



ORDINANCE 2013-12

MUNICIPAL COURT ORDINANCE

AN ORDINANCE OF THE CITY OF TOM BEAN, TEXAS ESTABLISHING A MUNICIPAL COURT, INCLUDING PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, PURPOSE, JURISDICTION, DEFINITIONS; APPOINTMENT OF MUNICIPAL COURT JUDGE, APPOINTMENT OF A MUNICIPAL COURT CLERK; PROSECUTION BY THE CITY PROSECUTOR; BAILIFF; WARRANT OFFICER; JURISDICTION OF THE COURT; PROCEDURES FOR THE OPERATION AND ADMINISTRATION OF THE COURT; AN EFFECTIVE DATE; AUTHORIZATION TO IMPOSE COURT COST AND FEES; AUTHORIZATION TO COLLECT CIVIC FINES OR CRIMINAL PENALTIES NOT TO EXCEED \$2,000; SEVERABILITY; PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the City of Tom Bean (“City”) seeks to provide for the enforcement of its municipal ordinances in order to protect the public health, safety and welfare; and

WHEREAS, the City finds the enactment of this ordinance is necessary for the good government, peace and order of the municipality and proper for carrying out the power granted by law to the municipality; and

WHEREAS, the City determines that the creation of a municipal court is necessary to provide an efficient disposition of cases arising in the municipality; and

WHEREAS, the City finds that the office of municipal court judge must be established; and

WHEREAS, the City finds that the appointment of a municipal court clerk is necessary; and

WHEREAS, the City finds that the appointment of a municipal prosecutor and court staffing is necessary; and

WHEREAS, the City is authorized to establish a municipal court by virtue of the Texas Government Code, Chapter 29.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOM BEAN, TEXAS:

SECTION I: ENACTMENT CLAUSES

A. POPULAR NAME

This Ordinance may be referred to as the City of Tom Bean “Municipal Court Ordinance.”

B. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Tom Bean, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

C. PURPOSE

This ordinance is adopted so that the City Council may promote the public health, safety, morals and general welfare within the City through the enforcement of the City of Whitewright’s ordinances and applicable state laws in the municipal court.

D. EFFECTIVE DATE

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

SECTION II: DEFINITIONS

A. GENERAL

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Words and phrases that are not defined in this Ordinance but are defined in other ordinances of the city shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Ordinance.

B. SPECIFIC

(1) Person means any human individual or corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

SECTION III: ESTABLISHMENT OF MUNICIPAL COURT

A. SCOPE

The provisions of this section govern the creation, establishment, operation, and jurisdiction of the municipal court within the City, including the judges of the court.

B. CREATION OF THE MUNICIPAL COURT

There is hereby established one (1) municipal court within the City, with the designation of “Municipal Court of the City of Tom Bean”.

C. JURISDICTIONAL LIMITS OF COURT

The municipal court has the jurisdiction provided by general law for municipal courts contained in Section 29.003, Texas Government Code and Article 4.14, Texas Code of Criminal Procedure, including concurrent jurisdiction with justice courts as provided by Section 29.003. The municipal court

also had jurisdiction over cases arising within the City's corporate boundaries (i.e., city limits) under ordinances authorized by law.

D. JUDGES OF COURT

(1) The municipal court shall be presided over by a judge, who shall be known as the "municipal judge." The judge shall be appointed and entitled to a monthly stipend set forth in the contractual agreement. The amount of the judge's stipend may not be diminished during the judge's term of the office. The stipend may not be based directly or indirectly on fines, fees or costs collected by the court. Until such time as municipal judge is appointed by the Council, the mayor can and shall serve as municipal judge.

(2) The judge must:

- (a) Be a citizen of the United States;
- (b) Be a resident of this state;

(3) The judge must take the oath of office and be sworn in upon the appointment of each contractual agreement with the city.

(4) A person may not serve as a municipal judge if the person is otherwise employed by the municipality. A municipal judge who accepts other employment with the municipality vacates the judicial office.

(5) If a vacancy occurs in the office of municipal judge, the City Council shall appoint a qualified person to assume the contractual agreement for the remainder of the unexpired term. If there is a vacancy in the office of municipal judge, the mayor can and shall serve as municipal judge.

(6) The municipal judge shall take judicial notice of state law and the ordinances and corporate limits of the municipality.

(7) A municipal judge is a magistrate and may issue administrative search warrants.

(8) A municipal judge may be removed from office by the City Council at any time for incompetency, misconduct, malfeasance, or disability.

E. WRITE POWER

The judges of the municipal court may grant writs of mandamus, injunction, attachment, and other writs necessary to the enforcement of the jurisdiction of the municipal court and may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the municipal court.

F. COURT RULES

The Code of Criminal Procedure and the Texas Rules of Appellant Procedure govern the trial of cases before the municipal court. The court may make and enforce all rules of practice and procedure necessary to expedite the trial of cases before the court that are not inconsistent with law.

G. CLERK OF COURT

The municipal court clerk shall be appointed by City Council being an employee of the City's personnel under the administration of the Mayor. A municipal court clerk may be removed from office on the recommendation by the Mayor at any time for incompetency, misconduct, malfeasance, or disability.

The Clerk and other court personnel perform their duties under the direction and control of the presiding judge.

The municipal court clerk's duties are generally ministerial and must be fulfilled impartially and competently. State Law provides that the clerk shall maintain record of all court proceedings, issue all process, and generally perform all duties such as the county clerk does for county court as per Gov. Code 29.010(c). Municipal court clerks deposit fines and fees in the city treasury; make monthly reports

to the city council of fines and fees collected; and should keep records of citizens who serve on municipal court juries.

The Clerk is responsible for all clerical functions of the municipal court such as creating and maintaining court records, processing cases, preparing for and coordinating trials, and assisting court participants. As cases progress through the judicial system, court clerks are required to perform many technical procedures. Computer skills are essential as the records are filed thru a program assisting with the efficiency of the court process.

H. PRESERVING COURT RECORD

For the purpose of recording the proceedings and preserving a record in all cases tried before the municipal court, as per the guidelines set forth in the Texas State Library's retention schedules for destruction of records.

I. COURT FACILITIES AND SEAL

(1) The City shall provide courtroom, jury rooms, offices, office furniture, and other facilities and supplies that the Mayor determines necessary for the proper operation of the municipal court.

(2) The City shall provide the municipal court with a seal that contains the phrase "Municipal Court of the City of Tom Bean, Texas". The seal's use must conform to Article 45.012 of the Code of Criminal Procedure.

J. COMPLAINTS AND PLEADINGS

Complaints and pleadings must substantially conform to the relevant provisions of Chapters 27 and 45 of the Code of Criminal Procedure. The court clerk has the power to administer oaths to those making complaints before the court. The clerk is authorized to accept written pleas of guilty in minor cases and to receive payment of fines without the requirement of a court trial. The clerk shall follow the policy of the court for which they work under the direction of the presiding judge.

K. PROSECUTION

Prosecution in the municipal court shall be conducted as provided by Article 45.201, Code of Criminal Procedure.

(1) All prosecutions in the municipal court shall be conducted by the city prosecutor. The prosecutor shall be appointed and shall be entitled to a monthly stipend set forth in the contractual agreement. The amount of the municipal prosecutor's stipend may not be diminished during the term of the office. The stipend may not be based directly or indirectly on fines, fees or costs collected by the court.

(2) The municipal prosecutor must:

(a) Be a citizen of the United States;

(b) Be a resident of this state;

(c) Be a licensed attorney in the State of Texas.

(3) A person may not serve as a municipal prosecutor if the person is otherwise employed by the municipality. A municipal prosecutor who accepts other employment with the municipality vacates the appointed office.

(4) If a vacancy occurs in the office of municipal prosecutor, the City Council shall appoint a qualified person to assume the contractual agreement for the remainder of the unexpired term.

L. BAILEFF

The bailiff is directly responsible to the judge and has the duty of maintaining order, security, and decorum while the court is in session. Bailiffs generally open and close court sessions. A police officer usually services as bailiff.

M. WARRANT OFFICER

The warrant officer is to serve all processes or papers issued by a municipal court; such as writs or summons to the party to whom it is addressed. This is usually conducted by the police department who has designated a police officer as the warrant officer.

Warrant officer must comply with the minimum educational, training, physical, mental, and moral standards established by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) chapter 1701, C.C.P. and T.A.C.

The process shall comply with Article 45.202, C.C.P. Failure, neglect, or refusal to serve process may make the responsible officer liable for a fine of ten \$(10.00) to two hundred dollars (\$200.00) for contempt of court under Article 2.16, C.C.P.

N. JURY

(1) A person who is brought before the municipal court and who is charged with an offense is entitled to be tried by a jury of six (6) persons. Trial by jury, including the summoning of jurors, must substantially conform to Chapter 45, Code of Criminal Procedure.

(2) The court clerk shall supervise the selection of persons for jury service.

O. APPEAL FROM JUDGEMENT OF CONVICTION IN MUNICIPAL COURT

(1) A defendant has the right of appeal from a judgment or conviction. The State of Texas has the right to appeal as provided by Article 44.01 Code of Criminal Procedure.

(2) All appeals shall be conducted pursuant to the Texas Code of Criminal Procedure.

P. FEE AND FINES

(1) The Municipal court clerk shall collect and administer all fees and fines authorized by state law and City ordinances. Fee and fines shall be in the amounts established by state law, the municipal court judges, and fee schedules adopted by the City Council, as may be amended.

(2) A fine or penalty imposed in municipal court for violation of an ordinance of the City may not exceed five hundred dollars (\$500.00), unless the fine or penalty is for violation of a rule or ordinance or police regulation that governs fire safety, zoning or public health and sanitation, including dumping and refuse, in which case the fine or penalty may not exceed two thousand dollars (\$2000.00).

SECTION IV:

The provisions of this ordinance shall apply within the City's corporate boundaries (i.e., city limits) as prescribed by state law.

A. CIVIC AND CRIMINAL PENALTIES

The City 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 five hundred dollars (\$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. CIVIC REMEDIES

Nothing in this Ordinance shall be construed as a waiver of the City'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 one thousand dollars (\$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 V: SEVERABILITY

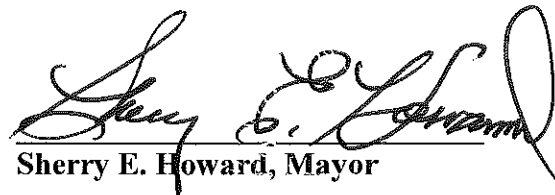
It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, and the remainder of this Ordinance shall be enforced as written.

SECTION VI: PROPER NOTICE AND MEETING

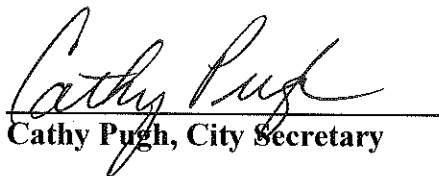
It is hereby officially found and determined that the meeting at which this Ordinance was passed was opened to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice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

That this ordinance shall become effective immediately from and after its passage.

PASS AND APPROVED by the City Council of the City of Tom Bean on this the 21st day of October, 2013.


Sherry E. Howard, Mayor

Attest:


Cathy Pugh, City Secretary