

**VILLAGE OF SAN LEANNA
ORDINANCE NO. 24 - 003**

AN ORDINANCE OF THE VILLAGE OF SAN LEANNA, TEXAS, ESTABLISHING REGULATION FOR PROPERTY OWNER MAINTENANCE OF ANY PUBLIC RIGHT-OF-WAY THAT ADJOINS PRIVATE PROPERTY OF THE VILLAGE OF SAN LEANNA, TEXAS; PROVIDING FOR THE INCORPORATION OF PREMISES; PROVIDING FOR POPULAR NAME; DEFINITIONS; PROVIDING FOR SANITATION REQUIREMENTS AND PROPERTY OWNER MAINTENANCE OF THE PUBLIC RIGHT-OF-WAY; PROVIDING FOR PROCEDURES FOR FILING AND INVESTIGATING COMPLAINT; PROVIDING FOR BOARD ACTION ON VIOLATION; PROVIDING FOR ADMINISTRATIVE ACTION TO REMOVE VIOLATION; PROVIDING FOR NOTICE; PROVIDING FOR EXPENSES, LIEN, AND FORECLOSURE; PROVIDING FOR ABATEMENT OF DANGEROUS WEEDS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR REPEAL OF ORDINANCE NO. 01-005; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECT DATE AND PROPER NOTICE AND OPEN MEETING.

WHEREAS, the Village of San Leanna (“Village”) is a Type B General Law municipality located in Travis County, created in accordance with the provisions of Chapter 7 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the Board of Aldermen of the Village (“Board”) has the general statutory authority, pursuant to Texas Local Government Code Chapter 51, to adopt an ordinance, rule or police regulation that is for the good government, peace, and order of the Village; and

WHEREAS, pursuant to Texas Local Government Code section 51.001 the Board is authorized by state law to amend and 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; and

WHEREAS, the Board has the specific statutory authority, pursuant to Texas Local Government Code Chapter 217.022, to prevent nuisances to the extent practicable and each nuisance removed at the expense of the property owner; and

WHEREAS, the Board has the specific statutory authority, pursuant to Texas Health and Safety Code Section 342.004, to require the owner of real property to keep their property free from weeds, brush, and public nuisance; and

WHEREAS, the Board previously approved the “Public Health and Sanitation Ordinance” on May 17, 2001; and

WHEREAS, the Board has determined that Ordinance No. 01-005 should be repealed and adopt this ordinance to adopt regulation of a property owner's maintenance of any public right-of-way adjoining their property; and

WHEREAS, the Board 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, the Board finds and determines that adopting this Ordinance to protect and regulate the maintenance of sanitation and any public right-of-way adjoining private property within the Village is in the best interest of the public health, safety and welfare for Village citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE VILLAGE OF SAN LEANNA, COUNTY OF TRAVIS, STATE OF TEXAS:

SECTION 1. FINDINGS INCORPORATED. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. POPULAR NAME. This Ordinance shall hereinafter be referred to as the "Public Right-of-Way Maintenance Ordinance."

SECTION 3. INTENT AND PURPOSE. The purpose of this ordinance is to establish regulation of property owners to maintain the public right-of-way that adjoins private property.

SECTION 4. DEFINITIONS.

Public Health and Sanitation Ordinance 01-005 is repealed to adopt this Public Right-of-Way Maintenance Ordinance to read as follows:

When the following words and phrases are used in this Ordinance, the following definitions apply:

- (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 5. 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) 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 6. PROPERTY OWNER RIGHT-OF-WAY MAINTENANCE.

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) Keep the lot, tract, parcel of land, 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.
 - 1. All grass and weeds trimmed or mowed to a height not to exceed twelve (12) inches. This clearance shall be measured vertically from the surface of the roadway.
- (b) Maintain all surface areas within the right-of-way, including sidewalks and curbs, in a clean, safe and efficient manner.
 - 2. Maintenance shall include, but not limited to, removal of trash and debris, trimming trees, so as not to prevent unsafe or obstructed pedestrian and vehicle travel, and keeping all grass and weeds trimmed or mowed to a height not to exceed twelve (12) inches.
- (c) An exception to these requirements will be granted to lots with rear frontage on streets and highways separated by a wall or fence.

SECTION 7. PROCEDURES FOR FILING AND INVESTIGATING COMPLAINT; BOARD ACTION ON VIOLATION

- (a) In the event any landowner, lessor, lessee or resident of any property bordering, adjoining or contiguous to a public right-of-way property fails to comply with the provisions of this section, the city's enforcement authority or designee shall provide official notice that such person or entity will have a minimum of seven (7) days to bring the property into compliance.
 - 1. 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, pursuant to the Interlocal Cooperation Agreement for Public Health Services Between the City of Austin and the Village of San Leanna.
 - 2. If the Officer determines there is a violation of this Ordinance, the Officer shall issue notice and attempt to secure voluntary compliance and proceed, if necessary, with administrative enforcement before San Leanna City Council or its delegate.
 - 3. If the landowner, lessor, lessee, or resident fails to comply with the provisions of this section within the time period prescribed in the notice, they shall be considered to be in violation of this section and subject to the penalty and fine set forth herein.
- (b) 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.

SECTION 8. 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 action is not taken by the property owner, the Board or its designee may, but is not obligated to:
 - (A) authorize that the necessary repairs or improvements are completed; and
 - (B) pay for the expenses incurred in having the repairs or improvements completed, and charge that expense 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.
 - (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 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 (10) percent on the amount due from the date of payment by the Village.
 - (A) The lien is inferior only to tax liens and liens for street improvements.
 - (4) The Board or its designee may bring a suit for foreclosure in the name of the Village to recover the expenses and interest due.
 - (5) The Board may foreclose the lien in a proceeding brought under the Tax Code, Chapter 33, Subchapter E.
 - (6) 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 9. ABATEMENT OF DANGEROUS WEEDS; EXPENSES; LIEN; FORECLOSURE; NOTICE; PUBLIC HEARING

- (a) The Board or its designee, may, without notice, abate dangerous weeds that have grown higher than 48 inches and are an immediate danger to the health, life, or safety of any person on any lot parcel, or tract of land, or part thereof, within the Village in accordance with Texas Health and Safety Code section 342.008.
- (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 (10th) 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 (30th) 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 (20th) day after the filing of the written request for a hearing.
 - (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 10. ENFORCEMENT

- (a) 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.
 - (1) Pursuant, but not limited to, Texas Local Government Code section 54.001(b)(1), any person violating any public health and sanitation 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.
 - (2) 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:

SECTION 11. CONFLICTING PROVISIONS. If any provision in this Ordinance conflicts with any provision in other Village ordinance, resolutions or orders, then the stricter provision shall apply.

SECTION 12. REPEAL. Village of San Leanna Ordinances No. 01-005 is hereby repealed as of the effective date of this Ordinance.

SECTION 13. CUMULATIVE REPEALER/SAVINGS CLAUSE. This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided, however, that any complaint, action, claim, or lawsuit, which has been initiated or has arisen under or pursuant to such Ordinance on the date of adoption of this Ordinance shall continue to be governed by the provisions of that Ordinance and for that purpose, the Ordinance shall remain in full force and effect.

SECTION 14. SEVERABILITY CLAUSE. It is hereby declared to be the intention of the Board 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 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, and sections of this Ordinance, since the same would have been enacted by the Board without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 15. PENALTY. Any person, firm, partnership, association, corporation, or other entity who violates any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$200.00. Each continuing day’s violation under this Ordinance shall constitute a separate offense and shall be punishable by separate fines for each offense.

SECTION 16. EFFECTIVE DATE. This Ordinance shall take effect upon its passage and publication as required by law. The Village Administrator is directed to publish the caption of this Ordinance as required by law.

PASSED AND APPROVED on this ____ day of _____ 2024 by a vote of _____ to _____ by the Board of Aldermen of the Village of San Leanna.

VILLAGE OF SAN LEANNA:

By: _____
Molly Quirk, Mayor

ATTEST:

Rebecca Howe, Village Administrator

APPROVED AS TO FORM:

Patricia A. Adams, Village Attorney