

**Ordinance No. 746**

***"Amending Chapter 12 (Court) to adopt a municipal court of record."***

**AN ORDINANCE OF THE CITY OF GRANITE SHOALS, TEXAS, AMENDING CHAPTER 12 (COURT) OF THE CITY OF GRANITE SHOALS CODE OF ORDINANCES TO ADOPT A MUNICIPAL COURT OF RECORD, INCLUDING PROVIDING FOR: FINDINGS OF FACT, PURPOSE, DEFINITIONS, CREATION AND JURISDICTION, APPOINTMENT OF A MUNICIPAL COURT JUDGE AND CLERK, APPOINTMENT OF A PROSECUTOR, PROCEDURES FOR THE OPERATION AND ADMINISTRATION OF THE COURT, AUTHORIZATION TO IMPOSE COURT COSTS AND FEES, AUTHORIZATION TO COLLECT CIVIL FINES OR CRIMINAL PENALTIES NOT TO EXCEED \$2,000; AND PROVIDING FOR THE FOLLOWING: SAVINGS, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.**

**WHEREAS**, Texas Government Code Section 30.0003 authorizes the governing body of a municipality to create a municipal court of record to provide a more efficient disposition of cases in the municipality;

**WHEREAS**, the City of Granite Shoals (the "City") City Council (the "Council") determines that the creation of a municipal court of record is necessary to provide a more efficient disposition of cases arising in the City;

**WHEREAS**, the City Council seeks to provide for the enforcement of its municipal ordinances in order to protect the public health, safety, and welfare;

**WHEREAS**, at this time, the City Council desires to establish a municipal court of record:

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRANITE SHOALS, TEXAS:**

**SECTION I. FINDINGS OF FACT**

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

## SECTION II. AMENDMENT

The Code of Ordinances of the City of Granite Shoals, Texas, is hereby amended by replacing Chapter 12 (Court), Article I (In General) with the following language:

### **Article I. In General**

#### **Sec. 12-01 Municipal Court of Record Created**

This article 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's ordinances and the efficient disposition of cases arising from such ordinances.

#### **Sec. 12-02 Jurisdiction**

The provisions of this article shall apply within the City limits and within and outside of the extraterritorial jurisdiction (ETJ) of the City as prescribed by state law.

#### **Sec. 12-03 Definitions**

Appellate court. The county criminal court, the county criminal court of appeals, or the municipal court of appeals; or the county court at law if there is no county criminal court, county criminal court of appeals, or municipal court of appeals, or the county court if there is no county court at law, of the county in which the offense occurred.

City Council or Council. The governing body of the City.

#### **Sec. 12-04 Scope**

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

#### **Sec. 12-05 Creation; designation**

There is hereby established one (1) municipal court of record within the City, with the designation of "Municipal Court of Record of the City of Granite Shoals, Texas" effective October 9, 2018.

#### **Sec. 12-06 Jurisdictional limits**

(a) Pursuant to section 30.00005, Texas Government Code, the municipal court of record has the jurisdiction provided by general law for municipal courts contained in Section 29.003, Texas Government Code, including concurrent jurisdiction with justice courts as provided by section 29.003.



(b) The municipal court of record has jurisdiction over cases arising outside the territorial limits of the city under ordinances authorized by Texas Local Government Code, Sections 215.072, 217.042, 341.903, and 551.002, or otherwise as provided by law.

(c) The municipal court of record has civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, chapter 214, Local Government Code, or subchapter E, chapter 683, Transportation Code.

(d) The municipal court of record has concurrent jurisdiction with a district court or a county court at law under subchapter B, chapter 54, Local Government Code, within the City's territorial limits and property owned by the City located in the City's extraterritorial jurisdiction for the purposes of enforcing health and safety and nuisance abatement ordinances.

(e) The municipal court of record shall have jurisdiction in all criminal cases arising under this Code and any ordinances of the City in which the punishment is by fine only, and where the maximum fine for the offense charged does not exceed \$500, with the exception of ordinances regulating fire safety, zoning, public health, and sanitation, in which the fine may not exceed \$2,000, and where the offense charged arose within the corporate limits of the City (or outside of the corporate limits but within an area over which the City has jurisdiction and control under the laws of the state).

(e) The municipal court of record has authority to issue:

(1) Search warrants, including administrative search warrants, for the purpose of investigating a health and safety or nuisance abatement ordinance violation;

(2) Seizure warrants for the purpose of securing, removing, or demolishing offending nuisance property and removing the debris from the premises.; and

(3) Any other warrants authorized by law.

#### **Sec. 12-07 Judges**

(a) The municipal court of record shall be presided over by a judge, who shall be known as the "municipal judge." The judge shall be appointed by the City Council for a term of two (2) years, and shall hold office for the term appointed and until the judge's successors have been appointed and qualified, and shall be entitled to a salary set by the City Council. The amount of the judge's salary may not be diminished during the judge's term of office. The salary may not be based directly or indirectly on fines, fees, or costs collected by the court.

(b) Upon the adoption of this Ordinance, the current presiding judge of the Municipal Court of the City of Granite Shoals shall become the judge of the Municipal Court of Record in the City of Granite Shoals. The initial term shall expire two years from the date of his/her last appointment by the City Council as judge of the Municipal Court. At the conclusion of the initial term described herein, all succeeding terms of the Municipal Judge shall be two (2) years from the date of the last appointment by the City Council.

(c) The judge must:

(1) Be a citizen of the United States;

(2) Be a resident of this state;

(3) Be a licensed attorney in good standing; and

(4) Have two (2) or more years of experience in the practice of law in this state.

(d) 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.

(e) If a vacancy occurs in the office of municipal judge, the city council shall appoint a qualified person to fill the office for the remainder of the unexpired term.

(f) There shall also be as many as three (3) alternate judges appointed by the City Council, subject to the same qualifications, who shall have all the powers and shall discharge all the duties of a municipal judge while serving as municipal judge. Each alternate judge shall be appointed for a term of two (2) years. If the regular municipal judge is temporarily absent due to illness, family death, continuing legal or judicial education programs, or any other reason, he or she shall select one of the alternate judges to serve during his or her absence.

(g) The municipal judges may exchange benches and act for each other in any proceeding pending in the court. An act performed by any of the judges is binding on all parties to the proceeding.

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

(i) A municipal judge may be removed from office by the City Council:

(1) Upon a majority vote of the City Council at a duly called meeting where it is determined that removal is in the best interests of the City;

(2) As provided by section 1-a, article V, Texas Constitution; or



- (3) For the reasons and by the procedure provided in subchapter B, chapter 21, Local Government Code.

#### **Sec. 12-08 Writ power**

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

#### **Sec. 12-09 Court rules**

The Code of Criminal Procedure and the Texas Rules of Appellate Procedure, as modified by chapter 30, Texas Government Code, govern the trial and appeal of cases before the municipal court of record. The court may make and enforce all rules of practice and procedure necessary to expedite the handling and trial of cases before the court that are not inconsistent with law.

#### **Sec. 12-10 Clerk of court**

The City Manager shall appoint a clerk of the municipal court of record who may hire, direct, and remove the personnel authorized in the City's annual budget for the clerk's office. The clerk or the clerk's deputies shall keep the records of the municipal court of record, issue process, and generally perform the duties for the court that a clerk of the county court at law exercising criminal jurisdiction is required by law to perform for that court. In addition, the clerk or the clerk's deputies shall maintain an index of all court judgments in the same manner as county clerks are required by law to prepare for criminal cases arising in county courts. The clerk shall perform the duties in accordance with statutes, and the charter and ordinances of the city. During the proceedings of the court, the clerk and other court personnel shall serve at the direction of the municipal judge.

#### **Sec. 12-11 Preserving court record**

(a) For the purpose of recording the proceedings and preserving a record in all cases tried before the municipal court of record, a good quality electronic recording device shall be used. When the recording device is used, a court reporter need not be present at the trial to certify the reporter's record. Proceedings of the court that are appealed shall be transcribed from the recording by an official court reporter. The recording shall be kept and stored for a 20-day period beginning the day after the last day of the proceeding, trial or denial of motion for a new trial, whichever occurs last.

(b) In lieu of a good quality electronic device and as deemed necessary by the municipal judge, a court reporter appointed by the court clerk under Texas Government Code section 30.00010, shall preserve the record. The court reporter may use written

notes, transcribing equipment, video or audio recording equipment, or a combination of these methods to record the proceedings of the municipal court of record. The court reporter shall keep the record for a 20-day period beginning the day after the last day of the court proceeding, trial or denial of motion for new trial, or until any appeal is final, whichever occurs last.

(c) Testimony is not required to be recorded in a case unless requested by the judge or one of the parties.

#### **Sec. 12-12 Clerk's record**

The clerk's record must substantially conform to the provisions relating to the preparation of a clerk's record in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure.

#### **Sec. 12-13 Statement of facts**

(a) A reporter's record included in the record on appeal must substantially conform to the provisions relating to the preparation of a reporter's record in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure.

(b) The appellant shall pay for the reporter's record.

#### **Sec. 12-14 Court facilities and seal**

(a) The City Council shall provide courtrooms, jury rooms, offices, office furniture, libraries, law books, and other facilities and supplies that the City Council determines necessary for the proper operation of the municipal court of record.

(b) The City Council shall provide the municipal court of record with a seal that contains the phrase "Municipal Court of Record of the City of Granite Shoals, Texas." The seal's use must conform to article 45.012 of the Code of Criminal Procedure.

#### **Sec. 12-15 Complaints and pleadings**

Complaints and pleadings must substantially conform to the relevant provisions of chapters 27 and 45, Code of Criminal Procedure.

#### **Sec. 12-16 Prosecution**

Prosecution in the municipal court of record shall be conducted as provided by article 45.201, Code of Criminal Procedure. Prosecution may be performed by the City Attorney or another lawyer designated as Municipal Prosecutor/Deputy City Attorney.



## **Sec. 12-17 Jury**

(a) A person who is brought before the municipal court of record 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 of the Code of Criminal Procedure.

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

## **Sec. 12-18 Appeal from judgment of conviction**

(a) A defendant has the right of appeal from a judgment or conviction. The state has the right to appeal as provided by article 44.01 Code of Criminal Procedure. The county criminal courts or county criminal courts of appeal of Burnet County have jurisdiction of appeals from the municipal courts of record. If there is no such court, the county courts or county courts at law have jurisdiction of an appeal.

(b) The appellate court shall determine each appeal from a municipal court of record conviction and each appeal from the state on the basis of the errors that are set forth in the appellant's motion for new trial and that are presented in the clerk's record and reporter's record prepared from the proceedings leading to the conviction or appeal. An appeal from the municipal court of record may not be by trial de novo.

(c) To perfect an appeal, the appellant must file a motion for new trial not later than the 10th day after the date on which the judgment and sentence are rendered. The motion must be in writing and must be filed with the clerk of the municipal court of record. The motion must set forth the points of error of which the appellant complains. The motion or an amended motion may be amended by leave of court at any time before action on the motion is taken, but not later than the 20th day after the date on which the original or amended motion is filed. The court may for good cause extend the time for filing or amending, but the extension may not exceed ninety (90) days from the original filing deadline. If the court does not act on the motion before the expiration of the thirty (30) days allowed for determination of the motion, the original or amended motion is overruled by operation of law.

(d) To perfect an appeal, the appellant must also give notice of the appeal. If the appellant requests a hearing on the motion for new trial, the appellant may give the notice of appeal orally in open court on the overruling of the motion. If there is no hearing, the appellant must give a written notice of appeal and must file the notice with the court no later than the 10th day after the date on which the motion is overruled. The court may for good cause extend that time period, but the extension may not exceed ninety (90) days from the original filing deadline.

(e) The fee for the preparation of the clerk's record, which does not include the fee the defendant must pay for an actual transcript of the proceedings, is \$25. The clerk shall note the payment of the fee on the docket of the court. If the case is reversed on appeal, the fee shall be refunded to the defendant.

#### **Sec. 12-19 Appeal bond and record on appeal**

(a) If the defendant is not in custody, the defendant may not take an appeal until the defendant files an appeal bond with the municipal court of record. The bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled. If the defendant is in custody, the defendant shall be committed to jail unless the defendant posts the appeal bond.

(b) The appeal bond must be in the amount of \$100.00 or double the amount of fines and costs adjudged against the defendant, whichever is greater.

(c) The bond must:

(1) State that the defendant was convicted in the case and has appealed; and

(2) Be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken.

#### **Sec. 12-20 Record on appeal**

The record on appeal must substantially conform to the provisions relating to the preparation of a transcript in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure.

#### **Sec. 12-21 Bills of exception**

Bills of exception must substantially conform to the provisions relating to the preparation of bills of exception in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure.

#### **Sec. 12-22 Transfer of record**

(a) Not later than the 60th day after the date on which the notice of appeal is given or filed, the parties must file the following with the clerk of the municipal court:

(1) The reporter's record;

(2) A written description of material to be included in the clerk's record in addition to the required material; and



(3) Any material to be included in the clerk's record that is not in the custody of the clerk.

(b) On completion of the record, the municipal judge shall approve the record in the manner provided for record completion, approval, and notification in the court of appeals.

(c) After the court approves the record, the clerk shall promptly forward the record to the appellate court clerk for filing. The appellate court clerk shall notify the defendant and the prosecuting attorney that the record has been filed.

#### **Sec. 12-23 New trial**

(a) Appellant must file the appeal brief with the appellate court clerk not later than the 15th day after the date upon which the clerk's record and reporter's record are filed. The appellee must file the appellee's brief no later than the 15th day after the date on which the appellant's brief is filed.

(b) Each party, on filing the party's brief on appeal with the appellate court clerk, shall deliver a copy of the brief to the municipal judge.

(c) The trial court shall decide from the briefs of the parties whether the appellant should be permitted to withdraw the notice of appeal and be granted a new trial by the court. The court may grant a new trial at any time before the record is filed with the appellate court.

(d) If the appellate court awards a new trial to the appellant, the case stands as if a new trial had been granted by the municipal court of record.

#### **Sec. 12-24 Certificate of appellate proceedings**

(a) Upon receipt of the certificate of appellate proceedings from the appellate court clerk, the clerk of the municipal court of record shall file the certificate with the papers in the case and note the certificate on the case docket.

(b) If the municipal court of record judgment is affirmed, to enforce the judgment the court may:

- (1) Forfeit the bond of the defendant;
- (2) Issue a writ of capias for the defendant;
- (3) Issue an execution against the defendant's property;
- (4) Order a refund for the defendant's costs; or

- (5) Conduct an indigency hearing at the court's discretion.

**Sec. 12-25 Relation to other ordinances**

This article shall not be construed to require or allow any act which is prohibited by any other ordinance. This article is specifically subordinate to any ordinance or regulations of the city pertaining to building and construction safety or to pedestrian and traffic safety.

**SECTION III. SAVINGS**

The repeal of any ordinance or part of ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this Ordinance.

**SECTION IV. SEVERABILITY**

Should any sentence, paragraph, subdivision, clause, phrase, or section of this Ordinance be adjusted or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Ordinance in whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

**SECTION V. REPEALER**

The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This Ordinance shall not be construed to require or allow any act that is prohibited by any other ordinance.

**SECTION VI. EFFECTIVE DATE**

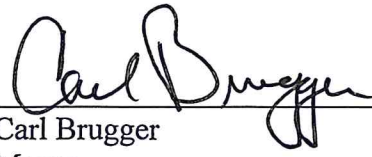
This Ordinance shall take effect immediately from and after its passage and publication as may be required by law.

**SECTION VII. PROPER NOTICE AND MEETING**

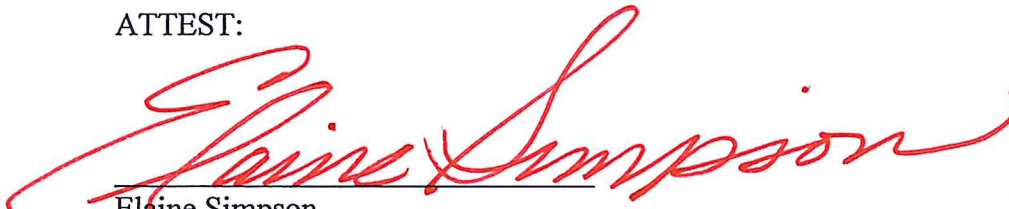
It is hereby officially found and determined that the meeting at that this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.



PASSED AND APPROVED this 9th day of October, 2018.

  
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Carl Brugger  
Mayor

ATTEST:

  
\_\_\_\_\_  
Elaine Simpson,  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Joshua Katz,  
City Attorney