Chapter 6

COURTS AND CRIMINAL PROCEDURES

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ARTICLE I. IN GENERAL

Section 6.1 Sessions.

A regular session of the Municipal Court shall be held in sufficient frequency to meet the needs of the City. Each session shall be held at a fixed hour of a fixed day as may be determined by the Municipal Court judge, provided any session may be dispensed with when there is no business pending in the court or no cases are ready for trial.

Section 6.2 Establishment of the Office of Municipal Court Clerk.

There is hereby established for the Municipal Court of the City of Blakely the office of Municipal Court Clerk. Said position shall be filled each year by the Mayor and Council at their first regular official meeting of the calendar year, for a term of one year and until a successor has been appointed. Should the Mayor and Council fail to appoint a successor, the incumbent shall continue to serve at the pleasure of the Mayor and Council, and until a successor is appointed. The compensation of such appointee shall be fixed by the Mayor and Council by agreement with the appointee.

Section 6.3 Duty of Law Enforcement Officers – Persons Violating City Ordinances.

Any law enforcement officer of the City shall arrest and confine in the county jail, when necessary, any offender against ordinances of the City, where such arrest and confinement is necessary to secure such offender's appearance before the Municipal Court to answer for an offense, or where it is necessary to preserve the peace and good order of the City, or such police officer may take bond as otherwise provided in Section 6.50 of this chapter.

Section 6.4 Same – Persons Violating Certain State Laws.

Any person who shall, in the presence of any police officer, violate any penal laws of this state not punishable by City ordinances shall be arrested with or without a warrant and be carried before a committing magistrate for examination and prosecution.

Section 6.5 Docket.

It shall be the duty of the Municipal Court Clerk of court to keep a docket showing the disposition of all cases brought before the Municipal Court. At the trial of all cases, the Municipal Court Clerk shall record opposite the statement of the case the punishment inflicted and the date, and an entry shall be made under the sentence of the judge of the Municipal Court showing the final disposition of the case, that is whether the fine, if any, was collected, the date of such collection, and the disposition of such amounts.

Section 6.6 Warrant or Summons; Issuance.

It shall be the duty of any member of the City Marshall's office or any other law enforcement agency having jurisdiction in the city limits of Blakely, in all cases where a complaint is made or information obtained of any violation of any of the laws or ordinances of the City, to issue an accusation/summons in the name of the City and directed to the accused, requiring the accused to appear before the Municipal Court to answer such charge, which accusation/summons shall designate the time and place of trial. It shall be signed by the officer issuing the accusation/summons, and a copy thereof shall be served upon the accused either personally or by leaving the copy at his place of residence by the issuing officer.

Section 6.7 Service of Summons Generally.

Summons directed to any offender shall be served personally by some member of the police force.

Section 6.8 Procedure for Service of Process on Corporations.

a. In addition to any other means provided by law, corporations may be served in accordance with the provisions of this section.

b. Whenever any charge shall be preferred against a corporation doing business in the City for violation of this code or other ordinance of the City, the Municipal Court Clerk shall issue an original and copy notice to the defendant corporation of the charge against such corporation, specifying the time when such charge shall be heard by the Municipal Court of the City, which copy notice shall be served by the City Marshall or any Assistant City Marshall, Police Chief or any police officer, or any other law enforcement officer having jurisdiction in the City of Blakely at least 10 days before the time fixed for trial in the Municipal Court upon any officer or such corporation to be found in the City, or upon any agent of such corporation, or employee in charge of the business of such corporation, in the City. The officer serving such copy notice shall make an entry of such service on the original notice and return the notice to the Municipal Court of the City. Such service shall be served upon the corporation, and such case shall, upon the return of such notice as provided in this section, stand for trial before the Municipal Court at the time stated in such notice.

Section 6.9 Issuance of Subpoenas.

Whenever the attendance of any witness may be required before the Municipal Court to establish any act, the Municipal Court Clerk shall issue a subpoena or summons directed to the witness, stating the time and place of trial and the parties to the case, which shall be served as other process by the Chief of Police, or other officer or police officer.

Section 6.10 Contempt for Failure of Witness to Appear.

If any person summoned as a witness shall fail, neglect, or refuse to attend the trial, or render an excuse, sufficient in the judgment of the judge of the Municipal Court, the defaulting witness shall be liable to a fine as provided in Section 6.11. If the cause shall be continued on account of the absence of the witness, the court may issue an attachment against the witness, requiring him to show cause on the day appointed for trial, why he should not be further dealt with for contempt. The Chief of Police or the City Marshall shall, by virtue of the attachment, arrest such witness, or cause such witness to be arrested by some other officer or police officer, and shall confine such witness, so as to have the witness before the court at such time as may be appointed for further hearing of the original complaint.

Section 6.11 Continuances.

Where the ends of justice may require, all cases may be continued. Applications for continuance shall be addressed to the sound discretion of the court, under the rules governing in the superior courts of the state. All motions in the Municipal Court for a continuance of any case where the defendant is at liberty on bond shall be made by the defendant, the defendant's attorney at law or attorney in fact, which designation shall not include the surety of defendant's appearance bond. No motion to continue a case shall be entertained except in open court and on the day set for trial. Where an appearance bond has been forfeited and the forfeiture is subsequently set aside for cause, no further motion to continue the case for trial shall be entertained until a forfeiture fee as set forth in schedule of fees and charges has been paid.

Section 6.12 Holding Defendant When Court Lacks Jurisdiction.

If, after an investigation of any case, it should appear that the Municipal Court has no jurisdiction to determine it, the Municipal Court judge shall require the defendant to enter into bond conditioned to appear before the next term of the court having jurisdiction, to answer such offense, which bond shall be turned over to the proper officer of such court. In default of such bond the Municipal Court judge shall have power to commit the defendant to jail to answer the offense at the next term of court having jurisdiction thereof.

Section 6.13 Rules of Practice.

The City shall have the opening and conclusion in each case unless the defendant introduces no evidence. The defendant shall then be entitled to the conclusion. The City shall announce first if it is ready for trial; and, if not, it shall be held to as strict a showing for continuances as the defendant. The rules of evidence and examination of witnesses shall be the same as in the superior court, so far as such rules are applicable to the case on trial. All officers, informers, and persons injured shall be competent witnesses. In general, the Municipal Court shall be controlled by the rules of practice governing the superior court, so far as they are applicable to Municipal Courts, and by a sound construction of the Charter and ordinances of the City.

Section 6.14 Guilty Pleas.

Any party charged with the violation of any provision of this code or any ordinance of the City may file a plea of "guilty" under such rules as the court may direct. Upon a plea of guilty, the Municipal Court shall pass sentence or judgment in the case as may appear reasonable and proper.

Section 6.15 Minimum Costs; Working Out.

In each case of a conviction in the Municipal Court, the costs assessable shall be as the base rate as set by the Municipal Court Judge plus any and all State mandated surcharges as set by the State of Georgia. Payments for fines and fees shall go into the general fund of the City for general municipal purposes. Defendants unable to pay costs, and completed in lieu of payment to work community service, shall be required to work the number of hours as set by the Municipal Court Judge.

Section 6.17 Contempt.

Any person who, during a session of the Municipal Court, shall be guilty of a contempt of court, or who refuses to abide by any sentence or order of the court, shall be punished as provided by Section 6.11.

Sections 6.18 - 6.29 Reserved .

ARTICLE II. APPEARANCE BOND

Section 6.30 Discretion of Officer on Duty as to Certain Bonds.

The officer on duty and in charge of the police department or city marshall's office when any arrest is made may take bond with or without security, and, in his discretion, payable to the City, in any sum not exceeding $1,000 for the appearance of any person accused or suspected of being guilty of the violation of any ordinance of the City to stand to and abide his trial, and also of witnesses to testify in any case pending or about to be commenced.

Section 6.31 Persons Refusing to Give Bond.

If any arrested person or necessary witness shall fail to give the bond and security required of him/her. such person so refusing may be confined in the county jail, or be kept under guard so as to be present at trial or to testify, as the case may be.

Section 6.32 Designation of Bail; Procedure upon Failure of Bonded Persons to Appear.

Upon failure of any principal in any bond to appear where such principal is charged with a violation of any of the provisions of this code or other ordinances of the City or upon the failure of any principal, who is a witness, to appear and testify as engaged, the judge of the Municipal Court shall pass a rule requiring the principal and sureties on such bond or recognizance to show cause before him/her on any date named therein, not to be less than a period of time as set by the judge of the Municipal Court from the passage of such rule, why they should not be required to pay the amount of such bond or recognizance and all costs of forfeiture.

Section 6.33 Service of Rule to Show Cause.

Any member of the City Marshall's office or any other law enforcement agency having jurisdiction in the City of Blakely shall serve a copy of the rule described in Section 6.32 above upon the principal and surety, if to be found in the City, personally or by leaving a copy at their usual place of abode, at least five days before the time named therein for hearing the cause.

Section 6.34 Entry of Judgment Against Delinquent Principal and Sureties.

If no sufficient cause is shown to the contrary, the judge of the Municipal Court shall proceed to enter up judgment against the principal and sureties for the amount of such bond and costs, and the Municipal Court Clerk shall issue execution for the amount of the judgment and costs, which execution shall bear teste in the name of the judge, and place the same in the hands of the City Marshall, the Police Chief or any other law enforcement agency having jurisdiction in the City of Blakely, who shall proceed to collect the same by levy and sale.

Section 6.35 **Delivery of Principal Prior to Judgment and Forfeiture; Release of Surety.**

Any surety upon any bail bond of any person charged with a violation of any provision of this code or other ordinance of the City may surrender his/her principal at any time before forfeiture to the Chief of Police, who shall confine such principal until discharged by order of the Municipal Court, or until such principal shall give other good and acceptable security and the delivery of the principal by the surety shall discharge such surety from all liability upon the bond.

Section 6.36 **Sureties Residing Beyond the County.**

No officer of the City shall accept on any bail bond any surety residing beyond the limits of the county, except as authorized by the City Council, but in case such officer shall do so, the surety will be bound, and, upon entry of judgment against such surety, the judgment shall be collected as provided by law.

Section 6.37 **Disposition of Money Pledges.**

If the person arrested shall fail to appear at the place and time of trial so appointed, it shall be the duty of the judge of the Municipal Court to declare any pledge forfeited and to order the money to be paid into the City treasury as in other fines and forfeitures if it has not already been deposited in such treasury. If the person so arrested shall appear as engaged and is adjudged not guilty, the money and the property thus deposited shall be ordered by the court delivered up to the person depositing the same. Should any accused person be adjudged guilty and fined upon trial, the amount of the fine and costs of the trial shall be paid into the City treasury, and the remainder, if any, refunded to the accused or to the person entitled thereto.

Sections 6.38 - 6.49 **Reserved .**

ARTICLE III. MUNICIPAL COURT JUDGE.

Section 6.50 Term of Office for Municipal Court Judge.

a. No person shall be qualified or eligible to serve as a judge of the municipal court unless he or she shall be in compliance with the requirements of state law on qualifications to serve in such office.

b. All judges of the municipal court for the Municipal Court of the City of Blakely shall be appointed by resolution of the City Council and shall serve a term of two (2) years. The compensation of the judge shall be fixed by the City Council by adoption of a resolution, the position of judge created in this article shall not be a full-rime position, and the person serving in said position may engage in the private practice of law; provided, however, a judge may not appear and represent a client before the court.

c. Before entering on duties of his or her office, the appointed judges shall take an oath before an officer duly authorized to administer oaths in this state declaring that he or she will truly, honestly, and faithfully discharge the duties of his or her office to the best of his or her ability without fear, favor, or partiality. The oath shall be entered upon the minutes of the City Council.

d. A judge of the municipal court shall serve for the designated term but may be removed from the position by a two-thirds vote of the entire membership of the City Council or upon action taken by the State Judicial Qualifications Council for:

1. Willful misconduct in office;

2. Willful and persistent failure to perform duties;

3. Habitual intemperance;

4. Conduct prejudicial to the administration of justice which brings the judicial office into disrepute; or

5. Disability seriously interfering with the performance of duties, which is, or is likely to become, of a permanent charter.

Sections 6.51 - 6.54 Reserved.

ARTICLE IV. PROSECUTOR AND INDIGENT DEFENSE COUNSEL

Section 6.55 Establishment of Office of Indigent Defense Counsel.

There is hereby established for the Municipal Court of the City of Blakely the office of Indigent Defense Counsel. Said position shall be filled each year by the Mayor and Council at their first regular official meeting of the calendar year, for a term of one year and until a successor has been appointed. All persons appointed to this position shall be members in good standing of the State Bar of Georgia, and shall be licensed and qualified to practice law in the State of Georgia. Should the Mayor and Council fail to appoint a successor, the incumbent shall continue to serve at the pleasure of the Mayor and Council, and until a successor is appointed. The compensation of such appointee shall be fixed by the Mayor and Council by agreement with the appointee.

Section 6.56 Duties of Indigent Defense Counsel.

It shall be the duty of Indigent Defense Counsel to attend each session of the Municipal Court at which there will be arraignments and/or trials of cases involving the violation of city ordinances and/or state laws, and to represent and defend the accused person in all cases and/or arraignments where appointed and directed by the court to do so.

Section 6.57 Establishment of Office of Prosecutor.

a. There is hereby established for the Municipal Court of the City of Blakely the office of Prosecutor. Said position shall be filled each year by the Mayor and Council at their first regular official meeting of the calendar year, for a term of one year, and until a successor has been appointed. All persons appointed to this position shall be members in good standing of the State Bar of Georgia, and shall be licensed and qualified to practice law in the State of Georgia. Should the Mayor and Council fail to appoint a successor, the incumbent shall continue to serve at the pleasure of the Mayor and Council, and until a successor is appointed. The compensation of such appointee shall be fixed by the Mayor and Council by agreement with the appointee.

b. Upon appointment, the prosecutor of the Municipal Court shall take and subscribe to the following oath:

> "I swear (or affirm) that I will well, faithfully, and impartially and without fear, favor or affection discharge my duties as prosecuting attorney of the City of Blakely."

c. Upon appointment of prosecutor or a successor and within thirty (30) days thereafter, it shall be the duty of the Clerk of Municipal Court, or such other person as designated by the City Council to notify the Prosecuting Attorneys' Council of the State of Georgia of the name of the person appointed.

d. The office of prosecutor of Municipal Court shall be part-time and the prosecutor

may engage in the private practice of law, but shall not practice or appear in the Municipal Court of the City of Blakely or appear in any matter in which he/she has exercised jurisdiction.

e. If the prosecutor of Municipal Court is disqualified from engaging in the prosecution of a particular case or is unable to perform the duties of said office due to illness or incapacity, the City Council shall appoint a substitute prosecuting attorney.

Section 6.58 Duties of Prosecutor.

a. It shall be the duty of the Prosecutor to attend each session of the Municipal Court at which there will be trials of cases involving the violation of city ordinances and/or state laws, and to prosecute the trial of said cases where directed by the court to do so.

b. In addition to the duties specified herein above, the prosecutor of Municipal Court shall be charged with those duties and authorities provided by O.C.G.A. § 15-18-96.

Section 6.59 Appointment of Representation.

In every criminal proceeding in the Municipal Court, both at arraignments and at trial, in which imprisonment is provided by law as a possible punishment, where the accused is not otherwise represented by counsel, and where the judge determines that the accused is financially unable to employ counsel, the court shall appoint and direct Indigent Defense Counsel to represent such accused.

Section 6.60 Fee.

At their first regular official meeting of each calendar year the Mayor and Council shall, by the method hereinafter set forth, establish a fee to be added as costs in every criminal case disposed of by the court, whether by trial or by plea, and in every bond forfeiture declared by the court, and it shall be the duty of the judge of the Municipal Court to add said costs in every case as above provided in addition to all other costs, fines, fees and forfeitures. The amount of said cost, to be fixed each year as above provided, shall be determined as follows: The total amounts paid to the Prosecutor and to Indigent Defense Counsel during the preceding calendar year shall be divided by the total number of all criminal cases processed by the court for the preceding calendar year, including trials, pleas, and bond forfeitures, and the result of that computation shall be the fee to be added as costs as hereinbefore provided during the ensuing calendar year. For the year 2007 the amount of said fee shall be $10, to be added to and collected in all cases as provided by this chapter. Said fee shall continue in effect for the balance of the year 2007 and thereafter until another fee has been fixed by the Mayor and Council.

Section 6.61 Application.

Each person lacking the financial ability to provide, for themselves, representation in his or her defense in criminal proceedings in the Municipal Court of the City of Blakely, and desiring that the City provide such services to him or her, shall submit an application to the City requesting indigent defense representation and setting forth the specifics supporting their need for such indigent representation.

The application shall be submitted to the public defender upon first appearance on a form approved by the City Council of the City of Blakely.

Section 6.62 Application Fee.

Each applicant for indigent defense service shall pay an application fee of $50 to the public defender of Municipal Court of the City of Blakely. Such fee must be paid either at the time the application is submitted or at the time the representation is provided.

Section 6.63 Waiver.

The application fee required herein above may be waived only upon order of the presiding judge scheduled to hear the case in which the applicant is seeking a waiver of the application fee. The judge may order a waiver of the fee only upon a finding by the court that the defendant is unable to pay the fee or that paying the fee would cause hardship to the defendant.

Section 6.64 Separate Account.

Any funds remitted to the City of Blakely pursuant to this article shall be maintained in a separate fund for 'indigent defense services' and shall be expended only for the purpose of providing legal representation to indigent defendants in Municipal Court of the City of Blakely.

Sections 6.65 - 6.70 Reserved.