

ORDINANCE NO. 2008- 006

AN ORDINANCE OF THE VILLAGE OF WIMBERLEY, TEXAS AMENDING TITLE XI BUSINESS REGULATIONS BY ADDING CHAPTER 101 (ALCOHOLIC BEVERAGES PERMIT) OF THE CODE OF ORDINANCES IN ORDER TO ADD THE REQUIREMENT FOR PERMITS, ESTABLISH PERMIT APPLICATION REQUIREMENTS AND INSPECTION; PROHIBITING CONSUMPTION OF ALCOHOLIC BEVERAGES ON PUBLIC STREETS, SIDEWALKS, AND PARKS; 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 ensure that all businesses operate lawfully within its corporate limits; 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 are the minimum requirements necessary to promote the public health, safety, morals and general welfare, and are not in conflict with state provisions regarding regulation of alcoholic beverages.

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 101 (Alcoholic Beverages Permit), to read as follows:

“Chapter 101 Permit Required.

(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) Inspection and Certification. This section applies to:

(1) an original application or a renewal application for a permit or license required by the Texas Alcoholic Beverage Code; and

(2) a permittee seeking to change the place of business for which a permit or license is issued, if the Texas Alcoholic Beverage Code requires the city secretary to certify that the sale of alcoholic beverages at a place of business is authorized by City ordinance.

(C) The applicant for a permit or license subject to this section shall file a completed and verified application with the city secretary on the form promulgated by the Texas Alcoholic Beverage Commission.

(D) An applicant shall make the place of business available for any investigation or inspection required by this chapter.

(E) Inspections under this section may relate to requirements established by Title XV (Land Usage), Building Code, Plumbing Code, Electrical Code, and Fire Code, and to any other applicable provisions of the City Code.

(F) The City Administrator shall review and route the application to staff as necessary to review and comment on the application.

(G) The City Administrator shall certify an application if he/she determines that:

(1) the sale of alcoholic beverages at the place of business is an authorized use at that location; and

(2) the place of business complies with all applicable provisions of the City's Code of Ordinances.

(H) The City Administrator may request the Hays County Sheriff's Office to investigate the applicant's moral character and police or criminal record; and may request the applicant to provide a classifiable set of the applicant's fingerprints as part of the investigation under this subsection.

(I) Except as provided in Subsection (J), each City official required to review an application under Subsection (F) shall conduct an investigation and inspection as necessary to make the determinations required under this section.

(J) A City official reviewing application under Subsection (F) may certify an application under this chapter without re-inspecting a place of business if:

(1) the place of business was inspected by the City department over which the official is responsible in the 12 months preceding the date an application was filed, and

(2) the official determines there has been no material change that affects the certification required by this section since the previous inspection.

(K) The City officials reviewing an application under Subsection (F) may report an interim certification if the official's department is unable to provide the required certification because a structure or remodeling of a structure at the proposed place of business is incomplete.

(L) After the city secretary receives the certifications required by this section, the secretary shall certify on the application that:

(1) the place of business is in a "wet" area; and

(2) the sale of alcoholic beverages is not prohibited at the place of business by the City Code.

(M) If requested by the applicant, the secretary shall certify an application based on interim certifications, provided that the place of business subject to the application may not be occupied and the business may not be operated until the applicant obtains a certificate of occupancy from the City.

(N) Permit Fees and Issuance. Unless state law exempts a permittee or licensee from payment of a fee established by this section, a permittee or licensee must pay the City an annual permit or license fee of one-half the amount of the state fee for each permit and license authorizing the sale of alcoholic beverages.

(O) An applicant shall pay the fees established under Subsection (N) to the City no later than the 30th day after the date the applicant's payment of a state permit or license fee is due.

(P) A permittee and licensee who sells an alcoholic beverage at a business location before the applicant pays the fees established by this section commits a class C misdemeanor punishable in accordance with subsection (U) (*Penalty*).

(Q) The city secretary shall issue and deliver a receipt under this section to the permittee or licensee authorizing the sale of alcoholic beverages under this chapter and a state permit or license, if the permittee or licensee:

- (1) pays the fees established by Subsection (N); and
- (2) exhibits the permit or license issued by the state.

(R) Consumption of Alcoholic Beverages in Designated Areas Prohibited In this section "alcoholic beverage" means any beverage containing more than one-half of one percent alcohol by volume that is consumed diluted or undiluted as a beverage.

(S) A person may not consume an alcoholic beverage on a public street, sidewalk, or park.

(T) This chapter does not prohibit or otherwise control the manufacture, sale, distribution, transportation, or possession of alcoholic beverages.

(U) 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.

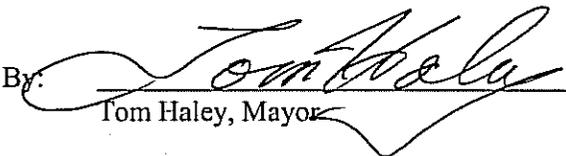
VI. PROPER NOTICE AND MEETING

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.

PASSED AND APPROVED on first reading this 3rd day of Jan., 2008, by a 4 (Ayes) 0 (Nays) 0 (Abstain) vote of the City Council of the Village of Wimberley, Texas.

PASSED AND APPROVED on second reading this 17th day of Jan., 2008, by a 5 (Ayes) 0 (Nays) 0 (Abstain) vote of the City Council of the Village of Wimberley, Texas.

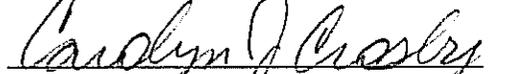
VILLAGE OF WIMBERLEY

By: 
Tom Haley, Mayor

ATTEST:


Cara McPartland, City Secretary

APPROVED AS TO FORM:


Carolyn J. Crosby, Assistant City Attorney