

ORDINANCE NO. 2009-053

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, AMENDING TITLE IX (GENERAL REGULATIONS) OF THE CODE OF ORDINANCES TO ADD CHAPTER 95 (ON-SITE SEWAGE FACILITIES REGULATIONS) WHICH PROVIDES FOR INSTALLATION, MAINTENANCE AND PERMITTING REQUIREMENTS FOR ON-SITE SEWAGE FACILITIES IN THE CITY OF WIMBERLEY; AND PROVIDING FOR PENALTIES, FINDINGS OF FACT, A REPEALING CLAUSE, TO PROVIDE A SAVINGS AND SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Texas Commission on Environmental Quality (TCEQ) has established Rules for on-site sewage facilities to provide the citizens of this State with adequate public health protection and a minimum of environmental pollution; and

WHEREAS, the Legislature has enacted legislation, codified as Texas Health and Safety Code (THSC), Chapter 366, which authorizes a local government to regulate the use of on-site sewage facilities in its jurisdiction in order to abate or prevent pollution or injury to public health arising out of the use of on-site sewage facilities; and

WHEREAS, due notice was given of a public meeting to determine whether the City Council of the City of Wimberley, Texas should enact an ordinance controlling or prohibiting the installation or use of on-site sewage facilities in the City of Wimberley, Texas; and

WHEREAS, the City Council of the City of Wimberley, Texas finds that the use of on-site sewage facilities in the City of Wimberley, Texas is causing or may cause pollution, and is injuring or may injure the public health; and

WHEREAS, the City Council of the City of Wimberley, Texas has considered the matter and deems it appropriate to enact an Ordinance adopting Rules regulating on-site sewage facilities to abate or prevent pollution, or injury to public health in the City of Wimberley, Texas.

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

SECTION 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

SECTION 2. Amendment. THAT the City of Wimberley Code of Ordinances, Title IX (General Regulations), is hereby amended to add Chapter

95 (On-Site Sewage Facilities Regulations) to read as follows:

“Chapter 95. On-Site Sewage Facilities Regulations

Section 95.01 ENACTMENT PROVISIONS

(A) Popular Name

This Chapter shall be commonly cited as the “On-Site Sewage Facilities Regulations” or “OSSF Regulations.”

(B) Purpose

The use of on-site sewage facilities in the City of Wimberley, Texas is causing or may cause pollution or is injuring or may injure the public health; therefore this Chapter provides standards for on-site sewage facilities in order to protect the public health, safety and welfare.

(C) Scope

This Chapter applies to all property within the incorporated municipal boundaries (i.e., “city limits”).

Section 95.02 DEFINITIONS

(A) General

Words and phrases used in this Chapter and associated Tables shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word “shall” is always mandatory, while the word “may” is merely directory. Headings and captions are for reference purposes only.

(a) Specific

On-site sewage disposal system--One or more systems that:

(A) do not treat or dispose of more than 5,000 gallons of sewage each day; and

(B) are used only for disposal of sewage produced on a site where any part of the system is located.

Septic tank--A watertight covered receptacle constructed to receive, store, and treat sewage by: separating solids from the liquid; digesting organic matter under anaerobic conditions; storing the digested solids through a period of detention; and allowing the clarified liquid to be disposed of by a method approved under this chapter. Under the Rules adopted in Section 95.05 of this ordinance

Contributing Zone of the Barton Springs Segment of the Edwards Aquifer- Any land within the watersheds of Barton, Onion, Slaughter, Williamson, Bear, and Little Bear Creeks. In the event an applicant cannot determine with specificity the location of the boundary of the Contributing Zone of the Barton Springs Segment of the Edwards Aquifer, the Applicant may submit appropriate maps and other evidence as may be requested by the City for assistance in such determination from the City.

City- The City of Wimberley.

Edwards Aquifer Recharge Zone --That area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as a geographic area delineated on official maps located in the TCEQ's central office and in the appropriate regional office, or as amended by Title 30 Texas Administrative Code Chapter 213 (relating to Edwards Aquifer).

Edwards Aquifer Rules:- The Regulations promulgated by the TCEQ relating to the Edwards Aquifer, currently set forth in Title 30 Texas Administrative Code Chapter 213, as amended from time to time.

Private Well- Any water well other than a Public Water Well.

Centralized Sewage Collection System- Any public or private sewage system for the collection of sewage that flows into a treatment and disposal system that is regulated pursuant to the rules of the TCEQ and Chapter 26 of the Texas Water Code.

Public Water System – A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which

includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes: any collection, treatment, storage and distribution facilities under the control of the operator of such system and sued primarily in connection with such system and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. This definition includes Community Water Systems and Public Water Wells.

Rainfall Collection System- An individual potable water supply system approved by the City and having rainwater as its source and having a capacity sufficient to provide all of the domestic water requirements other than irrigation for development on the Lot. The City may approve rainfall collection systems using a well for emergency back-up domestic water requirements on a case by case basis.

Single Family Dwelling--A structure that is either built on or brought to a site, for use as a residence for one family. A single family dwelling includes all detached buildings located on the residential property and routinely used only by members of the household of the single family dwelling.

Site Elevation Materials- The site evaluation materials described in Section 285.30 of the Rules.

Site Specific Materials- The facility planning materials described in Sections 285.4 of the Rules, and, if applicable, Sections 285.5, 285.6, 285.7, and 285.40 of the Rules.

Surface Water- Water from streams, rivers or lakes or other bodies of water above the surface of the ground and obtained without pumping or extracting underground water. Water that is obtained from groundwater or other underground sources through wells, pumps or other means designed to accelerate natural flows from such underground source and which is then stored in a surface reservoir shall not be considered surface water. In the event any water supply system relies primarily on surface water, with reliance upon groundwater only for back-up supplies or a small percentage of the total water supplied, the City Council may, on a case by case basis, approve an application to consider such water supply system as qualifying as a Surface Water system under these rules.

TCEQ- Shall mean and refer to the Texas Commission on Environmental Quality, or its successor agency.

THSC- Shall mean the Texas Health and Safety Code.

Section 95.03 CHAPTER 366

The City of Wimberley, Texas clearly understands that there are technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site sewage facilities, and will fully enforce Chapter 366 of the THSC and Chapters 7 and 37 of the Texas Water Code (TWC), and associated rules referenced in this Chapter.

Section 95.04 ON-SITE SEWAGE FACILITY RULES

Any permit issued for an on-site sewage facility within the jurisdictional area of the City of Wimberley, Texas must comply with the Rules adopted in this Chapter.

Section 95.05 ON-SITE SEWAGE FACILITY RULES ADOPTED

The Rules, Title 30 Texas Administrative Code (TAC) Chapter 30, Subchapters A and G, and Chapter 285, promulgated by the TCEQ for on-site sewage facilities are hereby adopted, and all officials and employees of the City of Wimberley, Texas having duties under said Rules are authorized to perform such duties as are required of them under said Rules.

Section 95.06 INCORPORATION BY REFERENCE

The Rules, 30 TAC Chapter 30, Subchapters A and G, and Chapter 285 and all future amendments and revisions thereto are incorporated by reference and are thus made a part of this Chapter.

Section 95.07 LOCAL RULES

The City of Wimberley, Texas wishing to adopt more stringent Rules for its OSSF Ordinance understands that the more stringent Local Rule shall take precedence over the corresponding TCEQ requirement. Listed below are the more stringent Local Rules adopted by the City of Wimberley, Texas:

1.1 FACILITY PLANNING

(a) Land Planning and Site Evaluation. All of the terms and provisions of 30 TAC Section 285.4 are incorporated within the Rules of the City of Wimberley except as expressly amended below.

(1) Residential Lot Sizing

(A) *Platted or un-platted Lots served by Surface Water or Rainwater Collection Systems.* Lots used for single

family residences platted or created after the effective date of these Rules and served by a Surface Water or Rainwater Collection System shall have surface areas of at least the acreage designated in Table 1.1(A).

(B) *Platted or un-platted Lots served by Public Water Systems.* Lots used for Single Family Residences platted or created after the Effective Date of these Rules and served by a Public Water System shall have surface areas of at least the acreage designated in Table 1.1(B).

(C) *Platted or un-platted Lots served by Private Wells or other water systems.* Lots used for Single Family Residences platted or created after the Effective Date of these Rules and served by a Private Well or any other system other than those described in 1.1(A) or 1.1(B) above shall have surface areas of at least the acreage designated in Table 1.1(C).

(2) Certain Multi-Unit Residential Developments Served by a Central Sewage Collection System for On-Site Disposal.

Non-Single Family residential developments with four or fewer living units, such as duplexes, may utilize lots smaller than stated in paragraphs 1.1(A), 1.1(B) and 1.1(C) of this Section provided:

(A) Site Specific Materials, addressing either a central system or individual systems, and Site Evaluation Materials are submitted to the City and approved by City Council.

(B) There are no more than two living units per each minimum lot acreage that would be applicable under Tables 1.1(A), 1.1(B) or 1.1(C); provided that in no event shall lot acreage be lower than permitted under Chapter 366 of the Texas Health and Safety Code or other applicable State law.

(3) Apartments, Condominiums, Institutional Uses or Non-Residential (Business, Commercial or Industrial).

Platted or un-platted Lots used for apartment or condominium complexes with more than four (4) units, institutional uses or non-residential uses, including office, commercial or industrial uses producing domestic wastewater shall:

(A) Be sized and designed pursuant to a sewage disposal plan submitted to the City Administrator and approved by the City Council, which shall be based upon approved Site Specific Materials and Site Evaluation Materials; and

(B) Have a surface acreage of at least one (1) acre for each living unit equivalent (LUE) per day. A Living Unit Equivalent is defined as three hundred and fifty (350) gallons of sewage per day.

1.2 MINIMUM REQUIRED SEPARATION DISTANCES FOR ON-SITE SEWAGE FACILITIES

(a) The minimum separation distances set forth in Table X of the state Rules for soil absorption systems, unlined ET Beds and soil irrigation spray areas for Lots created or platted after the Effective Date of these Rules are supplemented as follows:

- | | | |
|----|--|------|
| 1. | Blanco River (measured from bank at average pool height) | 150' |
| 2. | Cypress Creek and other current creek banks, or to that area defined on the most current FIRM as special flood hazard areas inundated by 100-year flood, which ever is greater (measured from the bank at average pool height) | 100' |
| 3. | Property Lines | 20' |
| 4. | Vegetable gardens or orchards | 20' |

1.3 WATER WELL SANITARY EASEMENT

Individual Lots in which a Private Well is to be located shall provide, within the boundary of each Lot, an area with a one hundred (100) foot radius around the well in which no on-site sewage facility may be located. This area shall be designed as a private water well sanitary control easement. Public Water Wells shall comply with the sanitary control easements required under 30 TAC Chapter 290, as amended.

1.4 VARIANCES

Requests for variances from these Rules shall be considered in accordance with the criteria specified in Section 285.3(h) of the Rules and the following additional criteria:

(a) Only lots platted in accordance with the City of Wimberley Subdivision Ordinance or legally in existence prior to the Effective Date of

these Rules will be eligible for a variance.

(b) Site Specific Materials and Site Elevation Materials may be substituted with the preliminary plat application for each Lot for which a variance is sought, with a detailed soil profile analysis of the proposed absorption field site demonstrating soil characteristics that meet or exceed the criteria for suitable soils set forth in Section 285.91, Table V of the Rules. In no instance should lots be smaller than allowed Chapter 285 of the state Rules.

The City Council shall have discretion to approve or deny an application for variance and may approve an application for a variance only upon a finding that (a) development pursuant to the proposed variance will provide equivalent protection of the public health and environment as development in strict accordance with these Rules, including those set forth in Section 95.07 of this Chapter , and (b) that there are special circumstances or conditions affecting the land involved such that strict application of the provisions of these Rules would deprive the applicant the reasonable use of his land and that failure to approve the variance would result in undue hardship on the applicant. Pecuniary hardship, standing alone, shall not be deemed to constitute undue hardship.

1.5 PUMP TANK SIZING (*Amendment to Section 285.34 (b) 2*)

Pump tanks shall be sized for one day of flow above the alarm-on level.

1.6 CRITERIA FOR SEWAGE DISPOSAL SYSTEM EXCAVATIONS (*Amendment to Section 285.33(a) (1) (A)*)

The bottom of the excavation shall not be less than 18 inches in width and level to within one inch over each 25 feet of excavation but in no event shall there be more than two inches of fall over the entire length of the excavation.

1.7 POROUS MEDIA (*Amendment to Section 285.33(a) (1) (B)*)

Chipped tires or iron slag are not a permitted medium.

1.8 SURFACE APPLICATION SYSTEMS (*Amendment to Section 285.33(d) (2)*)

The following requirements are imposed in addition to those set forth in Section 285.33(d) (2) for On-Site Sewage Facility utilizing surface irrigation:

(a) Licenses to operate an On-Site Sewage Facility utilizing surface irrigation shall be valid for two years.

(b) Surface irrigation shall be limited to sprinkler application only.

(c) All On-Site Sewage Facilities utilizing surface irrigation shall be designed to facilitate periodic sampling.

(d) Effluent discharge lines shall be equipped with a 100 mesh or smaller filter

1.9 REQUIRED MAINTENANCE OF ON-SITE SEWAGE SYSTEM USING AEROBIC TREATMENT

All contracted maintenance of an on-site sewage disposal system using aerobic treatment shall be conducted by a registered/licensed maintenance provider. A copy of the maintenance/inspection report from the registered/licensed maintenance provider shall be provided to the City by said provider no later than 30 days after the completion of the report.

A homeowner conducting his/her own maintenance prior to the Effective Date of this Order shall be allowed to continue to self maintain his/her on-site sewage disposal system until such time as the system is altered or repaired or is causing a nuisance. The homeowner shall then be subject to the maintenance requirements set forth in this order.

1.10 MISCELLANEOUS

(a) A permit will be required for all On-Site Sewage Facilities, regardless of the size of the lot or acreage onto which it is installed.

(b) Construction of an On-Site Sewage Facility must be commenced within 12 months and completed within 16 months of the date of the application for a permit.

(c) French drains used to support or protect On-Site Sewage Facilities shall be upgradient of the On-Site Sewage Facility and shall be designed by a registered engineer to prevent stormwater drainage from entering into the On-Site Sewage Facility. An applicant desiring to install a french drain must demonstrate that its use will afford a greater level of public health protection by diverting stormwater away from the On-Site Sewage Facility.

(d) Property owners requesting certification of existing systems will be required to submit a pumping report to the City in a form

acceptable to the City containing at least the following information: (i) verification that the septic tank has been pumped within the previous three years; and (ii) the tank capacity and depth of sludge, provided that pumping reports performed prior to the Effective Date of these Rules will not be required to identify tank capacity and depth of sludge. Upon review of the pumping report, the City, upon approval of the City Council, may require the septic system be upgraded to satisfy the current technical requirements (other than minimum lot acreage) prior to certification.

Section 95.07 DUTIES AND POWERS

The OSSF Designated Representative (DR) (30 TAC § 285.2(17)) of the City of Wimberley, Texas, must be certified by the TCEQ before assuming the duties and responsibilities, and shall be responsible for implementing and enforcing the rules and regulations contained within this Chapter.

Section 95.08 COLLECTION OF FEES

All fees collected for permits and/or inspections shall be made payable to the City of Wimberley, Texas, and in an amount established by City Council. A fee of \$10 will also be collected for each on-site sewage facility permit to be paid to the On-Site Wastewater Treatment Research Council as required by the THSC, Chapter 367.

Section 95.09 APPEALS

Persons aggrieved by an action or decision of the designated representative may appeal such action or decision in writing to the City Council of the City of Wimberley, Texas.

Section 95.10 ENFORCEMENT PLAN

The City of Wimberley, Texas clearly understands that, at a minimum, it must follow the requirements in 30 TAC § 285.71 Authorized Agent Enforcement of OSSFs.

This Chapter adopts and incorporates all applicable provisions related to on-site sewage facilities, which includes, but is not limited to, those found in Chapters 341 and 366 of the THSC, Chapters 7, 26, and 37 of the TWC and 30 TAC Chapter 30, Subchapters A and G, and Chapter 285. A violation of this Chapter shall subject violators to the penalties and actions set forth in state law referenced above.

Section 95.11 RELINQUISHMENT OF ORDINANCE

If the City Council of the City of Wimberley, Texas decides that it no longer wishes to regulate on-site sewage facilities in its area of jurisdiction, the City Council, as the authorized agent, and the TCEQ shall follow the procedures outlined in 30 TAC § 285.10 (d) (1) through (4).

After relinquishing its OSSF authority, the authorized agent understands that it may be subject to charge-back fees in accordance with 30 TAC § 285.10 (d) (5) and §285.14 after the date that delegation has been relinquished.

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

SECTION 3. All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed, but only to the extent of any such conflict.

SECTION 4. Severability. It is hereby declared to be the intention of the City Council of the City of Wimberley, Texas, that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should 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, since the same would have been enacted by the City Council without incorporation in this Ordinance of such unconstitutional phrases, clauses, sentences, paragraphs, or sections.

SECTION 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide, and upon the approval of the TCEQ, whichever shall occur later.

SECTION 6. Open Meetings. That it is hereby officially found and determined that the meeting at which this Ordinance is 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 Meeting Act, Capt. 551, Loc. Gov't. Code.

PASSED AND APPROVED First Reading this 3rd day of Dec., 2009, by a vote of 4 (Ayes) to 1 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

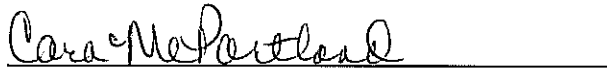
PASSED AND APPROVED Second Reading this 21st day of Dec., 2009, by a vote of 4 (Ayes) to 0 (Nays) 0 (Abstain) vote of the City

Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY, TEXAS

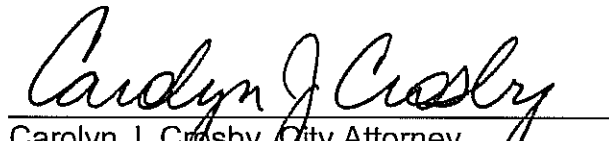

Tom Haley, Mayor

ATTEST:


Cara McPartland, City Secretary

SEAL

APPROVED AS TO FORM:


Carolyn J. Crosby, City Attorney

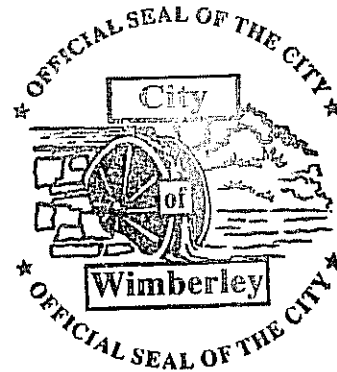


TABLE 1.1 (A)

LOTS SERVED BY SURFACE WATER OR RAINWATER COLLECTION SYSTEMS

<u>Wastewater Application</u>	<u>Location of Lot</u>	<u>Minimum Lot Size</u>
On-Site Sewage Disposal System	a. Within Edwards Aquifer Recharge Zone	2 acres
	b. Within Contributing Zone of Barton Springs Segment of Edwards Aquifer	1.5 acres
	c. All other areas	1 acre

TABLE 1.1 (B)

LOTS SERVED BY PUBLIC WATER SYSTEM

<u>Wastewater Application</u>	<u>Location of Lot</u>	<u>Minimum Lot Size</u>
On-Site Sewage Disposal System	a. Within Edwards Aquifer Recharge Zone	4.5 acres
	b. Within Contributing Zone of Barton Springs Segment of Edwards Aquifer	2.5 acres
	c. All other areas	1.5 acres

TABLE 1.1 (C)

LOTS SERVED BY PRIVATE WELLS OR ANY WATER SYSTEM OTHER THAN A PUBLIC WELL, SURFACE WATER DISTRIBUTION OR RAINWATER COLLECTION

<u>Wastewater Application</u>	<u>Location of Lot</u>	<u>Minimum Lot Size</u>
On-Site Sewage Disposal System	a. Within Edwards Aquifer Recharge Zone	5 acres
	b. Within Contributing Zone of Barton Springs Segment of Edwards Aquifer	3 acres
	c. All other areas	2 acres