ORDINANCE NO. 2008-032

AN ORDINANCE OF WIMBERLEY, TEXAS AMENDING TITLE III, CHAPTER 31, "MUNICIPAL COURT," OF THE WIMBERLEY CODE OF ORDINANCES IN ITS ENTIRETY TO ABOLISH THE MUNICIPAL COURT AS A COURT OF RECORD AND REESTABLISH THE MUNICIPAL COURT AND ASSOCIATED FUNCTIONS, ESTABLISH AN APPROPRIATE FEE AND ESTABLISHMENT OF BUILDING SECURITY AND TECHNOLOGY FUNDS AND ESTABLISH APPROPRIATE COURTROOM CONDUCT SUBJECT TO PENALTY FOR VIOLATION OF SAME; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; REPEALER; SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING

WHEREAS the City Council of Wimberley seeks to provide for the health, safety and welfare of its citizens; and

WHEREAS, the City originally established the Municipal Court as a Municipal Court of Record; and

WHEREAS, section 30.00004 of the Texas Government Code permits the Council to abolish a municipal court of record if it finds it to be unnecessary; and

WHEREAS, there are no cases currently pending in the Municipal Court of Record; and

WHEREAS, the City Council finds that a municipal court of record is not necessary for the administration of justice in the City, and that a municipal court shall be established as provided for herein.

NOW THEREFORE, BE IT ORDAINED 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 Council of Wimberley and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

II. AMENDMENT

THAT Title I, Chapter 31 (Municipal Court), of the Wimberley Code of Ordinances, is hereby revised and amended in its entirety to read as follows:

"CHAPTER 31: MUNICIPAL COURT

Section

Municipal Court

31.01 Purpose; scope; application
31.02 Establishment
31.03 Jurisdiction of Court
31.04 Municipal Judge
31.05 Writs
31.06 Rules of procedure
31.07 Clerk of Court
31.08 Court proceedings; records
31.09 Court facilities; seal
31.10 Complaints and pleadings; prosecution
31.11 Jury
31.12 Appeal procedures
31.13 Filing of False Affidavits
31.14 Courtroom Conduct
31.15 Municipal Court Building Security Fund
31.16 Municipal Court Technology Fund
31.17 Electronic Payments

MUNICIPAL COURT

§ 31.01 PURPOSE; SCOPE; APPLICATION.

(A) *Purpose.* This subchapter is adopted so that the City Council may promote the public health, safety, morals, and general welfare within the city through the enforcement of the city's ordinances.

(B) *Scope.* The provisions of this subchapter govern the creation, establishment, operation, and jurisdiction of the Municipal Court within the city, including the judges of the Court.

(C) *Application.* The provisions of this subchapter shall apply within the city limits and within the extraterritorial jurisdiction (ETJ) of the city as prescribed by state law.

(D) *Relation to other ordinances.* This subchapter shall not be construed to require or allow any act which is prohibited by any other ordinance or code provision. This subchapter is specifically subordinate to any ordinance or regulations of the city pertaining to building and construction safety or to pedestrian and traffic safety.

§ 31.02 ESTABLISHMENT.

There is hereby established one Municipal Court within the city, with the numerical designation of "Municipal Court No. 1."

§ 31.03 JURISDICTION OF COURT.

The Municipal Court has the jurisdiction provided by general law for municipal courts contained in Tex. Gov't Code, § 29.003, including concurrent jurisdiction with justice courts as provided by Tex. Gov't Code, § 29.003. The Municipal Court also has jurisdiction over cases arising outside the territorial limits of the city under ordinances authorized by Tex. Loc. Gov't Code, §§ 215.072, and Chapters 271, 301 and 401 or otherwise as provided by law.

§ 31.04 MUNICIPAL JUDGE.

(A) The Municipal Court shall be presided over by a judge, who shall be known as the "Municipal Judge." The Judge shall be appointed by ordinance for a term of two years and shall be entitled to a salary set by the City Council. The amount of the Judge's salary may not be diminished during the Judge's term of office. The salary may not be based directly or indirectly on fines, fees, or costs collected by the Court.

(B) The Judge must:

(1) Be a citizen of this country; and

(2) Be a resident of this state.

(C) A person may not serve as a Municipal Judge if the person is otherwise employed by the municipality. A Municipal Judge who accepts other employment with the municipality vacates the judicial office.

(D) If a vacancy occurs in the office of Municipal Judge, the City Council shall adopt an ordinance appointing a qualified person to fill the office for the remainder of the unexpired term.

(E) There may also be as many as three alternate judges appointed by the City Council, subject to the same qualifications, who shall have all the powers and shall discharge all the duties of a Municipal Judge while serving as Municipal Judge. Each alternate judge shall be appointed for a term of two years. If the regular Municipal Judge is temporarily absent due to illness, family death, continuing legal or judicial education programs, or any other reason, he or she shall select one of the alternate judges to serve during his or her absence.

(F) The Municipal Judges may exchange benches and act for each other in any proceeding pending in the court. All acts performed by any of the Judges are binding on all parties to the proceeding.

(G) The Municipal Judge shall take judicial notice of state law and the ordinances and corporate limits of the municipality.

(H) A Municipal Judge is a magistrate and may issue administrative search warrants.

(I) A Municipal Judge may be removed from office by the City Council at any time for incompetency, misconduct, malfeasance, or disability.

§ 31.05 WRITS.

The Judges of the Municipal Court may grant writs of mandamus, injunction, attachment, and other writs necessary to the enforcement of the jurisdiction of the Municipal Court and may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the Municipal Court.

§ 31.06 RULES OF PROCEDURE.

The Code of Criminal Procedure and the state Rules of Appellate Procedure, as modified by Tex. Gov't Code, Chapter 30, govern the trial of cases before the Municipal Court. The Court may make and enforce all rules of practice and procedure necessary to expedite the trial of cases before the Court that are not inconsistent with law.

§ 31.07 CLERK OF COURT.

(A) The city hereby creates the position of municipal court clerk. The city administrator shall appoint the municipal court clerk and shall serve at the will of the City, pursuant to such terms and compensation as may be determined from time to time by the council.

(B) The Clerk or the Clerk's deputies shall keep the records of the Municipal Court, issue process, and generally perform the duties for the Court that a clerk of the county court at law exercising criminal jurisdiction is required by law to perform for that court. In addition, the Clerk or the Clerk's deputies shall maintain an index of all Court judgments in the same manner as county clerks are required by law to prepare for criminal cases arising in county courts. The Clerk shall perform the duties in accordance with statutes and ordinances of the city.

§ 31.08 COURT PROCEEDINGS.

(A) Testimony is not required to be recorded in a case unless requested by the Judge or one of the parties.

§ 31.09 COURT FACILITIES; SEAL.

(A) The City Council shall provide courtrooms, jury rooms, offices, office furniture, libraries, law books, and other facilities and supplies that the Council determines necessary for the proper operation of the Municipal Court.

(B) The City Council shall provide the Municipal Court with a seal that contains the phrase "Municipal Court of the City of Wimberley, Texas." The seal's use must conform to Tex. Code of Crim. Pro., Art. 45.012.

§ 31.10 COMPLAINTS AND PLEADINGS; PROSECUTION.

(A) *Complaints and pleadings.* Complaints and pleadings must substantially conform to the relevant provisions of Tex. Code of Crim. Pro., Chapter 27 and 45.

(B) *Prosecution.* Prosecution in the Municipal Court shall be conducted as provided by Tex. Code of Crim. Pro., Art. 45.201.

§ 31.11 JURY.

(A) A person who is brought before the Municipal Court and who is charged with an offense is entitled to be tried by a jury of six persons. Trial by jury, including the summoning of jurors, must substantially conform to Tex. Code of Crim. Pro., Chapter 45.

(B) The Court Clerk shall supervise the selection of persons for jury service.

§ 31.12 APPEAL PROCEDURES.

(A) A defendant has the right of appeal from a judgment or conviction pursuant to Tex. Code of Crim. Pro., Art. 45.042.

§ 31.13 FILING OF FALSE AFFIDAVITS.

(A) No person shall knowingly, recklessly or negligently file an affidavit containing any material false statements with the municipal court clerk, when filing of such affidavit is otherwise required under the term of any ordinance of this city or pursuant to an order of the presiding or an associate judge of the municipal court of the city.

(B) Prosecution under this chapter may be initiated by the city prosecutor or by the municipal court clerk.

(C) The municipal court clerk shall immediately inform the city prosecutor of the filing of any affidavit containing any material false statement with the court clerk's office.

(D) Any person violating any provisions or terms of the chapter, or who shall fail to comply therewith or with any requirements thereof, shall be guilty of a misdemeanor, and shall in addition to all other penalties prescribed by law, be liable to a fine, and, upon conviction of any such violation, shall be fined in accordance with the general penalty provision found in section 10.99 of this code.

(E) This chapter shall be cumulative of all provisions of State Law.

(F) As used in the chapter, and where the context and circumstances will permit the term "person" shall mean and include any natural person, and any firm partnership, corporation, trust, or other legally recognized entity.

§ 31.14 COURTROOM CONDUCT.

(A) No person shall knowingly or intentionally:

(1) Use abusive, indecent, profane, vulgar, or threatening language to a judge, associate judge, court clerk or associate court clerk in the municipal courtroom or any court offices, which such language by its utterance tends to incite an immediate breach of peace;

(2) Abuse or threaten a judge, associate judge, court clerk or associate court clerk in the municipal courtroom or any court offices in an obviously offensive manner;

(3) Make an offensive gesture or display to a judge, associate judge, court clerk or associate court clerk in the municipal courtroom and or court offices, which such gesture or display tends to incite an immediate breach of the peace;

(4) Make unreasonable noise, including yelling, or screaming at a judge, associate judge, court clerk or associate court clerk in the municipal courtroom or any court offices;

(5) Disrupt the orderly functioning of the municipal court by any abusive, threatening, or unreasonable loud behavior conducted in an offensive manner.

(B) It is a defense to prosecution under subsection (A)(2) that the actor had significant provocation for his abusive or threatening conduct.

(C) Any person in violation any of the provisions or terms of the chapter, or who shall fail to comply herewith or with any requirements thereof, shall be guilty of a Class C Misdemeanor, and shall be liable to pay a fine, upon conviction of any such violation, in accordance with the general penalty provision found in section 10.99 of this code.

§ 31.15 MUNICIPAL COURT BUILDING SECURITY FUND

(A) There is hereby created and established a Municipal Court Building Security Fund (the "Fund") pursuant to Article 102.017 of the Code of Criminal Procedure.

(B) The Municipal Court is hereby authorized and required to assess a Municipal Court Building Security Fee (the "Fee") in the amount of $3.00 against all defendants convicted of a misdemeanor offense by the Municipal Court. Each misdemeanor offence shall be subject to separate assessment of the Fee.

(C) The fee shall be assessed and collected from the defendant upon conviction for a misdemeanor offense in the Municipal Court as a cost of court. A defendant is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person is placed on community supervision, including deferred adjudication community supervision; or

(3) the court defers final disposition of the person's case.

(D) The Municipal Court Clerk is hereby authorized and required to collect the Fee and to pay same to the treasury of the City. All Fees so collected and paid over to the treasury of the City shall be segregated in the Fund.

(E) The Fund shall be used only for the purpose of financing the purchase of security devices and/or security services for the building or building housing the Municipal Court. Security devices and/or security shall include any and all items described in Article 102.017 of the Code of Criminal Procedure.

(F) The Fund shall be administered by or under the direction of the Council.

§ 31.16 MUNICIPAL COURT TECHNOLOGY FUND

(A) There is hereby created and established a Municipal Court Technology Fund, here-in-now known as the fund, pursuant to Article 102.0172 of the Code of Criminal Procedure.

(B) The fund may be maintained in an interest bearing account and may be maintained in the general revenue account.

(C) The Technology Fund Fee shall be in the amount of four dollars.

(D) The fee shall be assessed and collected from the defendant upon conviction for a misdemeanor offense in the municipal court as a cost of court. A defendant is considered convicted if:

(1) Judgment, sentence, or both are imposed on the person;

(2) The person is placed on deferred disposition; or

(3) The court defers final disposition or imposition of the judgment and sentence in the person's case.

(E) The fees shall be collected on conviction for an offense committed on or after the adoption of this ordinance.

(F) The clerk of the court shall collect the fee and pay the fee to the municipal treasurer who shall deposit the fee into the municipal court technology fund.

(G) The fund shall be used only for the purpose of financing the purchase of or to maintain technological enhancements for the Municipal Court of the city. "Technological enhancements" shall include any and all the items described in Article 102.0172 of the Code of Criminal Procedure.

(H) The fund shall be administered by or under the direction of the council of the city.

§ 31.17 ELECTRONIC PAYMENTS.

(A) The city administrator is hereby authorized to contract with a vendor for the collection of payments for fines, fees, court costs or other charges through the Internet. The contract may permit the vendor to collect a reasonable fee from the person making the on-line payment for the provision of this service.

(B) The municipal court clerk is hereby authorized to accept payment by credit card of a fee, fine, court cost, or other charge.

Except as amended herein the Wimberley Code of Ordinances 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 4th day of September, 2008, by a 5 (Ayes) 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

SECOND AND FINAL READING PASSED AND APPROVED this 18th day of September, 2008, by a 5 (Ayes) 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY

By: Tom Haley
Tom Haley, Mayor

ATTEST:

Cara McPartland
Cara McPartland, City Secretary

APPROVED AS TO FORM:

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