

ORDINANCE NO. 2010-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 24. COURTS, BY DELETING CHAPTER 24 IN ITS ENTIRETY AND SUBSTITUTING THEREFORE A NEW CHAPTER 24, MAKING GENERAL PROVISIONS FOR THE OPERATION OF THE MUNICIPAL COURT; SPECIFYING THE TERM OF THE MUNICIPAL COURT AND THE JUDGES OF THE COURT; PROVIDING FOR CITATIONS TO THE MUNICIPAL COURT; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$500 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND MAKING OTHER PROVISIONS RELATED THERETO.

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, THAT:

SECTION 1. Chapter 24, Courts, of the Code of Ordinances of the City of Tomball, Texas, is amended by deleting all of Chapter 24 thereof and substituting therefore a new Chapter 24 to provide as follows:

“CHAPTER 24. COURTS

ARTICLE I. IN GENERAL

Sec. 24-1. Seal.

The municipal court shall have a seal having engraved thereon a star of five (5) points in the center and words "Municipal Court in Tomball, Texas" around the margin thereof, which shall be used to authenticate the official acts of the clerk and of the judge, where the clerk or the judge is authorized or required to use the seal of office.

Sec. 24-2. Jurisdiction.

The municipal court shall have jurisdiction with the power to hear and determine all cases of violation of this Code, the ordinances of the city, and all other cases of which municipal courts are given jurisdiction, or allowed to take jurisdiction, by state law. The municipal court shall exist for the disposition of misdemeanor criminal matters arising within its jurisdiction under the laws of the state or this Code or any other ordinances of the city.

Sec. 24-3. Organization; Alternate Judges.

(a) Judge. The judge and alternate judges of the municipal court shall be appointed by the Council.

(b) Presiding judge. The office of presiding judge of the municipal court is hereby created. The presiding judge is authorized to designate which judge shall preside over the Court for any given session.

(c) Alternate judges. The offices of alternate or associate judge are hereby created. Each associate judge shall preside over the Court when designated by the Presiding Judge.

(d) Powers and duties. Each judge shall be a magistrate and shall have all of the powers and authority prescribed by state law and the charter and ordinances of the city. Each judge shall have the duties pertaining to the office of judge.

(e) Terms of office. The Municipal Court shall have a two-year term beginning on September 1 of each even-numbered calendar year and extending through August 31 of the next following even-numbered calendar year. The presiding judge shall serve for the specific term, or the unexpired portion thereof, of the Municipal Court. Each associate judge shall serve for a two-year term of office beginning on September 1 of each odd-number calendar year and extending through August 31 of the next odd-numbered calendar year. Removal of judges shall be governed by state law and the city charter. All judges shall also serve after the expiration of their terms of office until their successor is appointed and shall have qualified; provided, however, that any judge who is not reappointed by the 91st day following the expiration of a term of office shall, absent action by the Council, continue to serve for another term of office.

Sec. 24-4. Oath.

The judges of the municipal court, prior to taking office, shall take the requisite oath of office required by the constitution and state law.

Sec. 24-5. Deputy clerks--Appointment.

There shall be appointed such number of deputy municipal court clerks as may be necessary for the municipal court to properly perform its functions. The appointment of deputy municipal court clerks shall be by the City Secretary of the municipal court, with approval by the City Manager.

Sec. 24-6. Same--Powers and duties.

The deputy clerks of the municipal court shall perform all the duties and have all the powers bestowed upon clerks of municipal courts by state law. Any clerk or deputy clerk so appointed may act as the official clerk of the municipal court and perform all acts incident to such office.

Sec. 24-7. Rules of practice and procedure.

The rules of practice and procedure as prescribed by state law governing trials in the state justice of the peace courts shall govern the procedure and practice of the municipal court; and the judge and the city council may prescribe such additional rules of practice and procedure as may not be inconsistent with state law.

Sec. 24-8. Notice to appear tickets.

(a) Whenever a person is arrested for any violation of law punishable by a fine in the municipal courts of the city, the arresting officer may prepare a written notice to appear that shall require the person to appear in municipal court within 10 days to answer the charges listed and shall contain the following information:

- (1) Name of the person arrested.
- (2) Address of the person arrested.
- (3) Driver's license or other identification.

(b) The following information may be included for informational purposes, but shall not nullify any promise to appear:

- (1) Date of violation.
- (2) Place of violation.
- (3) Offense charged.
- (4) Name of arresting officer.

This subsection shall not preclude the filing of any additional charges nor the filing of another offense.

(c) Notice to appear, incorrect name and address:

- (1) The above notice to appear shall only be a promise to appear and is not an admission of guilt.
- (2) It shall be unlawful for the arrested person to violate his written notice to appear in municipal court, regardless of the disposition of the charges upon which the person originally arrested.
- (3) It shall be unlawful for any person upon being issued a notice to appear to give the arresting officer other than the person's true name and correct address.

(d) The above procedure shall not be applicable:

- (1) When the person arrested demands an immediate appearance before a magistrate.
- (2) When the arrested person shall refuse to sign the notice to appear or furnish any of the information in subsection (a).
- (3) When the offense is a violation of the traffic laws or is covered by a specific provision of state law dictating the following of a procedure contrary to the above subsections.

(e) The above procedures in subsections (a), (b) and (c) shall not be mandatory upon the arresting officer. The arresting officer shall have authority to consider all the

circumstances relevant to the arrest and any police departmental regulations or policies in choosing whether or not to issue a notice to appear.

Sec. 24-9. Citations for violation of city codes and state laws.

(a) When any person is found in violation of any provision of the codes adopted by the City of Tomball or of the laws of the State of Texas, an agent or employee of the City of Tomball may, if the person agrees to sign a citation, issue a citation that shall require the person to appear in court within the time provided on the citation. The citation shall give the person at least 10 days to answer any charge of violation of any provision of the codes adopted by the city.

(b) Signing the citation shall only be a promise to appear and is not an admission of guilt.

(c) It shall be unlawful for any person, upon being issued any citation, to give the City of Tomball's agent or employee a false name or address.

(d) It shall be unlawful to fail to appear in municipal court within the time provided in the citation, provided the citation gave the person at least 10 days to answer any charge of violation of any provision of the codes adopted by the city.

(e) The following information shall be contained on the citation:

- (1) Name of the defendant;
- (2) Address of the defendant;
- (3) Driver's license or other identification.

The following information may be included for informational purposes, but shall not nullify any promise to appear:

- (i) Date of violation;
- (ii) Place of violation;
- (iii) Offense charged;
- (iv) Name of person issuing citation.

(f) Additional or other charges shall not be precluded by the issuance of citation.

Sec. 24-11. Compensation for jurors.

Each juror sworn to serve in a case pending in the municipal court shall be entitled to receive a fee as may be established by Council from time by resolution for each day on which the person actually serves as such juror, to be paid out of the city treasury.

Sec. 24-12. Prosecutor.

The City Attorney, or such other attorneys designated by the City Manager with approval of the City Council, may prosecute cases in the Municipal Court.

Sec. 24-13. Court bailiffs.

The City Manager, upon the request of the judge, shall furnish one or more peace officers to serve as municipal court bailiffs during the convening of the court and when, in the judgment of the judge, a bailiff is necessary to maintain proper decorum during any court proceedings.

(Sec. 24-14 – 24-20, reserved.)

ARTICLE II. Special funds.

Sec. 24.21. Municipal court building security fund.

(a) There is hereby created and established a municipal court building security fund (the "fund") pursuant to Article 102.017 of the Code of Criminal Procedure.

(b) The municipal court is authorized and required to assess a municipal court building security fee (the "fee") in the amount of \$3.00 against all defendants convicted in a trial of a misdemeanor offense by the municipal court. Each misdemeanor conviction shall be subject to a separate assessment of the fee.

(c) The municipal court clerk is hereby authorized and required to collect the fee and to pay same to the treasury of the city. All fees so collected and paid over to the treasury of the city, shall be segregated in the fund.

(d) The fund shall be used only for the purpose of financing the purchase of security devices and/or services for the building or buildings housing the municipal court of the city. Security devices and/or services shall include any and all items described in Article 102.017(d) of the Code of Criminal Procedure.

(e) The fund shall be administered by or under the direction of the Council.

Sec. 24-22. Establishment of municipal court technology fund.

(a) There is hereby created and established a municipal court technology fund, here-in-now known as the fund, pursuant to article 102.0172 of the Code of Criminal Procedure.

(b) The fund may be maintained in an interest-bearing account and may be maintained in the general revenue account.

Sec. 24-23. Establishment of amount of the fee and assessment and collection.

(a) The fee shall be in the amount of four dollars.

(b) The fee shall be assessed and collected from the defendant upon conviction for a misdemeanor offense in the municipal court as a cost of court. A defendant is considered convicted if:

- (1) A sentence is imposed on the person;
- (2) The person is placed on community supervision, including deferred adjudication community supervision; or
- (3) The court defers final disposition of the person's case.

(c) The fee shall be collected on conviction for an offense committed on or after November 1, 1999.

(d) The clerk of the court shall collect the fee and pay the fee to the treasurer of the city, who shall deposit the fee into the municipal court technology fund.

Sec. 24-24. Designated use of the fund and administration.

(a) The municipal court technology fund shall be used only to finance the purchase of or to maintain technological enhancements for a municipal court of the city, including:

- (1) Computer systems;
- (2) Computer networks;
- (3) Computer hardware;
- (4) Computer software;
- (5) Imaging systems;
- (6) Electronic kiosks;
- (7) Electronic ticket writers; and
- (8) Docket management systems.

(b) The fund shall be administered by or under the direction of the city council.”

SECTION 2. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

SECTION 3. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

SECTION 4. Any person, firm or corporation that knowingly violates any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Tomball, Texas, and, upon conviction, shall be punished by a fine not to exceed five hundred (\$500.00) dollars for each offense.

SECTION 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City’s home rule Charter.”

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 7TH DAY OF JUNE 2010.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

SECOND READING:

READ, PASSED AND ADOPTED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 21ST DAY OF JUNE 2010.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

Gretchen Fagan
Gretchen Fagan, Mayor
City of Tomball

ATTEST:

Doris Speer
Doris Speer, City Secretary
City of Tomball