

Municipal Courts

by Alan Bojorquez

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Article 1. Introduction

§17.01. General.

Municipal courts may not be what most people think of first when considering the judicial system, but it is more likely that the average person will come into contact with a municipal court than the other types. Municipal court is often thought of as traffic court, and traffic tickets are probably the most common type of offense prosecuted in municipal court. However, as explained below, municipal courts have a broad range of authority, and are a vital resource for preserving the public health, safety and welfare, as well as a community's quality of life.

§17.02. Public Perception.

In many municipalities, the municipal court is often overlooked as a separate, distinct branch of government that operates wholly independent – separate and apart from the rest of the municipal government. To the contrary, an efficient and effective municipal court is best seen as a vital part of the larger municipal organization. A healthy, functioning court contributes to the missions of other departments, including (but not limited to) Code Enforcement, Police Department, and Planning and Development. A professional, ethical municipal court fosters public confidence in a municipality, and reflects well on the entity, as a whole.

Article 2. Creation of Municipal Courts

§17.03. Creation by Statute.

A municipal court is created by law in each municipality in the State of Texas. Tex. Gov't Code §29.002. Special legislation contained in Texas Government Code, Chapter 30 creates municipal courts of record in a number of municipalities. If you are dealing with one of these municipalities, read the provisions of Texas Government Code, Chapter 30 applicable to the particular municipality. A municipal court is created in each municipality with exclusive original jurisdiction within the territorial limits of the municipality. The municipal court is sometimes referred to in statutes as a "corporation court." Tex. Gov't Code §29.002-§29.003.

§17.04. Creation of Municipal Court of Record.

A municipal court of record may be created by a special statute enacted by the Legislature or by an ordinance adopted by a city council. A court of record results in additional expenses but it also may provide an opportunity to solve the problem of cases being appealed from the municipal court and then being dismissed wholesale by the prosecutors in the county attorney's office or the district attorney's office.

●***Caution:** There is no requirement that a municipal judge be an attorney if the municipal court is not a "court of record". Tex. Gov't Code § 29.004 (2012). Like many justices of the peace, non-lawyers can serve on the bench of a regular municipal court. However, if the municipal court is a "court of record" the municipal judge must be a licensed attorney with at least 2 years of experience in practicing Texas law. Tex. Gov't Code §30.00006 (2012).

§17.05. No Special Term for Court.

Municipal courts have no terms and may sit at any time to try cases. Tex. Code Crim. Pro. art. 4.15.

§17.06. Court Seal.

The court shall have a seal with a 5 point star in the center and with the words "Corporation Court in (name of municipality), Texas." A court seal may be created electronically. Tex. Code Crim. Pro. art. 45.02.

§17.07. Joint Courts.

A municipality that contracts with one or more municipalities for the operation of a joint police department may conduct its municipal court proceedings within the municipal limits of any municipality that is a party to the contract. Tex. Gov't Code §29.105.

Article 3. Jurisdiction

§17.08. Exclusive Jurisdiction.

A municipal court has exclusive original jurisdiction in criminal cases arising within the municipality's limits or within property owned by the municipality located in the municipality's extraterritorial jurisdiction (ETJ) arising under:

(1) the ordinances of the municipality; or

(2) a resolution, rule, or order of a joint board operating an airport under Texas Transportation Code §22.074; and are punishable only by a fine not to exceed:

(A) \$2,000 in all cases arising under municipal ordinances or resolutions, rules, or orders of a joint board that govern fire safety, zoning, or public health and sanitation, including dumping of refuse; or

(B) \$500 in all other cases arising under a municipal ordinance or a resolution, rule, or order of a joint board. Tex. Gov't Code §29.003 and Tex. Code Crim. Proc. art. 4.14,

§17.09. Concurrent Jurisdiction.

A municipal court has concurrent jurisdiction with the justice of the peace in any precinct in which the municipality is located in all cases arising under state law within the municipality's territorial limits or on property owned by the municipality within its extraterritorial jurisdiction (ETJ) and which:

(1) are punishable only by a fine or other sanctions not including confinement in jail or imprisonment; or

(2) arise under Chapter 106, Texas Alcoholic Beverage Code, and do not include confinement as an authorized sanction. (Chapter 106 deals with provisions of Texas Alcoholic Beverage Code relating to age, commonly known as "minor in possession." It also deals with purchase of alcohol for or by a minor, or misrepresentation of age by a minor.)

§17.10. Concurrent Jurisdiction of Neighboring Courts.

A municipality may enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a

municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for:

- (1) all cases in which either municipality has jurisdiction under; and
- (2) cases that arise under Texas Health and Safety Code §821.022, or Texas Education Code §25.094, Tex. Gov't Code §29.003, and Tex. Code Crim. Proc. Article 4.14.

§17.11. Court May Impose Sanction Other than Fine in Some Cases.

The phrase punishable by “fine only” in the statutes is defined as an offense that is punishable by fine and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment. Tex. Gov't Code §29.003(c). The fact that a conviction in a municipal court has as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court. Tex. Gov't Code §29.003(d).

§17.12. Jurisdiction Over Bonds.

The municipal court has jurisdiction in the forfeiture and final judgment of all bail bonds and personal bonds taken in criminal cases of which the court has jurisdiction. Tex. Gov't Code §29.003(e).

§17.13. Jurisdiction Over Minors.

If a minor is charged in municipal court with a misdemeanor, other than a traffic offense, consult Texas Family Code §51.08 to determine whether the case must be transferred.

Article 4. Judge

§17.14. Selection of Judge.

(a) **Home-Rule.** In municipalities incorporated under charter (home-rule municipalities), the judge shall be selected under the provisions of the charter. Tex. Gov't Code §29.004. The statute or ordinance authorizing a court of record may provide either that the judge is appointed or elected.

(b) **General-Law Municipality.** In a general-law municipality the mayor is ex officio judge of the municipal court unless the municipality, by ordinance, authorizes the election or the appointment of the judge (as is strongly recommended). The city council of a general-law municipality may appoint one or more persons meeting the qualifications for the position of judge to sit as a temporary replacement for the regular municipal judge. Tex. Gov't Code §29.006.

(c) **Reference to Judge as Recorder.** The judge of the municipal court is referred to in some statutes as a “recorder.” Tex. Gov't Code §29.004.

§17.15. Term of Office.

Municipal judges serve a two year term unless a longer term (up to four years) is established by ordinance or charter pursuant to Tex. Const. Art. 11, §11. The judge of a municipal court is not an employee-at-will and can only be removed for cause. See *Barnett v. City of Plainview*, 848 S.W.2d 334, 339 - Tex. App.—Amarillo 1993, no writ. Home-rule municipalities may provide for temporary replacements by charter or ordinance. Tex. Gov't Code §29.007. The city council of a general-law municipality may appoint

temporary replacements meeting the qualifications for such position to sit for the regular municipal judge. The appointee shall have all the powers and duties of the office and shall receive compensation set by the city council of the municipality. Tex. Gov't Code §29.006.

§17.16. Oaths.

A judge of a municipal court may administer an oath and give a certificate of the fact in a matter pertaining to a duty of the court. In other words, a judge of the municipal court would not have to be a notary, to administer an oath and verify a certificate of the fact as long as the matter pertained to a duty of the court. If the municipal court is a court of record, then the judge may administer an oath and give a certificate of the fact just like a notary public. Tex. Gov't Code §602.002.

§17.17. Report to Judicial Council.

The municipal clerk in a municipality with a municipal court, including a municipal court of record, or the employee responsible for maintaining the city council's records shall notify the Texas Judicial Council of the name of:

- (1) each person who is elected or appointed as mayor, municipal court judge, or municipal court clerk; and
- (2) each person who vacates an office of mayor, municipal court judge, or municipal court clerk.

The secretary or employee shall notify the judicial council not later than the 30th day after the date of the person's election or appointment to office or vacancy from office. Tex. Gov't Code §29.013.

§17.18. Recusal or Disqualification.

A party in a hearing or trial in a municipal court, including a municipal court of record, may file with the clerk of the court a motion stating grounds for the recusal or disqualification of the municipal judge. The grounds may include any disability of the judge to preside over the case. Tex. Gov't Code §29.052.

☛***Caution:** The source and amount of municipal court revenue are no longer statutorily authorized criteria for evaluating a municipal judge's job performance.

§17.19. Training of Municipal Judges.

(a) Training for Non-Lawyers. Each municipal court judge in the State of Texas who is not a licensed attorney in this state must complete successfully a 32-hour course in the performance of his duties within one year from the date he is first elected or appointed. The judge must complete a minimum of 12 hours each calendar year following the calendar year in which the initial course was taken. The course may be completed in an accredited state-supported school of higher education or in a continuing education course, program, seminar, or law school or law enforcement school approved by the Texas Judicial Council.

(b) Training for Lawyers. Each municipal court judge in the State of Texas who is a licensed attorney and in good standing with the State Bar **must** complete successfully within one year from the date he is first elected or appointed, a 12-hour course in the performance of his duties. The judge must complete a 12-hour course each calendar year, following the calendar year in which the initial course was taken. The course may be completed in an accredited state-supported school of higher education or in a continuing education course, program, or seminar approved by the Texas Judicial Council.

(c) Accreditation of Courses. The Texas Judicial Council has general supervisory authority over the administration of this Act. The Texas Judicial Council accredits courses, programs, and seminars which satisfy the educational requirements of this Act. The Texas Judicial Council may make and adopt rules and regulations not inconsistent with this Act governing the conduct of business and the performance of its duties.

(d) Reporting Training. Not later than the 60th day after the day on which an accredited course is completed, each municipal court judge successfully completing the course shall make a written report of that fact to the Texas Judicial Council in the manner and form prescribed by the Texas Judicial Council.

(e) Waivers for Training. In individual cases, the Texas Judicial Council on proper application may grant waivers or extensions of the minimum educational or reporting requirements.

Article 5. Municipal Court Clerk

§17.20. Selection of Clerk.

In a general-law municipality, if the municipal judge is elected, the municipal court clerk is elected in the same manner, unless an ordinance provides that the municipal clerk serves as the court clerk. A municipal clerk who serves as court clerk may be authorized by ordinance to appoint a deputy clerk. Tex. Gov't Code §29.010(a). A home-rule municipality may provide by charter for the appointment of the court clerk, even though the judge is elected. Tex. Gov't Code §29.010(d). If the charter provides for election of the municipal judge in a home-rule municipality, but is silent as to the appointment of a clerk, then the clerk should also be elected in the same manner as the judge, unless an ordinance provides that the municipal clerk serves as court clerk. Tex. Gov't Code §29.010(a). Appointment of a clerk is required for court of record. Tex. Gov't Code §30.00009.

§17.21. Term of Clerk.

The court clerk serves a two year term of office unless the municipality has passed an ordinance providing for a longer term pursuant to Texas Constitution Art. 11 §11. If the municipal clerk is appointed as court clerk, that person serves as clerk during the term as municipal clerk. Tex. Gov't Code §29.010(b). This means that the court clerk should be re-appointed at the end of each term (unless the clerk is an elected position), just as the municipal court judge is re-appointed. The city council shall fill a vacancy in the office of clerk by appointment for the remainder of the unexpired term of office. Tex. Gov't Code §29.011.

§17.22. Duties of Clerk.

The clerk keeps minutes of the proceedings of the court, issues process, and generally performs the duties for a municipal court that a county clerk performs for a county court. Tex. Gov't Code §29.010(c). A clerk of a municipal court may administer an oath and give a certificate of the fact pertaining to a duty of the court. This means that as to matters pertaining to duties of the court, the clerk could sign as clerk of the court, and affix the court seal, rather than signing as a notary public and affixing the clerk's notary seal.

§17.23. Court Reporter.

A court reporter must be provided by the municipality in a court of record. The clerk shall keep minutes of the proceedings of the court, issue all process, and generally perform all the duties of the clerk of a court as prescribed by law for a county clerk. Tex. Gov't Code §29.010.

Tip: The law does not provide a specific chain of command that specifies to whom (if anyone) the municipal court clerk staff reports. A municipality by ordinance can designate the municipal court clerk's supervisor (e.g., the mayor, city council, city administrator, city secretary, municipal court judge, etc.). Clarifying the reporting relationships may increase accountability, avoid confusion, and help prevent unnecessary power struggles.

Article 6. Complaint

§17.24. Proceedings Commenced by Complaint.

The document which initiates a case in municipal court is called the complaint. A "complaint" is a sworn allegation charging the accused with the commission of an offense. Tex. Code Crim. Proc. art. 45.018(a). Just because a citizen complains does not mean a "complaint" has been filed in court. A defendant is entitled to notice of a complaint the day before any proceeding in the prosecution. Tex. Code Crim. Proc. art. 45.018(b).

§17.25. Requisites of Complaint.

A complaint must satisfy the following requirements:

- (1) be in writing;
- (2) commence "In the name and by the authority of the State of Texas";
- (3) state the name of the accused, if known, or if unknown, must include a reasonably definite description of the accused;
- (4) show that the accused has committed an offense against the law of this state, or state that the affiant has good reason to believe and does believe that the accused has committed an offense against the law of this state;
- (5) state the date the offense was committed as definitely as the affiant is able to provide;
- (6) bear the signature or mark of the affiant; and
- (7) conclude with the words "Against the peace and dignity of the State" and, if the offense charged is an offense only under a municipal ordinance, it may also conclude with the words "Contrary to the said ordinance";
- (8) allege that the offense was committed in the territorial limits of the municipality in which the complaint is made; and
- (9) be sworn to before any officer authorized to administer oaths. In municipal court it may be sworn to before the:
 - (A) municipal judge;
 - (B) clerk of the court or a deputy clerk;
 - (C) municipal clerk; or
 - (D) city attorney or a deputy city attorney. Tex. Code Crim. Proc. art 45.019.

Tip: Although the ticket (i.e., citation) issued by a peace officer is often sufficient to constitute a "complaint," depending on how it is worded, the prosecutor may want to prepare a separate complaint specifically for a particular case including all of the requirements listed above.

§17.26. Objections Must be Timely.

If the defendant does not object to an error of form or substance in a complaint before the date on which the trial on the merits commences, the defendant waives the right to object. A trial court may require that an objection to a complaint be made at an earlier time. Tex. Code Crim. Proc. art. 45.019(f).

☛**Caution:** Examine the statute or ordinance violated to be sure that the complaint describes the complete offense. Forms are available for many offenses but care must be taken in their use. To say that a person committed "public intoxication," is not the same as saying that "the offender appeared in a public place intoxicated to the point where he could endanger himself, or others."

☛**Tip:** Police officers or other complaining officials should be required to properly fill out the complaint and to describe the offense clearly, in terms of the ordinance or statute alleged to have been violated. This requires that the person understand each element of the offense and be ready to prove each element. It should be required that each complaint be signed before the court clerk or deputy court clerk. A little care and attention to detail in the paperwork can go a long way toward prevention of civil rights lawsuits by disgruntled offenders. It is difficult for a city attorney or prosecutor to effectively explain why an arrest was proper with a plaintiff's attorney pointing out how sloppy or incomplete the complaint was written.

§17.27. Citizen Complaints.

Complaints are not limited to municipal officials. Members of the public can file sworn complaints.

☛**Caution:** If a citizen wants to file a complaint, insist that it completely describe the offense and be signed and sworn to by the complainant. Why should the municipality or a police officer assume the risk of a civil lawsuit for malicious prosecution or false arrest?

§17.28. Statute of Limitations.

A complaint for any Class C misdemeanor may be presented within two years from the date of the commission of the offense. Tex. Code Crim. Proc. Article 12.02 (b).

§17.29. Exceptions to Requirement for Complaint.

There are two exceptions to the requirement that a sworn complaint be filed.

(1) **Parking.** If written notice of an offense for which the maximum possible punishment is by fine only or of a violation relating to the manner, time, and place of parking has been prepared, delivered, and filed with the court and a legible duplicate copy has been given to the defendant, the duplicate copy serves as a complaint to which the defendant may plead "guilty," "not guilty," or "nolo contendere." If the defendant pleads "not guilty" to the offense, a complaint shall be filed that conforms to the requirements of Chapter 45 of the Texas Code of Criminal Procedure, and that complaint serves as an original complaint.

(2) **Waiver.** A defendant may waive the filing of a sworn complaint and elect that the prosecution proceed on the written notice of the charged offense if the defendant agrees in writing with the prosecution, signs the agreement, and files it with the court. Tex. Code Crim. Proc. art. 27.14(d)

Article 7. Procedural Issues

§17.30. Criminal Docket.

Each municipal court judge shall keep a docket in which he shall enter the proceedings of each trial held before him. Tex. Code Crim. Proc. art. 45.017. Each docket shall show:

- (1) the style and file number of each criminal action;
- (2) the nature of the offense charged;
- (3) the plea offered by the defendant and the date of the plea;
- (4) the date any warrant was issued and the return made thereon;
- (5) the date when the examination or trial was had, and if a trial was held, whether it was by a jury or by the judge;
- (6) the verdict of the jury, if any, and the date of the verdict;
- (7) the judgment and sentence of the court, and the date each was given;
- (8) motion for new trial, if any, and the decision thereon; and
- (9) whether an appeal was taken and the date of that action.

This information may be processed and stored by the use of electronic data processing equipment. Tex. Code Crim. Proc. art. 45.017.

If the municipal court clerk does not provide online Internet access to the court's criminal case records, the clerk must post notice of a prospective criminal court docket in a designated public place in the courthouse as soon as the court notifies the clerk of the setting. Tex. Code Crim. Proc. art. 17.085.

☛***Caution:** Judges may be liable for plaintiff's attorney fees if they lose a civil rights lawsuit. A working knowledge of the constitutional rights of persons brought into court, a little care in following proper procedures, and courteous disposition of cases will deter most suits and help provide an effective defense to the judge and municipality if a civil suit is filed.

§17.31. Service of Process.

All process issued out of a municipal court shall be served by a policeman or marshal of the municipality under the same rules as are provided by law for the service, by sheriffs and constables, of process issuing out of the justice court, so far as applicable. Tex. Code Crim. Proc. art. 45.202. Process may be served throughout the county in which the municipality is located.

§17.32. Bail.

(a) Definition of Bail. "Bail" is the security given by the accused that he will appear and answer before the proper court the accusation brought against him, and includes a bail bond or a personal bond. Tex. Code Crim. Proc. art. 17.01.

(b) Bail Bonds. A "bail bond" is a written undertaking entered into by the defendant and his sureties (1 or 2 sureties, Tex. Code Crim. Proc. art. 17.11) for the appearance of the defendant before some court or magistrate, to answer a criminal accusation. Tex. Code Crim. Proc. art. 17.02. The defendant may deposit a cash bond in lieu of having sureties sign the bond. Tex. Code Crim. Proc. art. 17.02. The court may release the defendant on his personal bond without sureties or other security. Tex. Code Crim. Proc. art. 17.031. It is not proper for bail amounts to be set according to a pre-set schedule. Bail must be determined on a case-by-case basis. Op. Tex. Att'y Gen. No. DM-57 (1991).

●***Caution:** The city council and the municipal judge should be **absolutely sure** that persons are not being arrested and held longer than reasonably necessary before being arraigned. Holding a person longer than 24 hours without arraignment may result in a finding that a person's rights have been violated under federal law or in a finding of false imprisonment under state law. If the municipal judge, or some other judge, will not be available to arraign a person in a misdemeanor case within 24 hours of arrest, let them go, on a personal bond or upon signing a promise to appear. In Class A or B misdemeanor and felony cases the arresting officer is still responsible to ensure that a prisoner is arraigned without unnecessary delay, even if the prisoner is held at the county jail. You can bet that the municipal officers and the municipality will be included as defendants in the civil suit if the county judge or justice of the peace (J.P.) fails to arraign a prisoner arrested by the municipality within 24 hours of arrest (not 24 hours after book-in). Note that some cases have held a period less than 24 hours to be unreasonable. If a judge is available do not make a person charged with a Class C misdemeanor wait 24 hours as a "punishment."

§17.33. Prosecutions.

All prosecutions in a municipal court shall be conducted by the city attorney or a deputy city attorney of the municipality. Tex. Code Crim. Proc. art. 45.201(a). The county attorney of the county in which the municipality is located may also represent the state if the county attorney chooses to do so. Tex. Code Crim. Proc. art. 45.201(b).

It is the primary duty of the municipal prosecution not to convict, but to see that justice is done. Tex. Code Crim. Proc. art. 45.201(d). Toward that end, the prosecutor is also empowered to conduct plea negotiations with defendants or defense attorneys and enter into plea agreements at the prosecutor's discretion. See Plea Agreement form (Appendix A).

§17.34. Trials.

Trials in municipal courts are before the municipal judge. The defendant may waive a trial by jury. Tex. Code Crim. Proc. art. 45.025. If the defendant does not waive a jury, then a panel and a jury of six members is selected. Tex. Code Crim. Proc. art. 45.027(a). If the defendant then fails to appear, the judge may order the defendant to pay the costs incurred for impaneling the jury. Tex. Code Crim. Proc. art. 45.026. As a qualification for service on a jury of a municipal court, including a municipal court of record, a person must be a resident of the municipality for which the court is established. Tex. Gov't Code §62.501.

§17.35. Representation of Defendant.

A defendant may appear in person and by attorney, or the attorney may answer for the defendant. Tex. Code Crim. Proc. art. 45.020.

§17.36. Evidence.

Rules of evidence that govern the trials of criminal cases in the district court shall apply to the trial of cases before a municipal court. Tex. Code Crim. Proc. art. 45.011.

§17.37. Role of Jury.

The judge shall charge the jury on the law when requested by the defendant or his attorney. Tex. Code Crim. Proc. art. 45.033. If the state has failed to prove a prima facie case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of "not guilty" as in any other criminal case. Tex.

Code Crim. Proc. art. 45.032. If the jury fails to agree within a reasonable time, it may be discharged. Another jury may be impaneled as soon as practicable to try the case. Tex. Code Crim. Proc. art. 45.035.

§17.38. Plea of Guilty or Nolo Contendere.

(a) In Person. A defendant may personally appear to enter a plea of "guilty" or "nolo contendere" in a misdemeanor case, or an attorney may appear for the defendant. Tex. Code Crim. Proc. art. 27.14.

(b) By Mail. A defendant charged with a misdemeanor for which the maximum possible punishment is by fine only may mail to the court a plea of "guilty" or of "nolo contendere" and a waiver of jury trial. The defendant may also request in writing that the court notify the defendant, at the address stated in the request, of the amount of an appeal bond that the court will approve. Tex. Code Crim. Proc. art. 27.14.

(c) Court Appearance May Be Avoided. If the court receives a plea and waiver before the time the defendant is scheduled to appear in court, the court shall dispose of the case without requiring a court appearance by the defendant.

(d) Notice of Fine and Bond. The court shall notify the defendant by certified mail, or return receipt requested, of any fine assessed in the case and, if requested by the defendant, the amount of an appeal bond that the court will approve. The defendant shall pay any fine assessed or give an appeal bond in the amount stated in the notice before the 31st day after receiving the notice. Tex. Code Crim. Proc. art. 27.14(b).

§17.39. Judgment and Confinement.

(a) Judgments and Sentences. All judgments and sentences shall be rendered in open court. Tex. Code Crim. Proc. art. 45.041(d). Both must be entered on the docket. Tex. Code Crim. Proc. art. 30.09.

(b) Confinement. Defendants convicted of a misdemeanor who do not pay the fine and costs adjudged against them may be confined in jail if the judge finds the defendant intentionally failed to make a good faith effort to discharge the judgment or the defendant is not indigent. Tex. Code Crim. Proc. art. 45.046. This is sometimes called "laying out" the fine. Prisoners must be credited for time in jail at the rate of **not less** than \$50.00 for each period of time served, as specified by the convicting court in the judgment of the case. The convicting court may specify time of not less than 8 hours nor more than 24 hours as the "period of time" for which a defendant who fails to pay the fines and costs in a case must remain in jail to satisfy \$50.00 of the fine and costs. Tex. Code Crim. Proc. art. 45.048. Community service is another option the court may choose for all or part of the fine and costs. Tex. Code Crim. Proc. art. 45.049. A defendant must receive credit for time already served in jail. Tex. Code Crim. Proc. art. 42.03. Op. Tex. Att'y Gen. No. MW-386 (1981).

(1) **Indigents.** An indigent defendant may not be required to serve jail time on a Class C misdemeanor. The basic rationale is that a person cannot be put in jail because he is too poor to pay a fine. *Tate v. Short*, 401 U.S. 395, 28 L.Ed2d 130 (1971); *Ex parte Minjares*, 582 S.W.2d 105 (Tex. Crim. App. 1978). If a question of indigency is raised, the judge should hold a hearing to determine whether the person is indigent. See Tex. Code Crim. Proc. art. 43.03. An extended pay out plan may be agreed to.

(2) **Traffic Offenses by Minors.** The municipal court is required to report to the Department of Public Safety any minor charged with a traffic offense who does not appear before court as required by law and shall also report the final disposition of the case. The court must also report the default in any payment of a fine imposed on a minor. This information may be used by the Department as a ground for refusing to issue a license or to suspend a license.

§17.40. Appeals.

(a) **Appeal to County Court.** Appeals from the municipal court shall be to the county court, Tex. Code Crim. Proc. art. 4.08, unless the jurisdiction of the county court has been transferred to the district court or to a county court at law, in which case an appeal will be to the court to which such appellate jurisdiction has been transferred. Tex. Code Crim. Proc. art. 4.09.

(b) **Notice of Appeal.** Notice of appeal shall be given within 10 days from date of judgment and the filing of an appeal bond perfects the appeal. Tex. Code Crim. Proc. art. 44.16. Appeal bond shall be double the amount of fine and cost, but not less than \$50. Tex. Code Crim. Proc. art. 45.0425. Texas Rules of Appellate Procedure 40(b), 41(b).

(c) **Record.** All of the original papers in the case, together with a certified transcript of all the proceedings had in the court shall be delivered without delay to the clerk of the court to which the appeal was taken. Tex. Code Crim. Proc. art. 44.18.

(d) **Disposition on Appeal.** With the consent of the county attorney, the appeal may be prosecuted by the city attorney or deputy city attorney. Tex. Code Crim. Proc. art. 45.201(c). The case shall be tried de novo in the appellate court. Tex. Code Crim. Proc. art. 44.17. However, if the municipal court is a court of record, the appellate court shall only consider the record of the trial. Tex. Gov't Code §30.00024.

(e) **Fines Go to Municipality.** A fine imposed by a county court in a case heard on appeal from a municipal court must be returned to the municipal treasury. Op. Tex. Att'y Gen. No. MW-478 (1982).

(f) **Courts of Appeals.** The Texas courts of appeals have jurisdiction for misdemeanor offenses even if the penalty imposed is a fine of \$100 or less if the sole issue being appealed is the constitutionality of the statute or ordinance that was the basis for the conviction. Tex. Code Crim. Proc. art. 4.03.

§17.41. Court Costs and Financial Records.

(a) **Clerk Responsible for Funds.** It is the financial responsibility of the municipal court clerk to establish a system to carry out proper court policies and to safeguard money paid to the court.

☛**Caution:** The city council should monitor and audit this process closely. Numerous city councils have discovered loose accounting procedures in the municipal court only after thousands of dollars have been embezzled.

(b) **Municipal Court Costs.** Numerous special expenses and costs are authorized to be collected by the clerk of the municipal court which are not remitted to the State. They may be collected by the municipal court clerk and deposited in the municipal treasury for the benefit of the municipality. These costs are changed from time to time by the Legislature. In the past they have included:

(1) A special expense to be paid to the municipality for the issuance and service of a warrant of arrest for the offenses of bail jumping and failure to appear.

(2) A special expense to be paid to the municipality for the issuance and service of a warrant of arrest, after due notice.

(3) A fee for administering a defendant's request to take a defensive driving course; this fee is collected upon the defendant's request for the defensive driving course and is not refundable if the defendant does not take the course.

(4) A fee not to exceed the amount of the fine for dismissing a case under deferred disposition. This fee is to be collected at the end of the deferral period when the case is dismissed.

(5) An administrative fee of \$10.00 for dismissing a charge of operating a motor vehicle with an expired license plate or inspection sticker or expired driver's license, when proof of compliance is presented to the court within 10 days.

(c) Municipal Court Technology Fund. The city council of a municipality, by ordinance, may create a municipal court technology fund and may require a defendant convicted of a misdemeanor offense in a municipal court or a municipal court of record to pay a technology fee in an amount set out in Texas Code Criminal Procedure Article 102.0172. The court clerk shall collect the costs and pay the funds to the municipal treasurer for deposit in a fund to be known as the municipal court technology fund. The fund may only be used to finance the purchase of or to maintain technological enhancements for the court including computer systems, computer networks, computer hardware, computer software, imaging systems, electronic kiosks, electronic ticket writers, and docket management systems. Tex. Code Crim. Proc. art. 102.0172(d).

(d) Municipal Court Building Security Fund. A municipality may, by ordinance, create a municipal court building security fund and may require a defendant convicted of a misdemeanor offense in a municipal court to pay a \$3.00 security fee as a cost of court. Tex. Code Crim. Proc. art. 102.017(b). The clerk of the court shall pay the fee to the municipal treasurer or the official that discharges the duties of the treasurer for deposit in a fund to be known as the municipal court building security fund. This designated fund may only be used for the purpose of providing security services for the buildings housing the municipal court including the purchase or repair of x-ray machines; handheld metal detectors; walk-through metal detectors; identification cards and systems; electronic locking and surveillance equipment; bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services; signage; confiscated weapon inventory and tracking systems; locks, chains, alarms, or similar security devices; the purchase or repair of bullet-proof glass; and continuing education on security issues for court personnel and security personnel; and warrant officers and related equipment. The municipal court building security fund shall be administered under the direction of the city council of the municipality. Tex. Code Crim. Proc. art. 102.017.

(e) State Court Costs.

(1) There are also a number of different court costs to be collected by the clerk of the municipal court for the State of Texas. These costs change from time to time and have included additional fees charged for:

- (A) The Criminal Justice Planning Fund;
- (B) The Municipal Court Judges and Personnel Training Fund. Tex. Gov't Code §56.001;
- (C) The Crime Victims Compensation Act;
- (D) A fee of \$2 to help pay for indigent defense representation. Tex. Code Crim. Proc. art. 26.05; and
- (E) A fee of \$6 for support of the judiciary. Tex. Loc. Gov't Code §133.105.

(2) The officer collecting the costs shall keep separate records of the funds collected as costs under this section, and shall deposit the funds in the municipal treasury.

(3) Each officer collecting court costs for the State shall file the reports required under Texas Code Criminal Procedure Article 103.005. If no funds due as costs have been collected in any quarter, the report required for each quarter shall be filed in the regular manner, and the report shall state that no funds due under this section were collected.

(4) The custodian of a municipal treasury shall keep records of the amount of funds on deposit collected under this section, and shall remit to the Texas Comptroller of Public Accounts on or before the last day of the month following each calendar quarter period of three months, the funds collected during

the preceding quarter. Funds collected are subject to audit by the comptroller and funds expended are subject to audit by the state auditor and by the governor's division of planning coordination.

(f) Shared Fees. Pursuant to Tex. Code Crim. Proc. art. 102.011, a defendant convicted of a misdemeanor is required to pay various fees. These shall be assessed upon conviction for each arrest made of a defendant arising out of the offense for which the defendant was convicted. Tex. Code Crim. Proc. art 102.011(e). The clerk is authorized to receive the fees and deposit them in an interest bearing account. The clerk must forward part of the fee to the Comptroller quarterly and make a quarterly report to the Comptroller. Tex. Code Crim. Proc. art. 102.011(f).

●***Caution:** Costs and reporting procedures change frequently. It is wise to keep updated on changes as they occur.

§17.42. Fines.

Municipalities must use fines collected for violations of any highway law set out in the Texas Transportation Code for the construction and maintenance of roads, bridges, and culverts, and for the enforcement of traffic laws. Municipalities with a population of less than 5,000 may retain fines for violations of highway laws only in an amount equal to 30% of the municipality's revenue from all sources, other than federal funds and bond proceeds, as shown by the audit performed under Tex. Loc. Gov't Code §103.001, for the preceding year. After collecting the 30%, the municipality must send to the state treasurer any portion of a fine collected that exceeds \$1.00. Tex. Transp. Code §542.402.

§17.43. Control of Money Collected by Court.

(a) Assistance with Court Fees. Control of and accounting for funds collected by the municipal court are extremely important. There are numerous court costs to be collected which must be reported and/or paid to various State funds. If you have questions about fees, or if you have problems filling out quarterly reports, the State Comptroller's Local Government Program may be able to help. 1-800-531-5441, extension 34679 (Accounting) and extension 59876 (Revenue).

(b) Internal Procedures. Unfortunately, loose control and audit procedures in many municipalities are an invitation to theft, fraud, and loss through carelessness. Again the State Comptroller's Office can provide assistance in setting up and evaluating the handling of municipal funds. This procedure should be evaluated regularly by the city council and city manager or administrator.

§17.44. Payment by Credit Card.

(a) Authorizing Credit Payment. The city council of an incorporated municipality may authorize a municipal officer or official who collects fees, fines, court costs or other charges to:

- (1) accept payment by credit card of a fee, fine, court cost, or other charge; and
- (2) collect a fee for processing the payment by credit card. Tex. Loc. Gov't Code §132.002.

The city council of a municipality may authorize the acceptance of payment by credit card without requiring collection of a fee. Tex. Loc. Gov't Code §132.002(c).

(b) Processing Fee. If the city council of an incorporated municipality decides to charge a processing fee as authorized by Tex. Loc. Gov't Code §132.002(b), then it must set the processing fee in an amount that is reasonably related to the expense incurred by the municipal officer or official in processing the payment by credit card. However, the city council may not set the processing fee in an amount that exceeds

5% of the fee, fine, court costs, or other charge being paid. Tex. Loc. Gov't Code §132.003(b). The official processing the fee shall deposit the fee in the general fund of the municipality. Tex. Loc. Gov't Code §132.006.

(c) Service Charge for Collection. If a payment by credit card is not honored for any reason by the credit card company on which funds are drawn, the municipality is authorized to collect a service charge from the person owing the fee, fine, court cost or other charge. The service charge is in addition to the original fee and is for the collection of the original amount. The amount of the service charge is the same amount as the fee charged for the collection of a check drawn on an account with insufficient funds. The service charge shall be deposited in the general fund of the municipality. Tex. Loc. Gov't Code §132.004, §132.006(b).

(d) Collection of Credit Cards. A municipality is authorized to contract with a company issuing credit cards to collect and seize credit cards issued by the company that are outdated or otherwise unauthorized. The municipality may charge the company a fee for the return of the credit cards, which fee shall be deposited in the general fund of the municipality. Tex. Loc. Gov't Code §132.005.

§17.45. Deferred Disposition.

(a) Option for Deferred Disposition. When a person is charged with a misdemeanor offense punishable by fine only, the judge may, on a plea of guilty or nolo contendere by a defendant, or upon a finding of guilt, defer further proceedings while entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days. Tex. Code Crim. Proc. art. 45.051. During the deferral period the judge may require the defendant to:

- (1) post a bond in the amount of the fine assessed to secure payment of the fine;
- (2) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;
- (3) submit to professional counseling;
- (4) submit to diagnostic testing for alcohol or a control substance or drugs;
- (5) submit to a psychosocial assessment;
- (6) participate in an alcohol or drug abuse treatment or education program;
- (7) pay the cost of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs; and
- (8) comply with any other reasonable condition.

●***Caution:** In 2003, the Legislature amended the statute making persons holding a commercial driver's license (CDL) ineligible for deferred adjudication. Tex. Code Crim. Proc. art. 45.051(s). This ineligibility applies regardless whether the defendant was operating a commercial vehicle.

(b) Dismissal of Charge. At the conclusion of the deferral period, if the defendant presents satisfactory evidence he has complied with the requirements imposed, the judge shall dismiss the complaint and clearly note on the docket that the complaint is dismissed and there is not a final conviction. Otherwise, the judge may proceed with an adjudication of guilt and may then reduce the fine assessed or may impose a fine assessed less any portion that has already been paid. If the complaint is dismissed, a special expense not to exceed the amount of the fine assessed may be imposed. Records relating to a complaint dismissed under this article may be expunged under Tex. Code Crim. Proc. art. 55.01.

(c) Option for Deferred Disposition of Traffic Offense. When a person is charged with a misdemeanor traffic offense under the Texas Transportation Code, other than a violation of Texas Transportation Code §545.066, §545.401, §545.421, §550.022, §550.023, or a serious traffic violation as defined by Texas Transportation Code §522.003, the court, in its discretion, may defer proceedings and

allow the person 180 days to present evidence that, subsequent to the alleged act, a defensive driving course has been successfully completed. Tex. Code Crim. Proc. art. 45.051. If the person has not taken a defensive driving course under this section within the previous year, and is not currently taking a defensive driving course, and can show proof of financial responsibility, and is charged with an offense other than speeding 25 m.p.h. or more over the posted speed limit, and makes a request before the answer date, then the court *must* defer proceedings and allow the person 90 days to present a certificate of completion of a defensive driving course approved under the Texas Driver and Traffic Safety Education Act. Tex. Code Crim. Proc. art. 45.0511(b) and (c).

(d) Dismissal of Traffic Charge. Upon completion of the defensive driving course and acceptance by the court, the court shall dismiss the case against the person and the charge may not be a part of the person's driving record or used for any purpose. Tex. Code Crim. Proc. art. 45.0511(l) and (n). The court may dismiss only one charge for each completion of a course. Tex. Code Crim. Proc. art. 45.0511(m). As for other misdemeanor deferred adjudications, the court may assess a special expense, but in a traffic case the fee may not be more than \$10.00 in addition to any applicable court costs. Tex. Code Crim. Proc. art. 45.0511(f).

(e) Installments or Community Service. Notwithstanding any other provision of law, as an alternative to requiring a defendant charged with one or more offenses to make payment of all court costs, the judge (in the judge's discretion) may:

- (1) allow the defendant to enter into an agreement for payment of those costs in installments during the defendant's period of probation;
- (2) require an eligible defendant to discharge all or part of those costs by performing community service under Tex. Code Crim. Proc. art. 45.049; or
- (3) take any combination.

☛***Caution:** It is wise for court personnel to attain a level of confidence in the third-parties to whom the court refers defendants to perform community service. The court should not direct or encourage defendants (particularly juveniles or others warranting heightened supervision or care) to volunteer at places with poor oversight or hazardous conditions.

(f) Failure to Complete. If the defendant fails to present within the deferral period satisfactory evidence of compliance with the requirements imposed by the judge, the court shall:

- (1) notify the defendant in writing, mailed to the address on file with the court or appearing on the notice to appear, of that failure; and
- (2) require the defendant to appear at the time and place stated in the notice to show cause why the order of deferral should not be revoked.

On the defendant's showing of good cause for failure to present satisfactory evidence of compliance with the requirements imposed by the judge, the court may allow an additional period during which the defendant may present evidence of the defendant's compliance with the requirements. If on the date of a show cause hearing by the conclusion of an additional period [the deferral period] the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the judge may impose the fine assessed or impose a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant. Tex. Code Crim. Proc. art. 45.051.

§17.46. Ordinances May Not Conflict with State Constitution or Statutes.

(a) **Constitutional Preemption.** Article 11, §5 of the Constitution of Texas prohibits any municipality from enacting any ordinance which is inconsistent with the Constitution or the general laws of Texas.

(b) **Statutory Preemption.** No governmental subdivision or agency may enact or enforce a law that makes any conduct covered by the Texas Penal Code an offense subject to a criminal penalty. This section shall apply only so long as the law governing the conduct prohibited by the Texas Penal Code is legally enforceable. Texas Penal Code §1.08.

(c) **Culpable Mental State.** An offense defined by municipal ordinance may not dispense with the requirement of culpable mental state if the offense is punishable by a fine exceeding the amount authorized by Texas Penal Code §12.23. See sample ordinance (Appendix B).

§17.47. No Quotas for Traffic Citations.

A municipality is prohibited from establishing or maintaining, formally or informally, a system, program, or plan by which a peace officer may be evaluated, promoted, compensated, or disciplined according to issuance by the officer of a predetermined or specified number of traffic citations. A violation of this prohibition constitutes misconduct and is a ground for removal from office of an elected official and may also subject a non-elected official to removal from his or her position.

§17.48. Arrest Warrants Issued by Municipal Court.

Municipal judges and justices of the peace who also preside over a municipal court are required to attend training sessions which discuss the issuance of warrants and probable cause. Problems have arisen because it is sometimes thought that an arrest on a class C misdemeanor is not as important as an arrest for a more serious charge so the same formalities do not have to be observed. This is a mistake. See *State v. Martin*, 796 S.W.2d 810 (Dallas 1990). A warrant issued by municipal court for a class C offense should have the same information as other warrants, and the information specified in Texas Code Criminal Procedure Article 15.04, 15.05, and 45.01.

Additionally the municipal judge should be satisfied that there is probable cause for the warrant to issue. The judge should be sure that **all** information necessary to support issuing the warrant is contained in the affidavit or sworn complaint. A properly filled out complaint may be sufficient if it describes the facts of the offense, the date and place it was committed, and the accused, and it is sworn to by a credible witness with personal knowledge of the offense. The signing person should be the officer or witness who observed the offense and not merely the court clerk who was told about it. In other words while a complaint signed by the court clerk may be enough to prosecute a person who shows up for trial, it is risky to rely upon such a complaint to issue an arrest warrant or to put someone in jail pending bail or trial.