

**ORDINANCE NO. 82**

**AN ORDINANCE ESTABLISHING AND MAINTAINING A COURT DESIGNATED AS A MUNICIPAL COURT FOR THE TRIAL OF MISDEMEANOR OFFENSES AND CITY ORDINANCES; ALLOWING THE CITY OF TUSCOLA, TX TO APPOINT A MUNICIPAL COURT JUDGE AND ALLOWING THE CITY SECRETARY TO BE TRAINED AND TO SERVE AS MUNICIPAL COURT CLERK, ESTABLISHING AN EFFECTIVE DATE, AUTHORIZING BOTH THE CLERK AND THE JUDGE TO IMPOSE COURT COSTS AND IMPOSE FEES, AUTHORIZATION TO COLLECT CIVIL FINES OR CRIMINAL PENALTIES NOT TO EXCEED \$2000 AND ESTABLISHING JURISDICTION OF THE COURT.**

WHEREAS, THE CITY OF TUSCOLA, TX (HEREAFTER KNOWN AS THE CITY), SEEKS TO PROVIDE FOR THE ENFORCEMENT OF ITS MUNICIPAL ORDINANCES IN ORDER TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE OF ITS CITIZENS, AND

WHEREAS, THE CITY COUNCIL FINDS THAT THE ENACTMENT OF THIS ORDINANCE IS NECESSARY FOR THE GOOD GOVERNMENT, PEACE AND ORDER OF THE CITY AND PROPER CARRYING OUT OF THE POWER GRANTED BY LAW TO THE CITY; AND

WHEREAS, THE COUNCIL DETERMINES THAT THE CREATION OF A MUNICIPAL COURT IS NECESSARY TO PROVIDE AN EFFICIENT DISPOSITION OF CASES ARISING WITHIN THE CITY; AND

WHEREAS, THE COUNCIL FINDS THAT THE OFFICE OF MUNICIPAL COURT JUDGE MUST BE ESTABLISHED; AND

WHEREAS, THE COUNCIL FINDS THAT THE APPOINTMENT OF A MUNICIPAL COURT CLERK IS NECESSARY; AND

WHEREAS, THE CITY IS AUTHORIZED TO ESTABLISH A MUNICIPAL COURT BY VIRTUE OF THE TEXAS GOVERNMENT CODE, CHAPTER 29.002; AND

WHEREAS, PER TEXAS GOVERNMENT CODE 29.003, THE MUNICIPAL COURT WILL HAVE EXCLUSIVE ORIGINAL JURISDICTION WITHIN THE CITY LIMITS OF TUSCOLA, TX IN ALL CRIMINAL CASES THAT ARISE UNDER ANY CITY ORDINANCE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TUSCOLA, TAYLOR COUNTY, TEXAS THE FOLLOWING:

**1. ENACTMENT CLAUSES**

**A. POPULAR NAME: THIS ORDINANCE WILL HENCEFORTH BE KNOWN AS THE CITY OF TUSCOLA'S 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 OF TUSCOLA 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 OF THE CITY OF TUSCOLA MAY PROMOTE PUBLIC HEALTH, SAFETY, MORALS AND GENERAL WELFARE WITHIN THE CITY THROUGH THE ENFORCEMENT OF THE CITY'S ORDINANCES AND APPLICABLE STATE LAWS IN 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.

## 2. ESTABLISHMENT OF MUNICIPAL COURT

A. SCOPE: THE PROVISIONS OF THIS SECTION GOVERN CREATION, ESTABLISHMENT OPERATION, AND JURISDICTION OF THE COURT WITHIN THE CITY, INCLUDING 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 TUSCOLA, TEXAS"

C. JURISDICTIONAL LIMITS OF THE 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 IN SECTION 29.003. THE COURT ALSO HAS JURISDICTION OVER CASES ARISING WITHIN THE CITY'S CORPORATE BOUNDARIES (I.E., CITY LIMITS) UNDER ORDINANCES AUTHORIZED BY LAW.

### D. JUDGES OF THE COURT:

1. THE MUNICIPAL COURT SHALL BE PRESIDED OVER BY A JUDGE, WHO SHALL BE KNOWN AS THE MUNICIPAL COURT JUDGE. THE JUDGE SHALL BE APPOINTED BY ORDINANCE OF THE CITY COUNCIL FOR A PERIOD NOT TO EXCEED TWO (2) YEARS AND SHALL BE ENTITLED TO A SALARY SET BY THE COUNCIL. THE AMOUNT OF SALARY SHALL NOT BE DIMINISHED DURING THE JUDGE'S TERM IN OFFICE. THE SALARY MAY NOT BE BASED DIRECTLY OR INDIRECTLY ON FINES, FEES, OR COSTS ALLOWED BY THE COURT. UNTIL SUCH A TIME AS A MUNICIPAL JUDGE IS APPOINTED BY THE COUNCIL, THE MAYOR CAN AND SHALL SERVE AS MUNICIPAL COURT JUDGE.

### 2. THE JUDGE MUST BE:

A. A CITIZEN OF THE UNITED STATES

B. A RESIDENT OF THE STATE AND OF THE COUNTY

3. A PERSON MAY NOT SERVE AS JUDGE OF THE COURT IF HE/SHE IS OTHERWISE EMPLOYED BY THE MUNICIPALITY.

4. IF A VACANCY OCCURS IN THE OFFICE OF THE JUDGE, THE CITY COUNCIL SHALL APPOINT ANOTHER QUALIFIED PERSON TO FILL THE UNEXPIRED TERM. IF THERE IS A VACANCY IN THE OFFICE, THE MAYOR CAN AND SHALL SERVE AS MUNICIPAL COURT JUDGE UNTIL A REPLACEMENT CAN BE APPOINTED.

5. THE MUNICIPAL COURT JUDGE SHALL TAKE JUDICIAL NOTICE OF STATE LAWS AND THE ORDINANCES AND CORPORATE LIMITS OF THE MUNICIPALITY.

6. A MUNICIPAL JUDGE IS A MAGISTRATE AND MAY ISSUE ADMINISTRATIVE SEARCH WARRANTS.

7. A JUDGE MAY BE REMOVED FROM OFFICE BY THE CITY COUNCIL AT ANY TIME DUE TO INCOMPETENCY, MISCONDUCT, MALFEASANCE, OR JOB DISABILITY (NOT PHYSICAL DISABILITY)



E. MUNICIPAL COURT CLERK:

1. THE MUNICIPAL COURT CLERK SHALL BE APPOINTED BY THE COUNCIL FOR A TERM OF TWO (2) YEARS AND SHALL BE ENTITLED TO A SALARY SET BY THE COUNCIL. A CLERK MAY BE REMOVED FROM OFFICE BY THE COUNCIL FOR THE SAME REASONS AS A JUDGE.
2. THE CITY COUNCIL MAY, IN ACCORDANCE WITH SECTION 20.010 OF THE TEXAS GOVERNMENT CODE, DESIGNATE THAT THE CITY SECRETARY MAY SERVE AS THE MUNICIPAL COURT CLERK AND THAT THE TERM OF SAID APPOINTMENT SHALL CONTINUE FOR AS LONG AS THE CITY SECRETARY REMAINS IN OFFICE AS CITY SECRETARY.
3. THE CLERK SHALL BE RESPONSIBLE FOR ALL RECORDS OF THE COURT, ISSUE PROCESS, AND GENERALLY PERFORM THE DUTIES FOR THE COURT THAT A CLERK OF THE COUNTY COURT AT LAW IS REQUIRED TO PERFORM. THE CLERK SHALL MAINTAIN AN INDEX OF ALL COURT JUDGEMENTS IN THE SAME MANNER AS THE COUNTY COURT.

F. COURT FACILITIES AND SEAL:

1. THE CITY SHALL PROVIDE COURTROOMS, JURY ROOMS, OFFICES, OFFICE FURNITURE, LIBRARIES, LAW BOOKS, AND OTHER FACILITIES AND SUPPLIES THAT THE CITY 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 TUSCOLA, TEXAS". THE SEAL'S USE MUST CONFORM TO ARTICLE 45.012 OF THE CODE OF CRIMINAL PROCEDURE.

G. PROSECUTION: PROSECUTION IN THE MUNICIPAL COURT SHALL BE CONDUCTED AS PROVIDED BY ARTICLE 45.201, CODE OF CRIMINAL PROCEDURE. ALL PROSECUTIONS IN MUNICIPAL COURT SHALL BE CONDUCTED BY THE CITY ATTORNEY OR BY A DEPUTY CITY ATTORNEY, AS DESIGNATED BY THE CITY ATTORNEY.

H. 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.

I. APPEAL FROM JUDGMENT OF CONVICTION IN MUNICIPAL COURT:

1. A DEFENDANT HAS THE RIGHT OF APPEAL FROM A JUDGMENT FOR 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.

J. FEES AND FINES:

1. THE MUNICIPAL COURT CLERK SHALL COLLECT AND ADMINISTER ALL FEES AND FINES AUTHORIZED BY STATE LAW AND CITY ORDINANCES. FEES AND FINES SHALL BE IN THE AMOUNTS ESTABLISHED BY STATE LAW, THE MUNICIPAL COURT JUDGE, AND FEE SCHEDULES ADOPTED BY THE CITY AS MAY BE AMENDED.

2. A FINE OR PENALTY IMPOSED IN THE MUNICIPAL COURT FOR VIOLATION OF AN ORDINANCE OF THE CITY MAY NOT EXCEED FIVE HUNDRED DOLLARS (\$500), 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).

L. JURISDICTION SECTION: THE PROVISIONS OF THIS ORDINANCE SHALL APPLY WITHIN THE CITY'S CORPORATE BOUNDARIES (I.E., CITY LIMITS) AS PRESCRIBED BY STATE LAW.

M. CIVIL AND CRIMINAL PENALTIES:

1. 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.

N. CRIMINAL PROSECUTION:

1. ANY PERSON VIOLATING ANY PROVISION OF THIS ORDINANCE SHALL, UPON CONVICTION, BE FINED A SUM OF 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.

O. CIVIL REMEDIES:

1. 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:

2. INJUNCTIVE RELIEF TO PREVENT SPECIFIC CONDUCT THAT VIOLATES THE ORDINANCE OR TO REQUIRE SPECIFIC CONDUCT THAT IS NECESSARY FOR COMPLIANCE WITH THE ORDINANCE; AND A CIVIL PENALTY UP TO ONE THOUSAND DOLLARS (\$1000.00) 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.

P. SEVERABILITY:

1. IT IS HEREBY DECLARED TO 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 JUDGEMENT 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.

Q. PROPER NOTICE AND MEETING: IT IS HEREBY OFFICIALLY FOUND AND DETERMINED THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN 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.

I, THE UNDERSIGNED, CITY SECRETARY OF THE CITY OF TUSCOLA, TEXAS, DO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE #82, PASSED AND APPROVED THE 7TH DAY OF NOVEMBER, 2013, AS SAME APPEARS IN THE OFFICIAL RECORDS OF THE CITY OF TUSCOLA, TEXAS, OF WHICH RECORDS I AM LAWFUL CUSTODIAN.

WITNESS MY HAND AND OFFICIAL SEAL OF THE CITY OF TUSCOLA, TEXAS, THIS 7TH DAY OF NOVEMBER, 2013