

**VILLAGE OF SAN LEANNA**

**ORDINANCE NO. 01-005**

**AN ORDINANCE REPEALING ORDINANCE NO. 89-001 AND 95-006 CONCERNING SANITATION, CONTAINING NEW PROVISIONS ON PUBLIC HEALTH AND SANITATION AS AUTHORIZED BY TEXAS STATUTE, AND PROVIDING FOR: FINDINGS OF FACT; POPULAR NAME; DEFINITIONS; SANITATION REQUIREMENTS; PROCEDURES FOR FILING AND INVESTIGATING COMPLAINT; BOARD ACTION ON VIOLATION; ADMINISTRATIVE ACTION TO REMOVE VIOLATION; NOTICE; EXPENSES; LIEN; FORECLOSURE; ABATEMENT OF DANGEROUS WEEDS; EXPENSES; LIEN; FORECLOSURE; NOTICE; PUBLIC HEARING; MAXIMUM CRIMINAL FINE OF \$2,000.00 OR CIVIL PENALTY OF \$1,000.00 FOR VIOLATION OF ORDINANCE; CONFLICTING PROVISIONS; REPEAL; SEVERABILITY; EFFECTIVE DATE; AND 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, injury, property damage and urban blight within the Village limits; and

**WHEREAS**, the Board of Aldermen finds that the existence of stagnant water and other unsanitary conditions will harbor and attract rodents and insects, will result in the production of disease, and decrease the aesthetics of the Village; and

**WHEREAS**, the Board of Aldermen finds that the inadequate construction and maintenance of private sewage treatment facilities (septic systems) will result in increased sanitation problems, will increase disease, and will increase the improper treatment and disposal of sewage and waste matter; and

**WHEREAS**, the Board of Aldermen 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 by decreasing the aesthetics of the Village, will harbor rodents, will increase illegal dumping and littering, will increase fire hazards, and will increase crime by decreasing visibility and access; and

**WHEREAS**, pursuant to Texas Local Government Code section 51.001 the Board of Aldermen is authorized by law to adopt and repeal 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 51.032 the Board of

Aldermen is authorized by state law to adopt an ordinance, not inconsistent with state law, that the board considers proper for the government of the Village; and

**WHEREAS**, pursuant to Texas Health and Safety Code sections 342.001-342.004 and 342.008 the Board of Aldermen is authorized by law to regulate public health and sanitation within the Village in the areas of private sewage treatment facilities (septic systems), stagnant water, filth, carrion, weeds, dangerous weeds, and other unhealthy, unsanitary and unwholesome conditions; and

**WHEREAS**, the Board of Aldermen finds that it is necessary and proper for the good government, peace or order of the Village and for proper public health and sanitation in the Village to adopt an ordinance on public health and sanitation that regulates private sewage treatment facilities (septic systems), stagnant filth, carrion, weeds, dangerous weeds, and other unhealthy, unsanitary and unwholesome conditions in 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 "Public Health and Sanitation Ordinance."

### **SECTION 3. DEFINITIONS**

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

- (a) "*Board*" means the Board of Aldermen of the Village of San Leanna.
- (b) "*Code Officer*" means the person or persons officially designated by the Board of Aldermen to assist the Board in implementing and enforcing this Ordinance. 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 Ordinance.
- (c) "*Dangerous weeds*" means weeds that have grown higher than forty-eight (48) inches and are

an immediate danger to the life, health, or safety of any person, as provided by Texas Health and Safety Code section 342.008.

(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) "*Private sewage treatment facilities*" include, but are not limited to, sewers, privies, septic systems and on-site sewage facilities.

(h) "*Refuse*" means heterogeneous accumulation of worn out, used up, broken, rejected, discarded or worthless materials.

(i) "*Rubbish*" means trash, garbage, debris, rubble, stone, discarded or useless building materials, and other miscellaneous useless wastes, discarded or rejected material.

(j) "*Unwholesome*" means harmful to body or mind.

(k) "*Village*" means the Village of San Leanna, County of Travis, 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 not regularly cultivated vegetation, that exceed a height of eighteen (18) inches. Any plant, with the exception of wildflowers, that is not regularly cultivated which exceeds eighteen (18) inches in height shall be presumed to be objectionable, unsanitary and unsightly.

#### SECTION 4. 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:

(a) fill, drain, remove or regulate any hole or place which contains stagnant water, an unwholesome condition, or any other condition that may produce disease, as provided by Texas Health and Safety Code section 342.001;

(b) keep any building, establishment, or ground free of filth, carrion, refuse, rubbish or other impure or unwholesome matter, as provided by Texas Health and Safety Code section

342.003;

(c) keep the lot, tract parcel, or part thereof, free from dangerous weeds, weeds, rubbish, refuse, brush, and other objectionable, unsightly, or unsanitary matter, as provided by Texas Health and Safety Code sections 342.004 and 342.008; and

(d) build, make, fill, alter, repair, clean, disinfect, maintain and regulate on-site sewage facilities, sewers, private sewage systems, and privies in accordance with the laws, regulations and requirements of Travis County, Texas, and the State of Texas, as provided by Texas Health and Safety Code section 342.002.

**SECTION 5. PROCEDURES FOR FILING AND INVESTIGATING  
COMPLAINT;  
BOARD ACTION ON VIOLATION**

(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 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, shall investigate the alleged violation.

(1) The Officer may enter and inspect the premises where the violation is alleged to have occurred, at any reasonable time, pursuant to Texas Health and Safety Code section 161.011.

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

**SECTION 6. ADMINISTRATIVE ACTION; NOTICE;  
EXPENSES, LIEN, FORECLOSURE**

(a) The Board or its designee may proceed administratively to remove an alleged violation of this Ordinance by giving notice to the owner of the property where the alleged violation occurred, in accordance with the following procedures as set out in Texas Health and Safety Code section 342.006:

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

(A) authorize that the necessary work be done or improvements made; and  
(B) pay for the expenses incurred in having the work done or improvements made, and charge the expenses to the property owner.

(2) The 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 Travis County Central Appraisal District; or

(3) If notice by personal service cannot be obtained, the 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 Board or its designee will assess the expenses and create a lien, including possible foreclosure, against the property in the manner provided in Texas Health and Safety Code section 342.007.

(1) The Board or its designee will send a statement of expenses to the owner, requesting that payment be made to the Village Secretary within twenty days after receipt. The expenses to be charged to the owner of the property shall include: the amount paid by the Village for the work done or improvements made; the costs of inspection; the costs of providing notice; the costs of identifying and notifying the owner of the property; and any incidental expenses.

(2) If the violator does not pay the expenses within twenty (20) days, the mayor, municipal health authority or a municipal official designated by the mayor shall file a statement of expenses with the Travis County Clerk, stating 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 Travis 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 Board or its designee may bring a suit for foreclosure in the name of the Village to recover the expenses and interest due.

(6) The Board 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 Section 6(a) of this Ordinance and assess its expense as provided by Section 6(b) of this Ordinance.

#### **SECTION 7. ABATEMENT OF DANGEROUS WEEDS; EXPENSES; LIEN; FORECLOSURE; NOTICE; PUBLIC HEARING**

(a) The Board or its designee, may, without notice, but is not obligated to, abate dangerous weeds on any lot parcel, or tract of land, or part thereof, within the Village in accordance with the procedures in this section.

(b) If the Village pays the cost of abating the weeds, the Board or its designee will 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 6 of this Ordinance.

(c) Not later than the tenth (10<sup>th</sup>) day after the date the Board or its designee has abated the weeds, the Board or its designee shall give written notice to the owner of the lot or parcel of land in the manner required by Section 6(a) of this Ordinance. The notice shall contain:

- (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 weeds; and
- (4) an explanation of the property owner's right to request an administrative hearing on the abatement of the weeds.

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

(1) The hearing shall be held no later than the twentieth (20<sup>th</sup>) day after the filing of the written request for a hearing, pursuant to Texas Health and Safety Code section 342.008.

(2) The hearing procedure is informal in that:

- (A) the Board is 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 weeds; and
- (C) the Board may call the Code Officer or other individuals that the Board deems appropriate, to testify.

## **SECTION 8. ENFORCEMENT**

(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**

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Pursuant, but not limited to Texas Local Government Code section 54.001(b), any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding \$2,000.00. 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, pursuant, but not limited to Texas Local Government Code section 54.012, 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 \$1,000.00 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 9. CONFLICTING PROVISIONS**

If any provision in this Ordinance conflicts with any provision in other Village ordinances, resolutions or orders, then the stricter provision shall apply.

**SECTION 10. REPEAL**

Village of San Leanna Ordinances No. 89-001 and 95-006 are hereby repealed as of the effective date of this Ordinance.

**SECTION 11. 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 12. EFFECTIVE DATE**

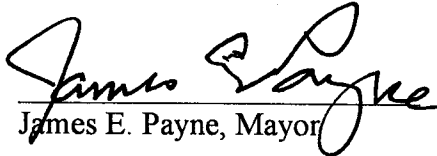
This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

**SECTION 13. PROPER NOTICE AND OPEN MEETING**

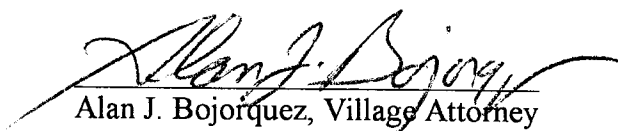
It is hereby officially found and determined that the meeting as which the Ordinance was passed was open to the public, as required, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED ON THIS 17th DAY OF May, 2001 by a vote of 4 to 0 of the Board of Aldermen of the Village of San Leanna.

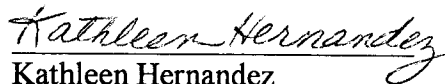
VILLAGE OF SAN LEANNA:

  
James E. Payne, Mayor

APPROVED AS TO FORM:

  
Alan J. Bojorquez, Village Attorney

ATTEST:

  
Kathleen Hernandez  
Village Secretary