

VILLAGE OF SAN LEANNA

ORDINANCE NO. 01-004

AN ORDINANCE REPEALING EXISTING ORDINANCE NO. 84-003 CONCERNING JUNKED VEHICLES, CONTAINING NEW PROVISIONS ON JUNKED VEHICLES AS AUTHORIZED BY TEXAS LAW, AND PROVIDING FOR: FINDINGS OF FACT; POPULAR NAME; DEFINITIONS; OFFENSE; DECLARATION OF PUBLIC NUISANCE; EXEMPTIONS; COMPLAINT PROCEDURES; NOTICE FOR REMOVAL; PUBLIC HEARING; ORDER OR RESOLUTION ON REMOVAL OF VEHICLE; CODE OFFICER TO ADMINISTER REMOVAL;; NOTICE TO DEPARTMENT OF PUBLIC SAFETY; RECONSTRUCTION; ENFORCEMENT; MAXIMUM CRIMINAL FINE OF \$200.00 OR CIVIL PENALTY OF \$100 FOR VIOLATION; 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, injuries, property damage, and urban blight within the Village limits; and

WHEREAS, the Board of Aldermen finds that junked vehicles are conducive to the stagnation of water and promulgation of weeds, thus contributing to infestations of insects, vermin and other threats to the public; and

WHEREAS, the Board of Aldermen finds that the existence of junked vehicles within the Village limits will result in vandalism, fire hazards, hazards to the health and safety of minors' and production of urban blight; and

WHEREAS, the Board of Aldermen finds that the existence of junked vehicles 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, pursuant to Texas Local Government Code section 51.001 the Board of Aldermen has the general authority to adopt and repeal an ordinance or police regulation 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 683.072, a junked vehicle, including a part thereof, that is visible from a public place or public right-of-way can be a public nuisance and the Board of Aldermen has authority to abate and remove this nuisance through court proceedings as provided by Texas Transportation Code section 683.074(a); and

WHEREAS, the Board of Aldermen finds that it is necessary and proper for the good government, peace or order of the Village to adopt an ordinance regulating junked vehicles that are public nuisances and including procedures for the Board to abate and remove the public nuisance through court proceedings;

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 be referred to as the "Junked Vehicle Ordinance."

SECTION 3. DEFINITIONS

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

- (a) *"Antique vehicle"* means a passenger car or truck that is at least 35 years old, as provided by Texas Transportation Code section 683.077(b)(1).
- (b) *"Board"* means the Board of Aldermen of the Village of San Leanna.
- (c) *"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 assistance includes, but is not limited to, investigations of possible violations of this Ordinance.
- (d) *"Department"* means the Texas Department of Public Safety.
- (e) *"Junked vehicle"* means a vehicle that is self-propelled and:
 - (1) does not have lawfully attached to it:
 - (a) an unexpired license plate; or
 - (b) a valid motor vehicle inspection certificate; or
 - (2) is wrecked, dismantled or partially dismantled, or discarded; or
 - (3) is inoperable and has remained inoperable for more than

- (a) 72 consecutive hours, if the vehicle is on public property, or
- (b) 30 consecutive days, if the vehicle is on private property, as provided by Texas Transportation Code section 683.071.

(f) "*Kit Car*" means a vehicle assembly kit that is accompanied by a manufacturer's statement of origin (MSO) document.

(g) "*Motor vehicle collector*" means a person who:

- (1) owns one or more antique or special interest vehicles; and
- (2) acquires, collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest, as provided by Texas Transportation Code section 683.077(b)(2).

(h) "*Person*" means an individual, corporation, organization, government agency, business, trust, partnership, association, or any other legal entity.

(i) "*Public right-of-way*" means the area on, below, above, or adjacent to a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the Village has an interest.

(j) "*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.

(k) "*Special interest vehicle*" means a motor vehicle of any age that has not been changed from the original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist, as provided by Texas Transportation Code section 683.077(b)(3).

(l) "*Village*" means the Village of San Leanna, County of Travis, State of Texas, and includes any official agent or employee acting on its behalf.

SECTION 4. OFFENSE

It shall be an offense for a person to maintain a junked vehicle within the Village.

SECTION 5. DECLARATION OF A PUBLIC NUISANCE;

Pursuant to Texas Transportation Code section 683.072, a junked vehicle, or a part thereof, that

is visible from a public place or public right-of-way:

- (1) is detrimental to the public health and safety,
- (2) tends to reduce the value of private property;
- (3) invites vandalism,
- (4) creates a fire hazard;
- (5) is an attractive nuisance creating a hazard to a minors' health and safety;
- (6) produces urban blight adverse to the maintenance and continuing development of municipalities;
- (7) is a public nuisance; and,
- (8) is hazardous to water sources and other environmental concerns.

SECTION 6. EXEMPTIONS

Exempt from the requirements of this Ordinance is a vehicle, or part thereof, that:

- (1) is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
- (2) is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or that is an antique vehicle, special interest vehicle or kit car stored by a motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are:
 - (A) maintained in an orderly manner;
 - (B) not a health hazard; and
 - (C) screened from ordinary public view by appropriate means, including but not limited to a fence, rapidly growing trees, or shrubbery.

SECTION 7. COMPLAINT PROCEDURES

(a) Any Village resident or property owner may file a complaint alleging the existence of a junked vehicle, or part thereof, as a public nuisance within the Village. The complaint must:

- (1) be in writing;
- (2) provide sufficient details about the alleged nuisance;
- (3) be signed by the complainant; and
- (4) be filed with the Code Officer, the Board or its designee.

(b) The Code Officer is authorized to remove and abate junked vehicle nuisances on the terms and conditions provided in this Ordinance. On his/her own knowledge or on the basis of a

written complaint by a Village resident or property owner, the Officer shall investigate the alleged existence of a junked vehicle, or part thereof, on private or public property or a public right-of-way within the Village.

(1) As provided by Texas Transportation Code section 683.074(e), the Officer may enter private property where the alleged junked vehicle, or part thereof, is located in order to examine the public nuisance, to obtain information to identify the nuisance and to remove or direct removal of the nuisance.

(2) If the Officer determines that a public nuisance exists, the Officer shall issue a written report of violation to the Board or its designee. The Board or its official designee, appointed by resolution, may then initiate official action to remove and abate a junked vehicle nuisance.

SECTION 8. NOTICE FOR REMOVAL

(a) The Board or its official designee, appointed by resolution, may authorize the Code Officer to issue written notice to the alleged violator not less than ten (10) days' prior to abatement and removal of the nuisance, as provided in Texas Transportation Code section 683.075(a)-(b).

(1) The notice shall describe the nature and location of the public nuisance and be sent by certified mail, return receipt requested with a five-day return requested, to:

- (A) the last known registered owner of the nuisance; and
- (B) each lien holder of record of the nuisance, and
- (C) the owner or occupant of:
 - (i) the property on which the nuisance is located,
 - (ii) or if the nuisance is located on a public right-of-way, the

property adjacent to the right-of-way.

(2) The notice shall state that:

- (A) the nuisance must be removed not later than the tenth (10th) day after the date on which the notice was mailed; and
- (B) Any request for a public hearing, in accordance with Section 7 of this Ordinance, must be made before the ten (10) day period expires.

(3) If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance itself or, if the owner is located, hand delivered.

(4) If notice is returned undelivered, action to remove the nuisance shall be continued

to a date not earlier than the eleventh (11th) day after the date of the return.

SECTION 9. PUBLIC HEARING; ORDER OR RESOLUTION ON REMOVAL OF VEHICLE

Upon request by the owner or occupant of the premises or the owner or occupant of the premises adjacent to the public right-of-way on which the vehicle is located, a public hearing shall be held before the Board or its official designee, appointed by resolution, for the determination of the existence of a junked vehicle as a public nuisance and for the purpose of entering an order or resolution requiring the removal of such junked vehicle if found to be so.

(a) The Board, or its official designee, appointed by resolution, shall hold the hearing no earlier than the eleventh (11th) day after the date of the service of notice, as provided by Texas Transportation Code section 683.075.

(1) During the hearing, the junked vehicle is presumed to be inoperable, unless the owner demonstrates otherwise, as provided by Texas Transportation Code section 683.076(c).

(2) If, after written notice has been given, as described in section 6 of this Ordinance, and continuing through the hearing, the owner relocates the junked vehicle, or a part thereof, to another location in the Village or in Travis County, the relocation has no effect on the hearing if the vehicle, or a part thereof, constitutes a public nuisance at the new location, as provided by Texas Transportation Code section 683.074(g).

(b) If the Board or its official designee, appointed by resolution, finds that the vehicle is a junked vehicle and constitutes a public nuisance, a resolution shall be entered requiring the removal of the vehicle or a part thereof and the resolution shall:

(1) contain information about the junked vehicle's description vehicle identification number, and license plate number if the information is available at the location of the nuisance, as set out in Texas Transportation Code section 683.076(d); and

(2) authorize the relocation of the junked vehicle, or a part thereof to a scrap yard, a motor vehicle demolisher, or a suitable site operated by a municipality or county.

(c) If the nuisance has not been removed no later than the tenth (10th) day after the date on which the notice was mailed and the alleged violator has not asked for a public hearing, the Board or its official designee, appointed by resolution, may request the appropriate municipal or

County court to order the removal of the nuisance. The court's order shall:

(1) contain information about the junked vehicle's description vehicle identification number, and license plate number if the information is available at the location of the nuisance, as set out in Texas Transportation Code section 683.076(d); and

(2) authorize the relocation of the junked vehicle, or a part thereof to a scrap yard, a motor vehicle demolisher, or a suitable site operated by a municipality or county.

SECTION 10. CODE OFFICER TO ADMINISTER REMOVAL

The Code Officer shall administer the removal of vehicles or parts thereof from property.

SECTION 11. NOTICE TO DEPARTMENT OF PUBLIC SAFETY

Pursuant to Texas Transportation Code section 683.074(b)(3), the Board or its official designee, appointed by resolution, shall provide written notice to the Texas Department of Public Safety no later than the fifth (5th) day after the date of removal of a junked vehicle. Such notice shall identify the vehicle, or part thereof which was removed.

SECTION 12. RECONSTRUCTION

Pursuant to Texas Transportation Code section 683.074(b), when a junked vehicle is declared a public nuisance by the Board or its official designee, appointed by resolution, and is ordered to be removed, it shall not thereafter be reconstructed or made operable.

SECTION 13. 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.

(b) **Criminal Prosecution**

Pursuant, but not limited to Texas Transportation Code section 683.073, any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding

\$200.00. 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 \$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 14. CONFLICTING PROVISIONS

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

SECTION 15. REPEAL

Village of San Leanna Ordinance No. 84-003, concerning junked vehicles, is hereby repealed as of the effective date of this Ordinance.

SECTION 16. SEVERABILITY

It is hereby declared to be the intention of the Village Board of Aldermen that the words, phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any words, phrases, clauses, sentences, paragraphs or sections of the Ordinance be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect any remaining words, phrases, clauses, sentences, paragraphs or sections 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 17. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and publication

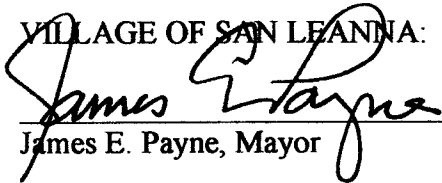
as may be required by governing law.

SECTION 18. PROPER NOTICE AND OPEN MEETING

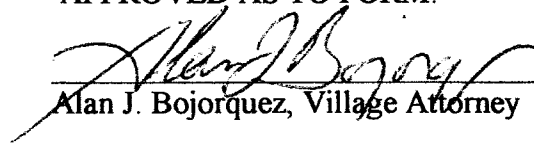
It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as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

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

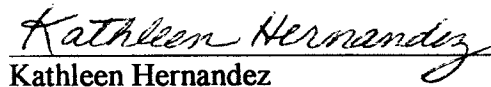
VILLAGE OF SAN LEANNA:


James E. Payne, Mayor

APPROVED AS TO FORM:


Alan J. Bojorquez, Village Attorney

ATTEST:


Kathleen Hernandez
Village Secretary