

RESOLUTION NO. R-76-2004

A RESOLUTION OF THE VILLAGE OF WIMBERLEY, TEXAS, AUTHORIZING ACTION BY THE LAW FIRM OF BICKERSTAFF, HEATH, SMILEY, POLLAN, KEVER & MCDANIEL, L.L.P., AS ATTORNEY FOR THE VILLAGE, TO COMMENCE LEGAL PROCEEDINGS AGAINST ALL RESPONSIBLE PERSONS, BUSINESS ENTITIES AND PARTIES WHO HAVE ALLEGEDLY VIOLATED, ARE VIOLATING OR ARE THREATENING TO VIOLATE CHAPER 341 OF THE TEXAS HEALTH AND SAFETY CODE, AND ANY OTHER STATE OR LOCAL LAWS, RULES OR REGULATIONS, PROHIBITING THE IMPROPER AND UNAUTHORIZED DEPOSIT, STORAGE, DISCHARGE OR EXPOSURE OF SEWAGE, HUMAN EXCRETA, WASTEWATER OR OTHER ORGANIC WASTES, AND AUTHORIZING THE FIRM TO TAKE ALL LEGAL ENFORCEMENT ACTIONS NECESSARY TO ABATE THE ALLEGED IMPROPER AND UNAUTHORIZED DEPOSIT, STORAGE, DISCHARGE OR EXPOSURE OF SEWAGE, HUMAN EXCRETA, WASTEWATER OR OTHER ORGANIC WASTES BY ALL RESPONSIBLE PERSONS, BUSINESS ENTITIES AND PARTIES, INCLUDING LITIGATION, WITH A CLAIM THEREIN FOR INJUNCTIVE RELIEF, CIVIL PENALTIES, DAMAGES, COSTS, EXPENSES, AND ATTORNEYS' FEES; PROVIDING FOR AN EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the Village of Wimberley ("Village") desires to protect the natural resources and water supply sources of the Village, including, but not limited to, the land, groundwater, rivers and streams; and

WHEREAS, the Village desires to protect the health, safety, and welfare of the citizens of the Village; and

WHEREAS, the City Council of the Village of Wimberley ("City Council") has been made aware of the alleged unauthorized discharge of sewage from certain persons, business entities, and parties located on or around the Village Square, including but not limited to, Old Fashion BBQ, including its owners and operators; and

WHEREAS, the City Council has been made aware of the alleged deposit, storage, discharge or exposure of sewage, human excreta, wastewater or other organic wastes in such a way as to be a potential instrument or medium in disease transmission to a person or between persons by certain persons, business entities, and parties located on or around the Village Square, including but not limited to, Old Fashion BBQ; and

WHEREAS, the City Council has been made aware of the alleged use of defective containers used to transport human excreta or other organic material which have allowed leakage or spilling of its contents on the ground, or in or toward the water of a river or creek in the Village by certain persons, business entities, and parties located on or around the Village Square, including but not limited to, Old Fashion BBQ; and

WHEREAS, the City Council has been made aware of certain persons, business entities and parties located on or around the Village Square, including but not limited to, Old Fashion BBQ, which have allegedly allowed overflowing septic tanks or systems to exist, without sufficient repair or maintenance, so that that the contents thereof are accessible to flies; and

WHEREAS, the City Council finds that the improper and unauthorized deposit, storage, discharge or exposure of sewage, human excreta, wastewater or other organic wastes constitutes a nuisance, pursuant to the provisions of Chapter 341 of the Texas Health and Safety Code, the appropriate provisions of the Texas Water Code, and other appropriate authority; and

WHEREAS, the City Council finds that the improper and unauthorized deposit, storage, discharge or exposure of sewage, human excreta, wastewater or other organic wastes constitutes an imminent threat to the natural resources and water supply sources of the Village; and

WHEREAS, the City Council finds that the improper and unauthorized deposit, storage, discharge or exposure of sewage, human excreta, wastewater or other organic wastes constitutes an imminent threat to the public health, safety, and welfare of the citizens of the Village; and

WHEREAS, the City Council finds that the improper and unauthorized deposit, storage, discharge or exposure of sewage, human excreta, wastewater or other organic wastes constitutes a situation threat and risk that is reasonably unforeseeable and must be corrected; and

WHEREAS, the City Council finds that improper and unauthorized deposit, storage, discharge or exposure of sewage, human excreta, wastewater or other organic wastes is an urgent public necessity that must be addressed and corrected; and

WHEREAS, the City Council finds it necessary to hold an emergency meeting of the City Council to authorize action to enforce the environmental laws of the State of Texas, and all applicable local laws, in order to abate the alleged improper and unauthorized deposit, storage, discharge or exposure of sewage, human excreta, wastewater or other organic wastes by all responsible persons, business entities, and parties located on the Village Square, including but not limited to, Old Fashion BBQ; and

WHEREAS, pursuant to section 551.045 of the Texas Government Code, governmental entities are authorized to hold emergency meetings if immediate action is

required of a governmental body because of an imminent threat to public health and safety or a reasonably unforeseeable situation; and

WHEREAS, pursuant to section 22.038(b) of the Texas Local Government Code the Mayor of the Village is authorized to call a special meeting of the City Council; and

WHEREAS, pursuant to Chapter 341 of the Texas Health and Safety Code, Sections 7.352-.352 of the Texas Water Code and other local, state and federal laws, rules, and regulations, the Village has authority to take action to abate the improper and unauthorized deposit, storage, discharge or exposure of sewage, human excreta, wastewater or other organic wastes, and to seek injunctive relief, civil penalties, and the recovery of all costs and expenses through civil enforcement action and litigation; and

WHEREAS, the City Council believes it is in the best interest of the citizens of the Village of Wimberley to abate the improper and unauthorized deposit, storage, discharge or exposure of sewage, human excreta, wastewater or other organic wastes by seeking relief in a court of appropriate jurisdiction, including a claim therein for injunctive relief, civil penalties, and the recovery of all costs and expenses; and

WHEREAS, the City Council wishes to pursue all remedies available by law to abate the improper and unauthorized deposit, storage, discharge or exposure of sewage, human excreta, wastewater or other organic wastes including, but not limited to, civil enforcement litigation with a claim therein for injunctive relief, civil penalties, costs, expenses, attorneys' fees and other relief afforded by law.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE VILLAGE OF WIMBERLEY, TEXAS:

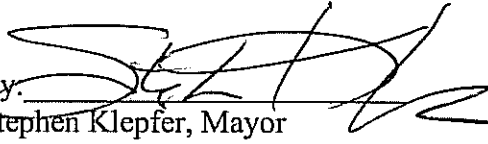
- (1) The City Council of the Village of Wimberley hereby authorizes the law firm of Bickerstaff, Heath, Smiley, Pollan, Kever and McDaniel, L.L.P., as attorney for the Village, to file suit in a court of appropriate jurisdiction against all persons, business entities, and parties located on or about the Village Square including, but not limited to, Old Fashion BBQ, who have allegedly violated, are violating or are threatening to violate Chapter 341, Texas Health and Safety Code pursuant to the Village's authority under Chapter 341, Texas Health and Safety Code, Sections 7.351-.352 of the Texas Water Code, and all other legal authority.
- (2) The City Council hereby authorizes Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P., as attorney for the Village, to take all actions necessary or advisable to pursue all remedies available to the Village to abate the alleged improper and unauthorized deposit, storage, discharge or exposure of sewage, human excreta, wastewater or other organic wastes by all persons, business entities, and parties located on or about the Village Square including, but not limited to, Old Fashion BBQ, including, but not limited to, civil enforcement litigation with a claim therein for

injunctive relief, civil penalties, costs, expenses, attorneys' fees and all other relief afforded by law.

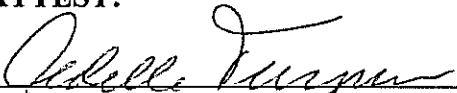
- (3) The City Council hereby finds that the statements set forth in the recitals of this Resolution are true and correct, and the City Council hereby incorporates such findings as a part of this Resolution.
- (4) This Resolution shall take effect immediately from and after its passage and publication as may be required by governing law.
- (5) It is hereby officially found and determined that the meeting at which this Resolution 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 and as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED by the City Council of the Village of Wimberley, Texas this 22nd day of June, 2004.

VILLAGE OF THE WIMBERLEY

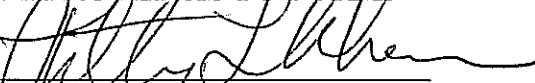
By: 
Stephen Klepfer, Mayor
Village of Wimberley, Texas

ATTEST:


Adelle Turpen, City Secretary
Village of Wimberley, Texas

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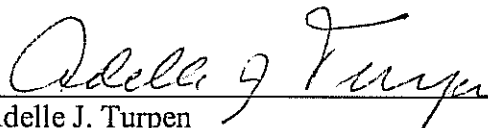
APPROVED AS TO FORM:


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

STATE OF TEXAS §
 §
COUNTY OF HAYS §

I hereby certify that the foregoing document, Resolution No. R-76-004, Resolution Authorizing Action to Commence Legal Proceedings Against All Responsible Persons, Business Entities and Parties who have Allegedly Violated, and are Violating or Are Threatening to Violate Chapter 341 of the Texas Health and Safety Code... is a true and correct copy of a Village of Wimberley, Texas, document, which is filed in the Records of the Village of Wimberley, Texas.

Given under my hand and the seal of office on June 22, 2004.



Adelle J. Turpen
City Secretary, Custodian of Records
Village of Wimberley, Texas

