



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

|  |                                  |                         |  |               |
|--|----------------------------------|-------------------------|--|---------------|
| <b>CITY SECRETARY'S USE ONLY</b>   |                                  |                         |  |               |
| <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory  |                                  |                         |  |               |
| Council Meeting Date:  |                                  | March 26, 2012          |  |               |
| Department:  |                                  | Municipal Court Judge   |  |               |
| Department Head  |                                  | Don Stevenson           |  |               |
| Agenda Coordinator (include phone #): <b>Don Stevenson x2495</b>   |                                  |                         |  |               |
| <b>CAPTION</b>   |                                  |                         |  |               |
| An Ordinance of the City of Plano, Texas, repealing Chapter 13, Municipal Court, of the Code of Ordinances of the City of Plano and adopting a new Chapter 13, Municipal Court, to create a municipal court of record in the City of Plano; and providing a repealer clause, a savings clause, a severability clause, and an effective date. |                                  |                         |  |               |
| <b>FINANCIAL SUMMARY</b>   |                                  |                         |  |               |
| <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP  |                                  |                         |  |               |
| FISCAL YEAR: <b>2011-12</b>  | <b>Prior Year<br/>(CIP Only)</b> | <b>Current<br/>Year</b> | <b>Future<br/>Years</b>                            | <b>TOTALS</b> |
| Budget   | 0                                | 0                       | 0  | <b>0</b>      |
| Encumbered/Expended Amount   | 0                                | 0                       | 0  | <b>0</b>      |
| This Item  | 0                                | 0                       | 0  | <b>0</b>      |
| BALANCE  | 0                                | 0                       | 0  | <b>0</b>      |
| <b>FUND(S):</b>  |                                  |                         |  |               |
| <b>COMMENTS:</b> This item has no fiscal impact.   |                                  |                         |  |               |
| STRATEGIC PLAN GOAL: Creating a Municipal Court of Record relates to the City's goal of being a Financially Strong City with Service Excellence.   |                                  |                         |  |               |
| <b>SUMMARY OF ITEM</b>   |                                  |                         |  |               |
| An Ordinance to repeal Chapter 13, Municipal Court, of the Code of Ordinances and adopting a new Chapter 13 that creates a Municipal Court of Record in the City of Plano; and providing an effective date of July 1, 2012.  |                                  |                         |  |               |
| List of Supporting Documents:<br>Ordinance   |                                  |                         | Other Departments, Boards, Commissions or Agencies |               |
|  |                                  |                         |  |               |

**An Ordinance of the City of Plano, Texas, repealing Chapter 13, Municipal Court, of the Code of Ordinances of the City of Plano and adopting a new Chapter 13, Municipal Court, to create a municipal court of record in the City of Plano; and providing a repealer clause, a savings clause, a severability clause, and an effective date.**

**WHEREAS**, the City of Plano currently has a municipal court; and

**WHEREAS**, the appeals from Plano municipal court may be retried at the county court at the request of the defendant; and

**WHEREAS**, the City Council finds that retrying the same case at the county court is not the best use of resources and results in a delay of a final decision; and

**WHEREAS**, the City Council finds that establishing the municipal court as a court of record will aid in the disposition of cases by limiting appeals and allowing full and final disposition of a case for trial purposes in municipal court; as well as expand the court's jurisdiction on other matters where health and safety violations may exist with regards to property; and

**WHEREAS**, in order to establish a court of record, Chapter 13 of the Code of Ordinances must be revised; and

**WHEREAS**, the City Council finds that converting the current court to a court of record is in the best interests of the citizens of Plano and furthers the welfare of the community.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** Chapter 13, Municipal Court, Plano Code of Ordinances, is hereby repealed effective July 1, 2012, and the new Chapter 13 is adopted effective July 1, 2012, as follows:

**“ARTICLE I  
ESTABLISHMENT OF THE COURT**

**Sec. 13-1 Creation**

(a) There is hereby created a municipal court of record to be known as the Municipal Court of Record of the City of Plano. Any reference hereinafter to the “Court” or “Municipal Court” shall be understood to mean the Municipal Court of Record of the City of Plano. The court shall possess all such powers and duties as now or hereafter may be prescribed by the laws of the State of Texas or City of Plano Code of Ordinances relative to municipal courts.

(b) The Municipal Court of Record is divided into two divisions designated as Municipal Court of Record Division No. 1 and Municipal Court of Record Division No. 2.

(c) The court shall commence operating as a court of record on July 1, 2012. Cases disposed of before that date shall be governed by the existing court rules and procedures. A case shall be deemed “disposed of” if a Judge has entered a finding of guilty or the defendant has entered a plea of guilty or nolo contendere.

(d) All cases filed in the court prior to July 1, 2012, but not disposed of by July 1, 2012, shall be tried in the court of record.

### **Sec. 13-2 Jurisdiction**

(a) Jurisdiction of the court shall be to the fullest extent provided by law for municipal courts including those provided for in Chapters 29 and 30, Government Code, as the same may be amended from time to time, City Charter and ordinances of the City of Plano, and the laws of this State.

(b) The court shall have jurisdiction for all appeals as provided by state law or by ordinance.

(c) The court has concurrent jurisdiction with any justice court in criminal cases that arise within the territorial limits of the City of Plano and are punishable by fine only.

(d) The court 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, as the same may be amended.

(e) The court has concurrent jurisdiction with a district court or a county court at law for the purpose of enforcing health and safety and nuisance abatement ordinances within the City of Plano territorial limits and property owned by the City located in the City’s extraterritorial jurisdiction under Subchapter B, Chapter 54, Local Government Code.

(f) The court has authority to issue (1) search warrants for the purpose of investigating a health and safety or nuisance abatement ordinance violation; and (2) seizure warrants for the purpose of securing, removing, or demolishing the offending property and removing the debris from the premises.

## **ARTICLE II MUNICIPAL JUDGES**

### **Sec. 13-3 Method of Selection**

(a) All Municipal Court Judges shall be appointed by City Council. The City Council shall appoint the Chief Municipal Judge as the Presiding Judge. The other judges appointed by the City Council shall be designated Senior Associate Judges and Associate

Judges. If a vacancy occurs, the City Council shall provide for the appointment of a qualified person to fill the office for the remainder of the unexpired term. Such appointee shall have all the powers and duties of the office and shall receive compensation as determined by City Council.

(b) Associate Judges whose duties only include magistrate functions shall be independent contractors and not employees. Magistrate functions include, but are not limited to, conducting detention hearings, advising persons in custody of their rights and setting bail amounts and conditions, issuing Orders for Emergency Protection, issuing search and arrest warrants, and ordering persons to be taken into protective custody for commitment to health facilities for mental evaluation. Magistrate duties shall not include presiding over trials or pre-trial municipal court dockets.

The Presiding Judge, or in his/her absence, a Senior Associate Judge, shall assign duties to substitute Associate Judges, as needed.

(c) The City Council shall determine the compensation and benefits of the Senior and Associate Judges in the approved annual budget for the department. The compensation of Associate Judges who only perform magistrate functions, as defined in subsection (b) above, shall be determined upon their appointment.

#### **Sec. 13-4 Term of Office**

The Municipal Court Judges shall serve a term of four (4) years.

#### **Sec. 13-5 Qualifications**

Each Municipal Court Judge shall be a resident of this state, a citizen of the United States, licensed attorney in good standing in this state and must have three (3) or more years of experience as a judge, prosecutor and/or defense counsel in municipal court operations in this state. In addition, the Presiding Judge must meet any other qualifications set by the City Council.

### **ARTICLE III COURT PERSONNEL**

#### **Sec. 13-6 Municipal Clerk**

(a) The office of Municipal Clerk is hereby established.

(b) The Municipal Clerk shall be appointed by the City Manager. The Municipal Clerk also holds the position of Court Administrator.

(c) The Municipal Clerk shall employ one or more deputy clerks, and said deputies shall be under the direction and supervision of the Municipal Clerk and act in and for the Municipal Clerk in the performance of their duties. The Municipal Clerk and deputy

clerks are subject to removal by the City Manager pursuant to the City's policies on discipline and termination.

**Sec. 13-7 Court Reporter**

(a) Municipal Court proceedings may be recorded by electronic device as authorized by law.

**ARTICLE IV  
PROCEEDINGS OF THE MUNICIPAL COURT**

**Sec. 13-8 Jury**

The Presiding Judge shall supervise the selection of persons for jury service.

**Sec. 13-9 Rules Governing Proceedings**

All proceedings in the court shall be governed by the laws of the State of Texas. In those areas not specifically covered by state law or by ordinance, the Presiding Judge may establish such court rules as are necessary to establish reasonable and consistent procedures for the operation of the court.

**ARTICLE V  
APPEALS**

**Sec. 13-10 Clerk's Record**

The fee for preparation of the clerk's record is set at \$25 and the defendant shall pay the \$25 fee for the preparation of the clerk's record. If the case is reversed upon appeal, the fee shall be refunded to the defendant. The preparation fee does not include the fee for an actual transcription of the proceedings. Except where indigence of appellant is established pursuant to the laws of this State, the appellant shall pay the fees for an actual transcription of the proceeding and for the appellate record.

**ARTICLE VI  
COURT COSTS AND FEES**

**Sec. 13-11 Court Fees Authorized**

Court costs or fees are hereby authorized to be imposed and collected in accordance with the provisions of applicable law.

**Sec. 13-12 Municipal Court Building Security Fund**

(a) A municipal court building security fund is authorized and shall be administered by the treasurer for the City. The municipal court building security fund shall be utilized in

accordance with the provisions of Article 102.017, Code of Criminal Procedure, as the same may be amended.

(b) Any defendant convicted in the municipal court of the city of a misdemeanor offense shall pay a security fee as a cost of court in the maximum amount authorized by law.

### **Sec. 13-13 Municipal Court Technology Fund**

(a) A municipal court technology fund is authorized and shall be administered by the treasurer of the city. The municipal court technology fund shall be used only to finance the purchase of technological enhancements for the municipal court of the city in accordance with the provisions of Article 102.0172, Code of Criminal Procedure, as the same may be amended.

(b) Any defendant convicted in the City of Plano Municipal Court of a misdemeanor offense shall pay a technology fee in the maximum amount authorized by law as a cost of court.

### **Sec. 13-14 Juvenile Case Manager Fund**

(a) A juvenile case manager fund is hereby authorized and shall be administered by the treasurer of the City of Plano. The juvenile case manager fund shall be used in accordance with the provisions of Article 102.0174, Code of Criminal Procedure, and the laws of this state, as the same may be amended.

(b) Any defendant convicted in the Municipal Court of the City of Plano of a misdemeanor offense shall pay a juvenile case manager fee in the maximum amount authorized by law as a cost of court.

(c) The judges of the municipal court are authorized to waive the juvenile case manager fee in a case of financial hardship.

(d) Municipal Court shall implement rules as adopted by the City Council for juvenile case managers pursuant to Art. 45.056, Code of Criminal Procedure, as the same may be amended.

### **Sec. 13-15 Convictions**

For purposes of this Article, a person is considered convicted if a sentence is imposed on the person, the person receives deferred disposition under Chapter 45, Texas Code of Criminal Procedure, or the court defers final disposition of the person's case.

### **Sec. 13-16 Credit Card Use Authorized**

(a) The municipal court clerk and any other municipal officer collecting fees, fines, court costs and other charges for the municipal court for the city are hereby authorized to

accept payment by credit card of any fee, fine, court cost, or other charge and to collect a fee for processing the payment by credit card.

(b) The processing fee will be in an amount equal to five (5) percent of the amount of the fee, fine, court cost and other charges being paid. The municipal officer collecting the processing fee shall deposit the fee in the general fund of the city.

(c) If payment by credit card is not honored for any reason by the credit card company by which the funds are drawn, a service charge from the person owing the fee, fine, court cost or other charge will be imposed. The service charge is in addition to the original fee, fine, court cost or other charge and is for the collection of the original amount. The amount of the service charge shall be in the same amount as the fee charged by the city for the collection of a check drawn on an account with insufficient funds. The municipal officer collecting a service charge shall deposit a service charge in the general fund of the city.”

**Section II.** All provisions of the Ordinances of the City of Plano, codified or uncodified, that are in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**Section III.** 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 municipality under any section or provision of any Ordinances at the time of passage of this Ordinance.

**Section IV.** It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or unconstitutionality of any other portion of this Ordinance.

**Section V.** This Ordinance shall become effective on July 1, 2012 and after its passage and publication as required by law.

**DULY PASSED AND APPROVED** this the 26th day of March, 2012.

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Phil Dyer, MAYOR

ATTEST:

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Diane Zucco, City Secretary

APPROVED AS TO FORM:

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Diane C. Wetherbee, CITY ATTORNEY