

Ordinance No. 194

**AN ORDINANCE OF THE CITY OF SUNRISE BEACH, TEXAS,
PROVIDING FOR MUNICIPAL COURT ASSESSMENT OF FINES
AND COSTS; PROVIDING FOR CERTAIN PRESUMPTIONS;
AMENDING ORDINANCES IN CONFLICT; PROVIDING OPEN
MEETINGS AND SEVERABILITY CLAUSES; ESTABLISHING AN
EFFECTIVE DATE; AND PROVIDING FOR RELATED
MATTERS.**

Whereas, Article 45.203 of the Code of Criminal Procedure authorizes the City of Sunrise Beach, Texas (herein the "City") to prescribe rules to enforce the collection of fines and fees imposed.

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

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Access Device shall mean a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with other access devices may be used to: (1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

Conviction or ***Convicted*** shall mean any person be deemed to have been convicted for whom the municipal court imposes any penalty or sentence, the person receives community service, supervision or deferred adjudication, or the Court defers final disposition of the case.

Rules of the Road shall mean offenses committed under Subtitle C, Title 7 of the Transportation Code being subsections 541 through 600 of the Transportation Code.

School Crossing Zone shall mean a reduced-speed zone designated on a street by a local authority to facilitate safe crossing of the street by children going to or leaving a public or private elementary or secondary school during the time the reduce speed limit applies.

Section 3. Fees. The fines imposed in the municipal court may be the same as are prescribed for like offenses by the penal statutes of the state, but shall never be greater.

Where any offense is covered solely and alone by ordinances of the City, such ordinance shall control. The Municipal Court Clerk shall collect and report all court costs as required:

(a) *State Court Costs.*

- (1) The Municipal Court Clerk shall collect each and every court cost statutorily mandated to be collected for the State of Texas. The Municipal Court Clerk shall keep a record of each court cost collected for the benefit of the State of Texas and report the collection to the City Treasurer including forwarding the monies to be deposited with the City Treasurer as required by internal policy.
- (2) The City Treasurer may deposit the money in an interest bearing account. The City Treasurer shall keep records of the money collected and on deposit in the treasury and shall remit the court costs collected for the benefit of the State of Texas to the Comptroller of Public Accounts not later than the last day of the month following the calendar quarter in which the court costs were collected.
- (3) The Municipal Court Clerk shall forward a completed quarterly report form to be reviewed and confirmed by the City Treasurer.
- (4) The City Treasurer shall ensure the accuracy of the report and for all fees collected for the CCC fund (Consolidated Court Cost Fund) to be forwarded to the State of Texas the City Treasurer shall retain 10% as a service fee and deposit the retained sums to the general fund to offset administrative expenses, save and except the 10% shall not be retained on sums not timely forwarded to the comptroller of public accounts. *Cross-Reference - - §102.075, CCP.*

(b) *Warrant of Arrest Fees.* The Municipal Court Clerk shall collect a warrant fee of \$50.00 from any defendant upon whom a peace officer executed a warrant issued by the Municipal Court at the time of conviction. For arrests made by a State Trooper, the Municipal Court Clerk shall report \$10.00 as payable to the comptroller. Law Enforcement agencies other than State Troopers and City Police Officers executing a warrant must submit a request for payment within 15 days of the conviction in order to be paid the warrant fee. If demand is not made within 15 days or a City Police Officer executed the warrant, the Municipal Court Clerk shall report the warrant fees collected as payable to the City Police Department. The City shall refund the fees in cases where the defendant pleads and demonstrates within thirty (30) days of payment of such fee that the court failed to give the person proper notice. *Cross-Reference - - §102.011 CCP.*

(c) *Failure to Appear Fee.*

- (1) *Special Expense.* The Municipal Court Clerk shall collect a special expense of \$25.00 for the issuance and service of a warrant of arrest from each defendant served with a warrant for failure to appear or violation of a promise to appear. The Municipal Court Clerk shall report each special expense collected to the

City Treasurer for deposit into the general funds of the City.

- (2) Contract with Texas Department of Public Safety. At all times that the City has a contract with the Texas Department of Public Safety to deny renewal of licenses for individuals Failing to Appear at court as directed, the Municipal Court Clerk shall collect an additional \$30.00 administrative fee at the time of the following: (1) the court enters judgment on the offense for which the failure to appear was submitted; (2) the case is dismissed; or (3) bond or other security is posted to reinstate the charge for which the warrant was issued. Distribution of the funds shall be as provided by agreement with the Texas Department of Public Safety. The Municipal Court Clerk shall maintain a copy of the agreement and report each failure to appear fee collected as well as the distribution of the fee to the City Treasurer. Should a defendant fail to pay the \$30.00 administrative fee as required, the Municipal Court Clerk shall report such failure to the Texas Department of Public Safety and request the Department deny renewal of the defendant's license. *Cross-Reference - §706.006, Transportation Code.*

(d) *Establishment of Time Payment Fee.*

- (1) Each defendant being permitted to make payments on any part of a fine, court cost or restitution on or after the 31st day after the date on which a judgment is entered, including deferred adjudication and deferred disposition, shall pay a \$25.00 time payment fee on or before the 31st day after the judgment is entered. *Cross-Reference - §51.921(a), Government Code.*
- (2) The Municipal Court Clerk shall keep separate records of the Time Payment Fees collected. Each month 50% of the Time Payment Fees collected shall be forwarded to the comptroller, 40% shall be deposited in the general revenue account of the City, and 10% shall be deposited in the general fund of the City to be allocated to improving the efficiency of the administration of justice in the City.
- (3) No defendant shall be permitted more than 180 days to pay fines, fees, costs, restitution or any other fees ordered to be paid in the judgment of the court.

(e) *Arrest Fee.* The Municipal Court Clerk shall collect a \$5.00 arrest fee with each conviction. The arrest fee shall be reported quarterly to the Comptroller of Public Accounts. For each citation submitted to the Municipal Court by a State Trooper for which a conviction occurs, the Municipal Court Clerk shall report \$1.00 of the Arrest fee as payable to the comptroller with the remaining \$4.00 being reported as distributable to the City Police Department. Any law enforcement agency other than the State Trooper or a City Police Officer submitting a citation to the Municipal Court for which a conviction occurs, the Municipal Court shall hold the \$5.00 arrest fee for fifteen working days. Should the law enforcement agency fail to claim the arrest fee in fifteen working days after the conviction, the Municipal Court Clerk shall report the arrest fee as payable to the City

Police Department. For each citation that the City Police Department issues a citation and a conviction occurs, the full arrest fee shall be reported as payable to the City Police Department. *Cross-Reference - - §102.009 (a)(1), CCP.*

(f) *Dishonored Check Fee.* A service charge of \$25.00 shall be assessed against any person who pays the city with a check, draft or money order which is returned unpaid for lack of sufficient funds or closed or nonexistent account. *Cross-Reference - - §3.506, Business & Commerce Code.*

(g) *Peace Officer's Time.* For any trial at which a Peace Officer is required to testify while off duty, the Municipal Court Clerk shall calculate the officers' overtime for time spent testifying at trial and time spent traveling to or from home if the officer was not at work that day or scheduled to be at work and add such costs as court costs to be paid by the defendant. *Cross-Reference - - §102.011 (g), CCP.*

(h) *Jury Fee.* The Municipal Court Clerk shall collect a \$3.00 fee from each defendant requesting a jury and being convicted thereby or requesting a postponement or accepting a conviction less than 24 hours before the time of trial. *Cross-Reference - - §102.004, CCP.*

(i) *Rules of the Road Fee.* The Municipal Court Clerk shall collect an additional \$3.00 fee as court costs for each defendant convicted of violating the "Rules of the Road". The Municipal Court Clerk shall deposit the fee collected with the City Treasurer. Fines and fees collected for violations of the Rules of the Road shall be deposited to the general fund of the City and utilized to construct and maintain roads, bridges and culverts in the City and to enhance the enforcement of laws regulating the use of highways. *Cross-Reference - - §§542.402 and 542.403, Transportation Code.*

(j) *Establishment of Administrative Fees when Certain Charges are Dismissed.*

- (1) *Vehicle Inspection Certificate.* On the finding of the Municipal Court Judge, having been presented credible evidence, that a defendant remedied the failure to have a valid vehicle inspection certificate within 10 working days of the issuance of a citation for an expired inspection certificate which has not been expired more than 60 days, the Municipal Court Clerk shall collect a \$10.00 administrative fee from the defendant at the time of dismissal. Inspection Certificates expired more than 60 days on the date of the citation shall not be dismissible on proof of correction. *Cross-Reference - §548.605(b)(1)(B), Transportation Code.*
- (2) *Vehicle Registration.* On the finding of the Municipal Court Judge, having been presented credible evidence, that a defendant remedied the failure to register the motor vehicle alleged in the offense not more than 10 working days from the date of the offense and within the discretion of the Judge the court grants the request to dismiss, the Municipal Court Clerk shall collect a \$10.00 administrative fee from the defendant at the time of dismissal. Vehicle Registration corrected more than 10 working days after the date of the citation shall not be dismissible on proof of

correction. *Cross-Reference - §502.407, Transportation Code.*

- (3) Driver's License Proof. On the finding of the Municipal Court Judge, having been presented credible evidence, that a defendant remedied the expired driver's license within 10 working days and within the discretion of the Judge, the court grants the request to dismiss, the Municipal Court Clerk shall collect a \$10.00 administrative fee from the defendant at the time of dismissal. *Cross-Reference - §521.026, Transportation Code.*
- (4) Deferred Disposition. Defendant's pleading no contest or guilty and requesting defensive driving on or before the date mandated for the first appearance date for an offense involving operation of a motor vehicle, other than a commercial vehicle or speeding more than 25 miles per hour over the posted speed, who has a valid Texas Driver's license or permit and adequate financial responsibility, and provides a sufficient affidavit and records from the Texas Department of Public Safety demonstrating that the individual has not had defensive driving in the proceeding 12 months from the date of the offense, upon granting of such request, the Municipal Court Clerk shall collect, in addition to the other court costs, an administrative fee of \$10.00 to be distributed to the City Treasurer for deposit in the general fund of the City. *Cross-Reference - §45.0511, CCP.*

Section 4. Funds. In addition to the court costs mandated to be collected under state statute for the State of Texas and remitted to the comptroller as court costs and as set out in Section 3, the following court costs shall be collected for each conviction as provided herein:

(a) *Child Safety Fund.*

- (1) School Crossing Fee. Each defendant convicted of violating any provisions of the Rules of the Road, Transportation Code Subtitle, Title 7, within a school crossing zone or convicted for passing a school bus, in violation of Transportation Code §545.066, shall pay an additional \$25.00 taxable as court costs.
- (2) Failure to Attend School Fee. Each defendant convicted of violating the Education Code §25.094, Thwarting Compulsory Attendance, or §25.094, Failure to Attend School, shall pay an additional \$20.00 taxable as court costs.
- (3) Collection and Deposit. The Municipal Court Clerk shall collect such court costs, including the School Crossing Fee and Failure to Attend School Fee, and pay such court costs to the City Treasurer for all offenses governed by this subsection. For all fines collected pursuant to §25.093, Thwarting Compulsory Attendance, the Municipal Court Clerk shall report 50% of the fine to be deposited to the credit of the operating fund of the school district in which the child attends or to the juvenile justice alternative education program, if the child has been ordered to attend such a program. The remaining 50% of the fine collected under §25.093

shall be reported as payable to the general fund of the City.

The City Treasurer shall deposit the \$25.00 School Crossing Fee and the \$20.00 Failure to Attend School Fee portion of such court costs into the "Child Safety Fund". The City Treasurer shall quarterly forward 50% of the fine collected under §25.093 payable to the school district which the convicted children attend or, if the children were sentenced to a juvenile justice alternative education program, the city treasure shall forward the 50% to the program. The remaining 50% shall be deposited to the general fund of the City.

- (4) Creation of Fund. There is hereby created a "Child Safety Fund" (the "CS Fund") which shall be maintained and reported as a separate fund of the City. The CS Fund may be maintained in an interest bearing account and may be maintained in the general revenue account.
- (5) Designated Use of the CS Fund and Administration. All School Crossing Fees and Failure to Attend School Fees collected shall be deposited in the CS Fund which shall be administered by the City Council. No expenditures or withdrawals shall be made from the fund except to finance eligible items listed in Section 102.014(g), Code of Criminal Procedure, and as authorized by a majority vote of the City Council. On the finding of the City Council that an expenditure is authorized, CS Funds may be removed from the Fund solely to be used to improve child safety, including:
 - (i) School Crossing Guard program, if one is established all money must first fund this program;
 - (ii) Programs designed to enhance child safety, health, or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention.

(b) Municipal Court Security Fund.

- (1) The Municipal Court Clerk shall collect such court costs, including the security fee, and pay such court costs to the City Treasurer.
- (2) The City Treasurer shall deposit the \$3.00 security fee portion of such court costs into the "Municipal Court Building Security Fund".
- (3) Creation of Fund. There is hereby created a "Municipal Court Building Security Fund" (the "Security Fund") which shall be maintained and reported as a separate fund of the City.
- (4) Designated Use of the Fund and Administration. All security fees collected shall be deposited in the Fund which shall be administered by the City Council. No expenditures or withdrawals shall be made from the fund except to finance eligible items listed in Section 102.017(d), Code of Criminal Procedure, and as

authorized by a majority vote of the City Council. On the finding of the City Council that an expenditure is authorized, Security Funds may be removed from the Fund solely to be used to finance items to be used for the purpose providing security services for the Municipal Court of the City, including:

- (i) the purchase or repair of X-ray machines and conveying systems;
- (ii) handheld metal detectors;
- (iii) walkthrough metal detectors;
- (iv) identification cards and systems;
- (v) electronic locking and surveillance equipment;
- (vi) bailiffs, deputy sheriffs, deputy constables or contract security personnel during times when they are providing appropriate security services;
- (vii) signage;
- (viii) confiscated weapon inventory and tracking systems;
- (ix) locks, chains, alarms or similar security devices;
- (x) the purchase or repair of bullet-proof glass; and
- (xi) continuing education on security issues for court personnel and security personnel.

(c) *Technology Fee.*

- (1) Fee. A \$4.00 technology fee is hereby established and imposed as a court cost to be paid by every person convicted of a misdemeanor in the municipal court, pursuant to Article 102.0172 of the Code of Criminal Procedure. The technology fee shall be charged for each separate case, matter or charge upon which any person is convicted in the municipal court.
- (2) Collection and Deposit. The Municipal Court Clerk shall collect such court costs, including the technology fee, and pay such court costs to the City Treasurer for all offenses governed by this subsection.

The City Treasurer shall deposit the \$4.00 technology fee portion of such court costs into the "Municipal Technology Fund".

Unless otherwise renewed, the collection of the funds shall expire September 1, 2005.

- (3) Creation of Fund. There is hereby created a "Municipal Technology Fund" (the "Technology Fund") which shall be maintained and reported as a separate fund of the City. The Fund may be maintained in an interest bearing account and may be maintained in the general revenue account.
- (4) Designated Use of the Fund and Administration. All technology fees collected shall be deposited in the Fund which shall be administered by the City Council. No expenditures or withdrawals shall be made from the fund except to finance

eligible items listed in Section 102.0172(d), Code of Criminal Procedure, and as authorized by a majority vote of the City Council. On the finding of the City Council that an expenditure is authorized, Technology Funds may be removed from the Fund solely to be used to finance the purchase of technological enhancements for the Municipal Court of the City, including:

- (i) computer systems;
- (ii) computer networks;
- (iii) computer hardware;
- (iv) computer software;
- (v) imaging systems;
- (vi) electronic kiosks;
- (vii) electronic ticket writers; or
- (viii) docket management systems.

(d) *Seat Belt Fund.* The Municipal Court Clerk shall report each fine collected for violations of the requirements to wear a seat belt contrary to §545.412, Transportation Code, committed after September 1, 2001. The report shall designate 50% of each fine as funds to be remitted to the comptroller annually. The City Treasurer shall maintain the seat belt funds in a separate interest bearing account and annually remit 50% of all fines collected from defendants for violations of the requirement to wear a seat belt. *Cross-Reference -- §545.412, Transportation Code.*

Section 5. Waiver of Fines, Fees and Costs of Court. The Municipal Court Judge may hold a hearing to determine the economic capabilities of any defendant filing a written motion seeking a finding of the Court that the defendant is per se indigent and each alternative method of discharging the fine or costs of court under CCP §43.09 would impose an undue hardship on the defendant. The Municipal Court Judge shall review the motion of the defendant, including any another evidence deemed necessary, and on a finding that defendant is indigent as a matter of law and that the alternative methods of discharge would work an undue hardship on the defendant the Municipal Court Judge may waive payment of any fines or costs for which the defendant has defaulted. *Cross-Reference - §45.091, CCP.*

Section 6. Post-Judgment Collection of Fines and Court Costs. As provided in the ordinances of the City and Texas State Statutes, the Municipal Court Judge shall assess fines and court costs against each defendant entering a plea of guilty or no contest or based on the verdict of the Court or Jury finding a defendant guilty. Defendants having not timely appealed the judgment of the court and who fail to timely pay fines, fees, costs or restitution as ordered shall be subject to permitted post-judgment collection procedures.

(a) *Capias Pro Fine.* The Municipal Court Judge may order a capias pro fine be issued for any defendant failing to satisfy a judgment of the court according to the terms of the judgment. The Municipal Court Clerk shall ensure that each capias states the amount of the judgment and sentence and commands a peace officer to bring the defendant before the court or place the defendant in jail until the defendant can be

brought before the court. *Cross-Reference -- §45.045, CCP.*

(b) *Commitment.* Defendants failing to satisfy any judgment may be committed as provided in the Code of Criminal Procedure to satisfy the judgment. Any defendant committed to jail serving less than 8 consecutive hours in jail shall not be given credit for time served. A defendant serving more than 24 consecutive hours shall be given a \$50.00 credit for each full consecutive 24 hours served as credit. Defendants committing offenses prior to September 1, 2001 shall receive \$100.00 credit for parts of days served. *Cross-Reference - - §45.048, CCP.*

(c) *Private Collection Contract.* At all times that the City Council has authorized a private collection contract with a private attorney or a public or private vendor for collection services relating to fines, fees, restitution or other debts or costs, other than forfeited bonds, the Municipal Court is authorized to collect an additional 30% on each such debt or account receivable that is more than 60 days past due and has been collected as a result of the action of a duly authorized contractor. The Municipal Court Clerk shall report the 30% as payable to the contractor. Should the contractor collect less than the full sum due from defendant, the Municipal Court Clerk shall ensure that the payment is distributed first in an amount sufficient to fully compensate the contractor and then in equal shares to the comptroller and the City until the comptroller is paid in full. *Cross-Reference -- §103.003, CCP.*

(d) *Civil Assessment Against Property.* The Municipal Court Judge may review judgments in which the defendant has defaulted in payment, either in whole or part after sentencing, and may order the fine and costs be collected by execution against the defaulting defendant's property in the same manner as a judgment in a civil suit. *Cross-Reference -- § 45.047, CCP.*

Section 7. Copying Charges for Public Records. The following service charge for copying governmental and public records shall be as follows:

(a) For readily available information on standard size pages (up to 8-1/2" x 14"), the copying charge shall be \$0.25 per page.

(b) For information which is not readily available, the copying charge shall be \$0.15 per page plus actual labor costs incurred by the city in providing the requested information.

(c) In addition, the city may also add any postal expenses which may be necessary to transmit the reproduced documents to the requesting party.

(d) The City Secretary shall establish the copying or reproduction charge for nonstandard sized pages or documents (maps, books, etc.). *Cross-Reference -- §552.266, Government Code.*

Section 8. Jury Duty Pay. The City shall pay each person appearing in response to a duly notice jury summons \$6.00 for service in Municipal Court for each day or fraction of each day they serve as a juror.

Section 9. Confidential Payment and Communication Records. The Municipal Court Clerk shall separately file from the records of any case in the Municipal Court any documents collected, assembled or otherwise maintained containing a credit card, debit card charge card, or other access device number. The Municipal Court Clerk shall redact the e-mail address from any communications received via e-mail or shall maintain such documents separately of the documents of the case. The e-mail address of any individual communicating with the court shall not be disclosed to a member of the public without express consent of the individual. Any requests for documents containing this information shall be immediately referred to the City Attorney's office. *Cross-Reference - §§552.136 and 552.137, Government Code.*

Section 10. Prima Facie Evidence. (a) *Vehicles.* In any prosecution charging a violation of this ordinance governing the stopping, standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of this ordinance, together with proof that the defendant named in the complaint was, at the time of such parking, the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

(b) *Properties.* In any prosecution charging a violation regarding nuisances upon a property, the failure to comply with any notice or order regarding a nuisance on a property or building in violation of an ordinance of the City, including but not limited to failure to apply for a building permit or other permit or license required herein, proof that the particular property described in the complaint was in violation of an Ordinance regulating the property, together with proof that the defendant named in the complaint was, at the time of such notice, violation or order or at the time when work was performed without a permit, the registered owner of such property, shall constitute in evidence a prima facie presumption that the registered owner of such property was the person who failed to comply with the notice or order or failed to apply for a permit for the time during which such violation occurred in violation of the charged Ordinance of the City.

(c) *Animals.* In any prosecution charging a violation of an Ordinance or Statute regulating or governing the abuse, neglect or ownership of an animal or failure to license an animal as required, proof that the particular property described in the complaint was the premises upon which the animal resided, was harbored or maintained and a violation of an Ordinance or Statute regulating or governing the animal alleged in the complaint together with proof that the defendant named in the complaint was, at the time of such complaint or at the time when the animal was in violation of said Ordinance or Statute, the registered owner of such animal or the person with legal rights to reside on said property, shall constitute in evidence a prima facie presumption that the registered owner of such property or the person with legal rights to reside on said property was the owner of the animal and the person who failed to comply with or violated the Ordinance or Statute.

Section 11. Severability. Should any section or part of this Ordinance be held unconstitutional, illegal or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

Section 12. Savings Clause. All rights and remedies of the City are expressly saved as to any and all violations, offenses, costs, fines, fees or funds accruing under the provisions of any ordinances, state statute or other offense charged within the City which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations or offenses and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 13. Effective Date. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't. Code*.

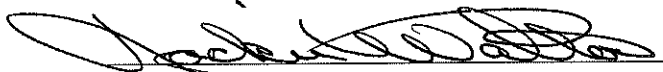
Section 14. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*.

PASSED AND APPROVED this the 19 day of March, 2002.

CITY OF SUNRISE BEACH, TEXAS


Floyd Drake, Mayor

ATTEST:


Jackie Walton, City Secretary