

ORDINANCE NO. 2007- 026

AN ORDINANCE OF THE VILLAGE OF WIMBERLEY, TEXAS AMENDING THE CODE OF ORDINANCES, TITLE XIII (GENERAL OFFENSES) TO ADD CHAPTER 150 TO ESTABLISH PROVISIONS ON PUBLIC HEALTH AND SANITATION, INCLUDING PROVIDING FOR FINDINGS OF FACT; JURISDICTION; DEFINITIONS; SANITATION REQUIREMENTS; PROCEDURES FOR FILING AND INVESTIGATING COMPLAINTS; ADMINISTRATIVE ACTION TO ABATE VIOLATIONS INCLUDING NOTICE, VILLAGE INCURRING EXPENSES, LIEN, AND FORECLOSURE; ABATEMENT OF DANGEROUS WEEDS; RELATION TO OTHER ORDINANCES; EFFECTIVE DATE; ENFORCEMENT INCLUDING A FINE NOT TO EXCEED \$2,000.00 OR CIVIL PENALTY OF \$1,000.00; NO VESTED INTEREST; SEVERABILITY; AND PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the Village of Wimberley seeks to promote the health, safety and general welfare of the community by preventing death, injury, property damage and urban blight within the Village limits; and,

WHEREAS, the City Council finds that the existence of stagnant water and other unsanitary conditions will harbor and attract rodents and insects, result in the production of disease, and decrease the attractive nature of the Village; and,

WHEREAS, the City Council finds that the existence of weeds, rubbish, brush, filth, carrion and other unsightly, unsanitary and unwholesome matter will lower the quality of life for Village citizens, decrease the attractive nature of the Village, harbor rodents, increase illegal dumping and littering, increase fire hazards, and increase crime by impeding visibility and access; and,

WHEREAS, pursuant to Texas Local Government Code section 51.001 the City Council is authorized to adopt an ordinance that is for the good government, peace or order of the Village and is necessary or proper for carrying out a power granted by law to the Village; and,

WHEREAS, pursuant to Texas Local Government Code section 51.012 the City Council is authorized to adopt an ordinance, not inconsistent with state law, that the Council considers proper for the government, interest, welfare or good order of the Village; and,

WHEREAS, pursuant to Texas Health and Safety Code Chapter 342 the City Council is authorized to regulate public health and sanitation within the Village in the areas of stagnant water, filth, carrion, weeds, dangerous weeds, and other unhealthy, unsanitary and unwholesome conditions; and,

WHEREAS, the City Council finds it to be in the best interest of the public safety, health and general welfare to adopt a public health and sanitation ordinance that regulates stagnant water, filth, carrion, weeds, dangerous weeds, and other unhealthy, unsanitary and unwholesome conditions in the Village.

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 XIII (General Offenses), of the Code of Ordinances of the Village of Wimberley, is hereby amended to add Chapter 150 (Public Health and Sanitation) to read as follows:

“CHAPTER 150 PUBLIC HEALTH AND SANITATION.

§ 150.01 JURISDICTION.

(A) *Jurisdiction.* The provisions of this Chapter shall apply within the Village limits.

§ 150.02 DEFINITIONS.

Words and phrases used in this Chapter shall have the meanings set forth in this section. Words and phrases which are not defined in this Chapter but are defined in other provisions in the Code of Ordinances of the Village of Wimberley shall be given the meanings set forth in the Code. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Chapter.

(A) “Council” means the City Council of the Village of Wimberley.

(B) “Code Officer” means the person or persons officially designated by the Council to assist the Council in implementing and enforcing this Chapter. Such person or persons may be an employee of the Village, a person or persons contracted by the Village or a person or persons otherwise designated by the Village to serve in this capacity, and such assistance shall include, but is not limited to, investigating alleged violations of this Chapter.

(C) "Dangerous weeds" means weeds that have grown higher than forty-eight inches (48") and are an immediate danger to the life, health, or safety of any person.

(D) "Designee" means official designee appointed by resolution.

(E) "Objectionable, unsightly or unsanitary matter" means any matter, condition or object which is or should be objectionable, unsightly or unsanitary to a person of ordinary sensitivities.

(F) "Person" means an individual, corporation organization, government agency, business, trust, partnership, association, or any other legal entity.

(G) "Refuse" means garbage, rubbish, paper and other decayable or nondecayable waste, including vegetable matter and animal and fish carcasses.

(H) "Rubbish" means nondecayable trash, garbage, debris, rubble, stone, paper, discarded or useless building materials, and miscellaneous useless wastes, discarded or rejected material.

(I) "Unwholesome" means harmful to body or mind.

(J) "Visibility Triangle" means the triangular area adjacent to the intersection of any street established by measuring a distance of twenty-five (25) feet from the point of intersection of two streets along the right-of-way of each of the intersecting streets and connecting the ends of each measure distance to assure adequate visibility sight lines for vehicular traffic approaching the intersection.

(K) "Village" means the Village of Wimberley, County of Hays, State of Texas, and includes any official, agent or employee acting on behalf of the Village.

(L) "Weeds" means any brush, grass, vegetation, weeds or any plant, with the exception of wildflowers, that is rank and uncultivated and that exceeds a height of twelve inches (12"). Any plant, with the exception of wildflowers and agricultural crops that are not regularly cultivated so long as they do not obstruct the necessary view to and from adjacent rights-of-way, which exceeds twelve inches (12") in height shall be presumed to be objectionable, unsanitary and unsightly.

§ 150.03 SANITATION REQUIREMENTS.

A person who is an owner, tenant, resident, occupant, agent or person having supervision of any lot, tract, or parcel of land, or a portion thereof, occupied or unoccupied within the Village shall comply with the following standards:

(A) fill, drain, remove or regulate any hole or place on said lot or parcel which contains stagnant water, an unwholesome condition, or any other condition that may produce disease;

(B) keep any building, establishment, or ground free of filth, carrion, refuse, rubbish or other impure or unwholesome matter; and

(C) keep the area defined as the visibility triangle free from dangerous weeds, weeds, rubbish, refuse, brush and other objectionable, unsightly, or unsanitary matter.

§ 150.04 FILING AND INVESTIGATING COMPLAINTS.

(A) Any Village resident or property owner may file a complaint alleging a violation of this ordinance. The complaint must:

- (1) be in writing;
- (2) provide sufficient details about the alleged violation;
- (3) be signed by the complainant; and
- (4) be filed with the Code Officer, the Council or its designee.

(B) The Code Officer, on his/her own knowledge or on the basis of a complaint by a Village resident or property owner, shall investigate any alleged violation of this ordinance.

(C) The Code Officer may enter and inspect the premises where a violation of this ordinance is alleged to have occurred, at any reasonable time.

(D) If the Code Officer determines there is a violation of this ordinance, the Officer shall submit to the Council or its designee a written report of violation. The Council or its designee may then initiate official action to remedy the violation.

§ 150.05 ADMINISTRATIVE ACTION TO ABATE VIOLATIONS.

(A) The Council or its designee may proceed administratively to remove an alleged violation of this Chapter by giving notice to the owner of the property where the alleged violation occurred, in accordance with the following procedures:

(1) The notice shall inform the property owner of the alleged violation and state that the owner has seven (7) days from receipt of the notice to comply with this Chapter, and if such action is not taken, the Council or its designee may, but is not obligated to:

- (a) authorize that the necessary work be done or improvements made;
- (b) pay for the expenses incurred in having the work done or improvements made; and
- (c) charge the expenses to the property owner.

(2) Notice must be given personally to the property owner in writing or by certified mail return receipt requested addressed to the owner at the owner's address as recorded in the records of the Hays County Central Appraisal District.

(3) If notice by personal service cannot be obtained, the Code Officer may give notice by:

- (a) publication of the notice, at least once, in a newspaper of general circulation, as defined by Subchapter C, Chapter 2051, Texas Government Code;
- (b) posting the notice on or near the front door of each building on the property to which the violation relates; or
- (c) posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

(4) If notice by letter is mailed to the owner and the U.S. Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected and the notice is considered as delivered.

(B) If the Village incurs expenses for the work done or improvements made, the Council or its designee may assess the expenses and create a lien, including possible foreclosure, against the property as follows and in the manner provided by law:

(1) The Council or its designee shall send a statement of expenses to the owner, requesting that payment be made to the City Secretary within twenty (20) days after receipt of the statement. The expenses to be charged to the owner of the property shall include:

- (a) the amount paid by the Village for the work done or improvements made;
 - (b) the costs of inspection;
 - (c) the costs of providing notice;
 - (d) the costs of identifying and notifying the owner of the property;
- and
- (e) any incidental expenses.

(2) If the violator does not pay the expenses within twenty (20) days of receipt of the statement, the mayor, municipal health authority or a municipal official designated by the mayor shall file a statement of expenses with the Hays County Clerk, including the owner's

name, if known, and the legal description of the property. A lien attaches upon the filing of the expense statement with the Hays County Clerk.

(3) The lien is security for the expenses incurred by the Village and interest accruing at the rate of ten (10) percent per year on the amount due from the date of payment by the Village.

(4) The lien is inferior only to tax liens and liens for street improvements.

(5) The Council may bring a suit for foreclosure in the name of the Village to recover the expenses and interest due.

(6) The Council may foreclose the lien in a proceeding brought under the Tax Code, Chapter 33, Subchapter E.

(7) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the Village in doing the work or making the improvements.

(C) The Village, in the notice of violation, may inform the owner by regular mail and a posting on the property that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the Village without further notice may correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice occurs within the one-year period, and the Village has not been informed in writing by the owner of an ownership change, then the Village without notice may take any action permitted by this Section.

§ 150.06 ABATEMENT OF DANGEROUS WEEDS.

(A) The Council or its designee may, without notice, abate dangerous weeds on any lot parcel, or tract of land, or part thereof, within the Village that are an immediate danger to the life, health, or safety of any person in accordance with the procedures in this Section.

(B) If the Village pays the cost of abating dangerous weeds, the Council or its designee shall assess the expenses and, if necessary, create a lien against the lot or parcel of land, including foreclosure on the property, in the same manner and subject to the same conditions as that described in Section 150.05 of this Chapter.

(C) Not later than the tenth (10th) day after the date the Council or its designee has abated the dangerous weeds, the Council or its designee shall give written notice to the owner of the lot or parcel of land in the manner required by Section 150.05 this Chapter. The notice shall contain:

- property;
- (1) an identification, which is not required to be a legal description, of the property;
 - (2) a description of the violations that occurred on the property;
 - (3) a statement that the Village has abated the dangerous weeds; and
 - (4) an explanation of the property owner's right to request an administrative hearing regarding the abatement.

(D) If, not later than the thirtieth (30th) day after the date of the abatement of the dangerous weeds, the property owner files with the Council or its designee a written request for an administrative hearing, the Council or its designee shall hold and conduct the hearing.

(1) The hearing shall be held no later than the twentieth (20th) day after the filing of the written request for a hearing.

(2) At the administrative hearing:

- (a) parties are not required to follow formal rules of evidence;
- (b) the owner may testify or present any witnesses or written information relating to the abatement of the dangerous weeds; and
- (c) the Village may call the Code Officer or other individuals deemed appropriate to testify.

§ 150.07 ENFORCEMENT.

(A) Civil and Criminal Penalties

The Village shall have the power to administer and enforce the provisions of this Chapter as may be required by governing law. Any person violating any provision of this Chapter is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Chapter is hereby declared to be a nuisance.

(B) Criminal Prosecution

Any person violating any provision of this Chapter shall, upon conviction, be fined a sum not exceeding two-thousand dollars (\$2,000.00). Each day that a provision of this Chapter is violated shall constitute a separate offense.

(C) Civil Remedies

Nothing in this Chapter shall be construed as a waiver of the Village's right to bring a civil action to enforce the provisions of this Chapter and to seek remedies as allowed by law, including, but not limited to the following:

(1) injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with this Chapter; and

(2) a civil penalty up to one-thousand dollars (\$1,000.00) a day when it is shown that the defendant was actually notified of the provisions of this Chapter and after receiving notice committed acts in violation of this Chapter or failed to take action necessary for compliance with this Chapter; and

(3) any other available relief.”

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

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.

FIRST READING PASSED AND APPROVED this 16th day of August, 2007, by a 5 to 0 vote of the City Council of the Village of Wimberley, Texas.

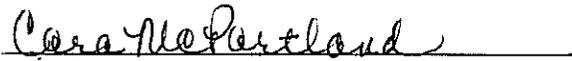
SECOND READING PASSED AND APPROVED this 4th day of October, 2007, by a 5 to 0 vote of the City Council of the Village of Wimberley, Texas.

VILLAGE OF WIMBERLEY

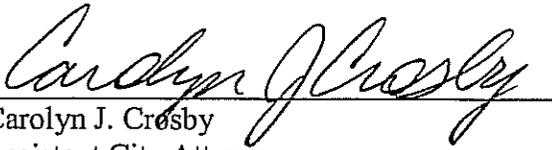
By:


Thomas Haley
Mayor

ATTEST:


City Secretary

APPROVED AS TO FORM:



Carolyn J. Crosby
Assistant City Attorney

Attachments Upon Passage:

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