, the City Council for the Village of Wimberley desires to ban the sale and use of fireworks in the City, except during authorized public displays, 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 IX General Offenses, Chapter 93 (Fireworks) of the Code of Ordinances of the Village of Wimberley, is hereby deleted in its entirety and replaced with the following:

"Section 93.01Definitions

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(a) *Fireworks:* *Firecrackers, skyrockets, torpedoes, roman candles, sparklers, fire balloons, and all substances, in whatever combination and by whatever name, which are intended for use in obtaining visible or audible effects by combustion and by whatever name, which are intended for use in obtaining visible or audible effects by combustion, explosion or detonation. Such term shall include all articles or substances within the ordinary meaning of the term fireworks, whether or not specifically designated herein.*

(b) *Person:* *Any natural person, association or persons, partnership or corporation and shall include any agent, officer, or employee of the foregoing.*

Section 93.02 Declaration of Nuisance

The transporting, storing, offering for sale, sale, possession, assembly, manufacture, use or discharge of fireworks within the City limits is hereby declared to be illegal and a public nuisance, and it shall be unlawful for any person to transport, store, offer for sale, sell, have in his possession, use, discharge, cause to be discharged, ignite, detonate or otherwise set into action any fireworks within the City.

Section 93.03 Abatement of Nuisance

The duly appointed and acting City Administrator of the City or his authorized representative is hereby authorized to enter any premise, other than a private residence, where the unlawful presence of fireworks is suspected in order to determine whether fireworks are present, and to seize, remove and cause to be destroyed, at the expense of the owner, any fireworks found or used within the City limits in violation of this Chapter. Provided however, that prior to the disposal or destruction of any fireworks seized under this Section, the City shall file a Motion with Municipal Court requesting an Order of Disposal and/or Destruction for explosives, explosive materials and/or fireworks pursuant to authority granted by the 2003 International Fire Code, Section 3301.7. Said Motion shall be filed with a sworn affidavit of the City Administrator or his representative stating the underlying circumstances of the seizure and the City shall verify that the explosives, explosive materials and/or fireworks are not being held as evidence to be used in any pending case. A hearing shall be held before a judge of the municipal court. The municipal judge shall, as soon as practicable, hear the matter, after giving reasonable notice to the person whose explosives, explosive materials and/or fireworks have been removed or impounded. The City and the person whose explosives, explosive materials and/or fireworks have been removed or impounded shall each have the opportunity to present evidence and make argument on their behalf. The formal rules of evidence do not apply to a hearing under this section.

The judge hearing the case shall make his or her ruling on the basis of a preponderance of the evidence presented at the hearing. If the judge finds that the explosives, explosive materials and/or fireworks were lawfully seized and that, at the time of the hearing, the explosives, explosive materials and/or fireworks constitute materials or other items that cannot be lawfully possessed, stored, handled or used in the jurisdictional limits of the city, the judge shall grant the motion. The decision of the judge is final.

Section 93.04 Exceptions

(a) *This Chapter shall not apply to signal flares transported or used by railroads in connection with their operations; signal flares or rockets for police use; auto safety flares; paper caps containing less than .25 of a grain of explosive material*

per cap, designated for use in toy guns or toy cannons; or to blank cartridges used in connection with athletic or similar events.

(b) This Chapter shall not apply to pyrotechnic displays designed to entertain the general public, which have been approved by the Fire Marshal in advance and which are supervised by the Fire Marshal or his authorized representative.

Section 93.05 Special Event Fireworks Permit

Any person who wishes to possess or use fireworks in a manner that differs from the authorizations described in this Chapter may do so upon issuance by the City of a Special Event Fireworks Permit.

(a) A person desiring a Special Events Fireworks Permit shall submit an application for such permit using the form provided by the City, and pay the application fee established by City Council. Such form will require the name and address of the person(s) owning the property, the name and address of the person seeking the permit, the date and time of the event, estimate of the number of people in attendance at the event, the type of fireworks to be used at the event, any preventative or safety measures being implemented at the event and any other information as requested by the City. Permission and consent of the landowner must be submitted with the application if the application is submitted by someone other than the landowner.

(b) Prior to the issuance of the permit, the City may require that the applicant submit proof of insurance, and may require coverage in sufficient amounts depending on size and type of event and that the city shall be named as an additional insured.

(c) Upon receipt of an application for a permit, the City Administrator or his designee shall make or cause to be made an investigation to determine if all conditions of this chapter applying to the permit specified are fulfilled, and if the City Administrator or his designee shall find that the things required to be set forth and are true and that the requirements of this article are fulfilled, the permit or certificate herein mentioned shall be issued, but may impose terms and conditions upon the permit that the City deems necessary for the safety of the public.

(d) The permit applicant may appeal any Special Events Fireworks Permit decision of the City Administrator to the City Council within seven (7) days of the denial, otherwise the decision is final.

Sections 93.06-93.98. Reserved.

Section 93.99 Penalty

Any person which violates any provision of this ordinance shall be guilty of a misdemeanor and upon conviction will be subject to a fine not to exceed $2,000. Each day of violation will constitute a separate offense. This penalty will be cumulative of any other rights or remedies the City may have."

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.

PASSED AND APPROVED on first reading this 3rd day of January, 2008, by a 4 to 0 vote of the City Council of the Village of Wimberley, Texas.

PASSED AND APPROVED on second reading this 17th day of January, 2008, by a 5 to 0 vote of the City Council of the Village of Wimberley, Texas.

VILLAGE OF WIMBERLEY

By: _____
Thomas Haley
Mayor

ATTEST:

_____
City Secretary

APPROVED AS TO FORM:

_____
Carolyn J. Grosby
Assistant City Attorney

Attachments Upon Passage:

- meeting agenda
- meeting minutes
- publisher's affidavit (if required)
- other: _____