ORDINANCE 2007-034

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE VILLAGE OF WIMBERLEY, TEXAS, TITLE XIII (GENERAL OFFENSES) TO ADD CHAPTER 170, TITLED "ENGINE BRAKES PROHIBITED", PROHIBITING THE USE OF ENGINE BRAKES WITHIN THE VILLAGE LIMITS; AND PROVIDING FOR THE FOLLOWING: PENALTY, SAVINGS CLAUSE, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the Texas Transportation Code authorizes the Village of Wimberley to adopt laws and ordinances to regulate traffic within the corporate boundaries of Village of Wimberley, Texas; and

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

WHEREAS, the City Council finds that in order to protect the health, safety, and well being of the citizens of Wimberley, it is necessary to adopt an ordinance prohibiting the use of engine brakes within the City in such a manner as to cause the least hardship or offense to the greatest number of people; 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, 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 City Council and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. AMENDMENTS

That Title XIII (General Offenses) of the Village of Wimberley Code of Ordinances is hereby amended to add Chapter 170 (Engine Brakes Prohibited) to read as follows:

"*CHAPTER 170. ENGINE BRAKES PROHIBITED*

Section 170.01 Prohibition

It shall be unlawful to use or operate an auxiliary or compression engine brake in a posted area on a street or highway on which such use is prohibited that produces any noise in addition to the normal operating engine noise within the Village. This provision shall not be construed to prohibit the use of braking mechanisms by emergency vehicles while in the performance of their official or normal duties. This provision is not intended to prohibit the passage of vehicles equipped with engine or "Jake brakes" in posted areas but rather to prohibit the use of engine or "Jake brakes" in posted areas.

Section 170.02 Penalty

Criminal prosecution. Any person violating any provision of Chapter 170, shall, upon conviction, be guilty of a misdemeanor and shall be fined a sum not exceeding $500. Each day such violation continues shall constitute a separate offense."

SECTION 3. SEVERABILITY

Should any sentence, paragraph, subdivision, clause, phrase, or section of this Ordinance be adjusted or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Ordinance in whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

SECTION 4. REPEALER CLAUSE

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 5. EFFECTIVE DATE

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

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.

PASSED AND APPROVED Second Reading this 6th day of Dec., 2007, by a vote of 5 (Ayes) to 0 (Nays) 0 (Abstain) vote of the City Council of the Village of Wimberley, Texas

VILLAGE OF WIMBERLEY

Tom Haley

Tom Haley, Mayor
Village of Wimberley, Texas

ATTEST:

Cara McPartland

Cara McPartland, City Secretary
Village of Wimberley, Texas

(SEAL)

APPROVED AS TO FORM:

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Patty L. Akers, City Attorney
Village of Wimberley, Texas