

**VILLAGE OF SAN LEANNA**

**ORDINANCE NO. 01-007**

**AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. 77-002, PROHIBITING THE DISCHARGE OF FIREARMS AND EXPLOSIVE WEAPONS AND ZIP GUNS WITHIN THE VILLAGE LIMITS; RESTRICTING THE DISCHARGE OF AIR GUNS; PROVIDING FOR: FINDINGS OF FACT; POPULAR NAME; SCOPE OF ORDINANCE; DEFINITIONS; PROHIBITION AGAINST DISCHARGE OF FIREARMS, EXPLOSIVE WEAPONS AND ZIP GUNS WITHIN THE VILLAGE; EXCEPTIONS; PROHIBITION AGAINST DISCHARGE OF AIR GUNS; PROCEDURES FOR FILING AND INVESTIGATING COMPLAINT ABOUT VIOLATION OF ORDINANCE; OFFENSE AND ENFORCEMENT CLAUSE INCLUDING INJUNCTIVE RELIEF AND MAXIMUM FINE OF \$500.00 FOR VIOLATION OF ORDINANCE; CONFLICTING PROVISIONS; REPEAL; SEVERABILITY; EFFECTIVE DATE; PROPER NOTICE AND OPEN MEETING.**

**WHEREAS**, the Board of Aldermen of the Village of San Leanna seeks to promote the health, safety and general welfare of the community by preventing death, injuries and property damage within the Village Limits; and

**WHEREAS**, the Board of Aldermen of the Village of San Leanna finds that the recent population growth and land development within the Village has increased the likelihood that the discharge of air guns, guns firearms, explosive weapons, zip guns and similar devices within the Village will result in bodily injury, death, and property damage; and

**WHEREAS**, the Board of Aldermen of the Village of San Leanna finds that the discharge of air guns, guns, firearms, explosive weapons, zip guns and similar devices constitutes a public nuisance that poses a significant and immediate threat to the health, safety, and welfare of Village citizens and their property; and

**WHEREAS**, the Board of Aldermen of the Village of San Leanna finds that the noise generated by the discharge of air guns, guns, firearms, explosive weapons, zip guns and similar devices constitutes a public nuisance; and

**WHEREAS**, pursuant to Texas Local Government Code section 51.001 the Board of Aldermen of the Village of San Leanna has the general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the Village and is necessary or proper for implementing a power granted by law to the Village; and

**WHEREAS**, pursuant to Texas Local Government Code section 217.003 the Board of Aldermen has the express authority to regulate the discharge of guns and similar devices; and

**WHEREAS**, pursuant to Texas Penal Code section 215.001 the Board of Aldermen is authorized to regulate the discharge of firearms, explosive weapons, and similar devices within the Village.

**NOW, THEREFORE**, be it ordained by the Board of Aldermen of the Village of San Leanna, County of Travis, State of Texas, that:

### **SECTION 1. FINDINGS OF FACT**

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if set forth herein at length.

### **SECTION 2. POPULAR NAME**

This Ordinance shall hereinafter be referred to as the “Firearm Explosive Weapon, and Zip Gun Ordinance.”

### **SECTION 3. SCOPE OF ORDINANCE**

- (a) This Ordinance applies to the discharge of a firearm, explosive weapon, zip gun and similar devices within the Village of San Leanna.
- (b) This Ordinance does not apply to the private ownership, keeping, transfer, transportation, licensing or registration of firearms, ammunition, or firearm supplies.

### **SECTION 4. DEFINITIONS**

In this ordinance, the terms listed below shall be defined as follows:

“Air gun” means any device designed, made, or adapted to expel a projectile through a barrel by using the energy or force generated by the release of a spring or compressed gases. The term “air gun” includes but is not limited to b-b guns, pellet guns, air pistols and air rifles.

“Board” means the Board of Aldermen of the Village of San Leanna.

“Code Officer” means the person or persons officially designated by the Board of Aldermen to assist the Board or its designee in the implementation of this Ordinance, such assistance including, but is not limited to, the investigation of a possible violation of this Ordinance.

“Explosive weapon” means any explosive or incendiary bomb, grenade, rocket, or mine that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made, or adapted for delivery or shooting an explosive weapon, as provided by Texas Penal Code section 46.01(2).

“Firearm” means any device designed, made, or adapted to expel a projectile through a barrel by using the energy or force generated by an explosion or burning substance or any device readily convertible to that use.

The term “firearm” includes but is not limited to guns, handguns, machine guns, rifles, shotguns, automatic rifles, revolvers, and pistols.

As provided by Texas Penal Code section 46.01(3) a firearm does not include a firearm that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by state law and that is:

- (1) an antique or curio firearm manufactured before 1899; or
- (2) a replica of an antique or curio firearm manufactured before 1899, but only if the replica does not use rim fire or center fire ammunition.

“Person” means any individual, corporation, organization, government agency, business, trust, partnership, association, or other legal entity.

“Public place” means any place to which the public or a substantial group of the public has access and include, but is not limited to, parks, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

“Public right-of-way” means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest.

“Village” means the Village of San Leanna, County of Travis, State of Texas, any of its officers, agents or employees who are acting on behalf of the Village.

“Zip gun” means a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance.

## **SECTION 5. PROHIBITION AGAINST DISCHARGE OF FIREARMS, EXPLOSIVE WEAPONS AND ZIP GUNS WITHIN THE VILLAGE**

It shall be unlawful for any person to discharge, fire, or shoot any firearm, explosive weapon, or zip gun of any description within the Village limits.

## **SECTION 6. EXCEPTIONS**

Pursuant to Texas Penal Code section 42.12(d), Section 5 of this ordinance shall not apply to:

- (a) licensed peace officers, as that term is defined by Texas Code of Criminal Procedure, article 2.12(3), provided that such discharges are made in the course and scope of the peace officers’ official duties;
- (b) the use of blank cartridges for a theatrical production, military ceremony, or sporting event that is either sponsored by an educational institution or issued a permit by the

Village;

- (c) self-defense or the defense of third person, as provided by Texas Penal Code sections 9.31, 9.32, and 9.33; or
- (d) destroying predatory animals on one's own property or with the written permission of the owner of the property.

#### **SECTION 7. PROHIBITION AGAINST DISCHARGE OF AIR GUNS**

It shall be unlawful for any person to discharge, fire, or shoot any air gun in a public place. It shall be unlawful for any person to discharge, fire, or shoot any air gun on or across any public right-of-way or across any property line.

#### **SECTION 8. PROCEDURES FOR FILING AND INVESTIGATING COMPLAINT ABOUT VIOLATION OF ORDINANCE**

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

- (1) may be oral or in writing;
- (2) must provide sufficient details about the alleged violation;
- (3) must be signed by the complainant if in writing; and
- (4) may be filed with the Code Officer of the Board 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, will investigate an alleged violation of this Ordinance.

(1) If the Officer determines that a violation is occurring, the Officer will request the violator to immediately comply with this Ordinance. If the violation continues, the Officer will notify the violator that the Officer will promptly report the violation to the Board or its designee for possible legal action.

(2) If the Officer determines that a violation has occurred after the fact, the Officer will issue a written report of violation to the Board or its designee for review and possible action. The Officer will send a copy of the report to the violator.

#### **SECTION 9. ENFORCEMENT; OFFENSE; FINE**

(a) Civil and Criminal Penalties

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

(b) Criminal Prosecution

Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding \$500.00. Each day that a provision of this ordinance is violated shall constitute a separate offense. An offense under this ordinance is a misdemeanor.

(c) Civil Remedies

Nothing in this ordinance shall be construed as a waiver of the Village's right to bring a civil action to enforce the provisions of this ordinance 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 the ordinance; and
2. a civil penalty up to \$100.00 a day when it is shown that the defendant was actually notified of the provisions of the ordinance and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance; and
3. other available relief.

#### **SECTION 10. CONFLICTING PROVISIONS**

If any provision of this Ordinance conflicts with a provision of another ordinance, resolution or order of the Board, then the stricter provision shall apply.

#### **SECTION 11. REPEAL**

Village Ordinance No. 77-002, concerning firearms, is hereby repealed as of the effective date of this Ordinance.

#### **SECTION 12. SEVERABILITY**

It is hereby declared to be the intention of the Board of Aldermen that the words, phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any word,

phrase, clause, sentence, paragraph or section of this Ordinance be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect any remaining word, phrase, clause, sentence, paragraph or section of this ordinance which can be given effect as written , and to this end the provisions of this ordinance are declared to be severable.

**SECTION 13. EFFECTIVE DATE**

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

**SECTION 14. PROPER NOTICE AND OPEN 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, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED ON THIS 21<sup>st</sup> DAY OF June, 2001, by a 5 to 0 vote of the Board of Aldermen of the Village of San Leanna.

VILLAGE OF SAN LEANNA:

APPROVED AS TO FORM:

\_\_\_\_\_  
John Linton, Mayor

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Alan J. Bojorquez, Village Attorney

ATTEST:

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Kathleen Hernandez, Village Secretary