

## ORDINANCE NO. #002-07

**AN ORDINANCE OF THE CITY OF DE LEON, TEXAS, AMENDING ORDINANCE NO# 025-03, PLACING RESTRICTIONS ON THE USE AND OPERATION OF MOTOR ASSISTED SCOOTERS BY LIMITING OR PROHIBITING THE OPERATION OF MOTOR ASSISTED SCOOTERS ON CERTAIN STREETS, HIGHWAYS, PATHS AND ALLEYS; PROVIDING FOR A PENALTY FOR ADULTS, PARENTS AND CHILDREN FOR THE USE OF A MOTOR ASSISTED SCOOTER IN A RESTRICTED OR PROHIBITED AREA; REQUIRING THAT CHILDREN WEAR A PROTECTIVE HELMET WHILE OPERATING OR RIDING A MOTOR ASSISTED SCOOTER; PROVIDING FOR A PENALTY FOR PARENTS AND CHILDREN FOR FAILURE OF CHILD TO WEAR A HELMET; PROVIDING A REPEALING, SEVERABILITY AND SAVINGS CLAUSES; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF**

**WHEREAS,** the City Council of the City of De Leon (“City Council”) has determined that restriction of the use and operation of motor assisted scooters on the streets, highways, alleys, paths and trails within the City of De Leon is necessary in the interest of safety; and

**WHEREAS,** City Council has determined that requiring children to wear helmets while operating or riding a motor assisted scooter is necessary in the interest of safety; and

**WHEREAS,** the City Council has investigated and determined that it will be advantageous, beneficial and in the best interest of the citizens of De Leon to prevent potential traffic hazards and safety hazards resulting from unauthorized use of streets, highways, alleys and certain pathways and resulting from children failing to wear helmets.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DE LEON, TEXAS:**

### **SECTION 1: Findings Incorporated**

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

### **SECTION 2: Definitions**

**Adult** means any individual eighteen (18) years of age or older.

**Child** means any individual under eighteen (18) years of age.

**Helmet** means properly fitted protective headgear that is not structurally damaged and that conforms to the standards of the American National Standards Institute, the American Society for Testing and Materials, the Snell Memorial Foundation or any

federal agency having regulatory jurisdiction over bicycle helmets, as applicable, at the time of the manufacture of the helmet.

**Motor Assisted Scooter** shall have the same meaning assigned by Texas Transportation Code Section 551.301(2), as it exists or may be amended, and includes a self-propelled device with at least two wheels in contact with the ground during operation; a braking system capable of stopping the device under typical operating conditions; a gas or electric motor fifty (50) cubic centimeters or less; a deck designed to allow a person to stand or sit while operating the device; and the ability to be propelled by human power alone.

**Parent** means the natural or adoptive parent or court-appointed guardian or conservator of a child.

**Public Way or Public Property** means real property owned, leased or controlled by a Political subdivision of the State of Texas, a governmental entity or agency, or similar entity, or any property that is publicly owned or maintained or dedicated to public use, including, but not limited to, a path, trail, sidewalk, alley, street or highway, and a public park facility.

**Wearing a Helmet** means that the person has a helmet fastened securely to his/her head with the straps of the helmet securely tightened in the manner intended by the manufacturer to provide maximum protection.

### **SECTION 3: Restrictions and Prohibitions for Motor Assisted Scooters/Penalty for Violation**

#### **A. Restrictions and Prohibitions on Locations of Use.**

- (1) It is unlawful for any child to operate or ride a motor assisted scooter on any alley, or the streets designated in (5) or any highway within the City.
- (2) It is unlawful for a parent to allow or permit a child to operate or ride a motor assisted scooter on any alley, designated street or highway within the City.
- (3) It is presumed that a parent allowed a child to operate or ride a motor assisted scooter in a restricted or prohibited area.
- (4) It is unlawful for any adult to operate or ride a motor assisted scooter on any public way or public property for which the posted speed limit is more than thirty-five (35) miles per hour. The motor assisted scooter may cross a road or a street at an intersection where the road or street to be crossed has a posted speed of more than thirty-five (35) miles per hour.
- (5) The following streets and highways are prohibited for use of motor assisted Scooters except as enumerated in (4) above: All sections of **State highways 16 and 6** also know as **Texas Street** and **Navarro street**; All of **Sipe Springs Road, FM 587**; **Cato Street from Sipe Springs Rd. to S.H. 6, Navarro Street**; All of **Reynosa** and **all streets** adjacent to school property during school hours.

#### **B. Penalty**

- (1) A person who violates any provision of Section 3.A., above, shall be guilty of a Class C misdemeanor and upon conviction shall be fined an amount not exceeding one hundred dollars (\$100.00).

- (2) The purpose of this Section 3 is to promote safety and discourage the use of motor assisted scooters in unsafe areas. The courts may consider deferred dispositions under the Texas Code of Criminal Procedure, as it exists or may be amended, whenever the circumstances warrant deferred dispositions.

**SECTION 4: Helmets Required/Penalty for Failure to Wear Helmet**

**A. Helmet Required**

- (1) It is unlawful for any child to operate or ride a motor assisted scooter unless the child is wearing a helmet.
- (2) It is unlawful for a parent to allow or permit a child to operate or ride a motor assisted scooter unless the child is wearing a helmet.
- (3) It is presumed that a parent allowed a child to operate or ride a motor assisted scooter without wearing a helmet.
- (4) It is a defense to prosecution that the motor assisted scooter was not being operated upon public property or a public way at the time of the alleged offense.

**B. Penalty**

- (1) A person who violates any provision of Section 4A, above, requiring helmets, shall be guilty of a Class C misdemeanor and upon conviction shall be fined an amount not exceeding fifty dollars (\$50.00) upon the first conviction and an amount not exceeding one hundred dollars (\$100.00) upon the second and each subsequent conviction.
- (2) The municipal court shall dismiss a charge against a child and/or parent for a first offense under Section 4A upon receiving proof that:
  - i. The Defendant acquired a helmet for the child who was operating or riding the motor assisted scooter in violation of Section 4A; and
  - ii. The defendant acquired the helmet on or before the tenth day after receiving the citation of the violation.
- (3) If the charge against a person is dismissed under subsection B(2), a later conviction for a violation of Section 4A shall be considered a second or subsequent conviction for purposes of subsection B(1).
- (4) The purpose of this Section 4 is to promote safety and encourage the use of helmets. The courts may consider deferred dispositions under the Texas Code of Criminal Procedure, as it exists or may be amended, whenever the circumstances warrant deferred dispositions.

**SECTION 5: Savings/Repealing Clause**

All provisions of any ordinance in conflict with this Ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinance shall remain in full force and effect.

**SECTION 6   Severability**

Should any section, subsection, sentence, clause, phrase or word of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. De Leon hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

**SECTION 7   Penalty Provision**

Any person, firm, corporation or business entity violating the Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined as set forth herein. Each unlawful act or continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude De Leon from filing suit to enjoin the violation. De Leon retains all legal rights and remedies available to it pursuant to local, state and federal law.

**SECTION 8   Effective Date**

This Ordinance shall become effective from and after its adoption and publication as required by the City Charter and by law.

**PASSED AND APPROVED** the first reading on this 11<sup>th</sup> day of **January**, 2007.

**PASSED, APPROVED AND ADOPTED** the second reading on this 25<sup>th</sup> day of **January**, 2007.

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*Danny Owen, Mayor*

**ATTEST:**

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*Karen Wilkerson, City Secretary*