ORDINANCE NO. 2008-001

AN ORDINANCE OF THE VILLAGE OF WIMBERLEY, TEXAS AMENDING TITLE XI BUSINESS REGULATIONS BY ADDING CHAPTER 100 (ALCOHOLIC BEVERAGES) OF THE CODE OF ORDINANCES IN ORDER TO ESTABLISH DISTANCE REQUIREMENTS BETWEEN CERTAIN USES AND THOSE WHICH INVOLVE ALCOHOLIC BEVERAGES; AND PROVIDING FOR THE FOLLOWING: PENALTY; FINDINGS OF FACT; REPEALER; SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the Village of Wimberley ("City Council") seeks to provide for the orderly arrangement and regulation of compatible uses within its corporate limits; and

WHEREAS, the City Council is authorized by the Texas Alcoholic Beverage Code, Chapter 109, to adopt regulations regarding the distance between businesses which sell alcoholic beverages by a dealer whose place of business is within a certain distance of church, public or private school, or public hospital, day-care center and a child-care facility; and

WHEREAS, parties in interest and citizens have had an opportunity to be heard at two separate public meetings conducted by the City Council on this matter; and

WHEREAS, the City Council finds that the provisions of this Ordinance will serve to promote the public health, safety, morals and general welfare.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE VILLAGE 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 Village of Wimberley and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

II. AMENDMENTS

THAT the Village of Wimberley Code of Ordinances, Title XI (Business Regulations) is hereby amended by adding Chapter 100 (Alcoholic Beverages), to read as follows:

"Chapter 100 Alcoholic Beverages

(A) Requirements. The sale, storage, or handling of alcoholic beverages for the purpose of sale is permitted only where the use is authorized by and complies with all applicable provisions of this Code and the Texas Alcoholic Beverage Code.

(B) The sale, storage or handling of beer for the purpose of sale is prohibited in residential areas in the City limits.

(C) The hours for the sale of beer shall be as prescribed by the Texas Alcoholic Beverage Code.

(D) The sale, storage or handling of alcoholic beverages for the purpose of sale is permitted only in approved locations within the interior of buildings or structures that have a valid certificate of occupancy allowing such use.

(E) Restrictions.

(1) The sale, storage or handling of alcoholic beverages for the purpose of sale is not permitted in any zoning district where the place of business is located within three hundred feet (300') of a church, public or private school, or public hospital unless expressly granted an exception pursuant to the requirements of this section.

(2) The sale, storage or handling of alcoholic beverages for the purpose of sale is not permitted in any zoning district where the place of business is located within three hundred feet (300') of a day-care center or a child-care facility as defined in the Texas Human Resources Code § 42.002 and the permit or license holder does not hold a food and beverage certificate issued by the Texas Alcoholic Beverage Commission, unless expressly varied pursuant to the requirements of this section, except that this provision shall not apply:

a. If the permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building; or

b. If the permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multistory building.

(3) The distance between the place of business where alcoholic beverages are sold and a church or public hospital shall be measured along the property lines of the street fronts and from front door to front door, and in direct line across intersections.

(4) The distance between the place of business where alcoholic beverages are sold and a school, day-care center or child-care facility shall be measured in a direct line from the property line of the school, day-care center or child-care facility to the property line of the place of business, and in a direct line across intersections.

(5) The possession of an open container or the consumption of an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a homeless shelter that is not located in a central business district or a substance abuse treatment center that is not located in a central business district is prohibited.

(F) Waiver of Minimum Distances.

(1) The council may waive the distance restrictions in subsection (E), if, after notice and a public hearing, the council determines that enforcement of the restriction in a particular instance:

a. is not in the best interest of the public;

b. constitutes waste or the inefficient use of land or other resources;

c. creates an undue hardship on an applicant;

d. does not serve its intended purpose;

e. is not effective or necessary; or

f. for any other reason the council, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines in the best interest of the community.

(2) The council may consider the written consent to a waiver under this subsection from each church, public or private school, public hospital, day-care center or child-care facility within 300 feet from the applicant's proposed place of business filed by the applicant with the City to be a sufficient justification for a waiver.

(3) To obtain a waiver under this section, an applicant must submit an application to the City with all information requested and required by the City, and pay an administrative fee.

(G) Notice of Application for Waiver.

(1) The City shall distribute notice of an application for a waiver to the distance requirements under subsection (F) by:

a. publication once in a newspaper of general circulation in the location in which the waiver is requested; and

b. mail not fewer than 15 days before the date of the council's public hearing under this subsection to:

1. the applicant;

2. the record owner of real property located within 300 feet of the proposed place of business according to the most recent tax appraisal roll; and

3. a neighborhood organization on file with the City that has requested notice of an application for the waiver under this subsection; and

4. posting one to three signs in the location for which the waiver is requested.

(2) A sign posted under this subsection shall:

a. be posted no more than twenty days or less than fifteen days prior to the date of the council's public hearing;

b. include the type of action pending, the file number and a contact telephone number for additional information;

c. be visible from the street; and

d. be spaced not more than 200 feet apart, unless the street frontage of the place of business requesting a waiver is less than 200 feet, in which case, only one sign is required.

(3) An applicant may post the sign(s) required under subsection (2), and must advise the City at the time of the application of his intention to assume the responsibility to post and remove the required sign(s). If the applicant will not install the signs, then the applicant shall pay an additional fee to the City to compensate for such expenses. Further, the applicant must:

a. verify placement of the sign(s) in writing to the City; and

b. respond to complaints regarding the signs to the City within 24 hours.

(H) Penalty. Any person who violates any provision of this Chapter shall, upon conviction, be subject to the penalties as set forth in Section 10.99 of this Code."

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

III. REPEALER

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

IV. 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.

V. EFFECTIVE DATE

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

VI. 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 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 6 th day of Dec., 2007, by a 4 (Ayes) 0 (Nays) 0 (Abstain) vote of the City Council of the Village of Wimberley, Texas.

SECOND AND FINAL READING PASSED AND APPROVED this 3rd day of Jan., 2008, by a 5 (Ayes) 0 (Nays) 0 (Abstain) vote of the City Council of the Village of Wimberley, Texas.

VILLAGE OF WIMBERLEY

By: Tom Haley
Tom Haley, Mayor

ATTEST:

Cara McPartland
Cara McPartland, City Secretary

(SEAL)

APPROVED AS TO FORM:

Carolyn J. Crosby
Carolyn J. Crosby, Assistant City Attorney