

SimpliCITY™

Municipal Law Training

General Information

Municipal Court - CCP art. 4.14 - Fine-only misdemeanors (no confinement); exclusive jurisdiction over municipal ordinance violations (fines up to \$2000); concurrent jurisdiction with JP for all state Class C misdemeanors; magistrate functions.

Note: Muni. cts. of record have transcript, extended jurisdictions, & appealable judgments. Appeals are not *de novo*, but based solely on errors at trial ct. level.

Elements of Complaint - CCP art. 45.019 - Proceedings in muni. ct. commenced by complaint or citation. Elements: Must (1) be written; (2) commence "In the name and by the authority of the State of Texas;" (3) state name of accused; (4) state date & location of offense; (5) contain signature of affiant; (6) conclude with words, "Against the peace and dignity of the State;" (7) allege that offense was committed in territorial limits of city; (8) be sworn; (9) provided to Def. before trial date.

Statute of Limitations - CCP art. 12.02 - Complaint for misdemeanor due no later than 2 years from date of offense.

Mental States - TPC §§6.02, 6.03 - Unless ordinance plainly dispenses with it, if ordinance silent on *mens rea*, presume one is required. Intent, knowledge, or recklessness will establish criminal responsibility in such case. Ordinance can't dispense with *mens rea* if offense punishable by fine >\$500.

Voir Dire - TRCP rules 230, 233 - Used to rule out bias. Don't ask questions that reveal juror's conviction or accusation of an offense that would disqualify them. Each party gets 3 strikes. 6 jurors on panel.

Evidence - Rules of evidence apply. Prosecution can call Def's witness as hostile.

Objections - Hearsay; Argumentative; Def. testifying without being under oath; Assumes facts not in evidence.

Procedure - Prosecution opens & closes. Can waive opening statement. If State waives, defense doesn't get opening statement. Can redirect witnesses. Only one Prosecutor conducts proceedings.

Agreement - Agreements between parties touching any suit pending must be written & signed. Note: Ct. of Appeals will hear matter of Rule 15 Agreement.

Admission of Unadjudicated Offense - TPC §12.45 - With prosecutor's consent, Def. may admit during sentencing hearing guilt of one or more unadjudicated offenses & request the ct. take each into account in determining sentence for the offense(s) he stands adjudged guilty. If a ct. takes into account an admitted offense, prosecution is barred for that offense.

Fines CAN Run Concurrently - State v. Crook ('08), Ct. of Crim. App. held fines must be concurrent when fines arise from a single indictment alleging multiple separate causes. If prosecutors charge Defs. through individual complaints, case will not affect muni. cts.

Common Offenses

Traffic Tickets - T.C. §542.401 - Violation of Subtitle C (Rules of the Road) is misdemeanor punished by fine not <\$1 or >\$200 (unless exception). Plus \$3 ct. cost & \$30 state traffic fine.

Speeding - T.C. §545.352 - Speed in excess of limits is prima facie evidence that speed is unlawful. Exceptions: Authorized emergency vehicle, police patrol, physician, or ambulance responding to emergency call.

School Zone Speeding - T.C. §§542.202, 544.356, & 541.302 - City has authority to alter prima facie speed limits.

Stop Sign - T.C. §544.010 - All vehicles shall stop before entering crosswalk on near side of intersection. If no crosswalk, stop at stop line. If no stop line, stop at place nearest to intersecting roadway where driver can view approaching traffic. Exceptions: Unless directed otherwise by police or traffic-control device.

Disregard Traffic Signal - T.C. §544.007 - Vehicles facing red light shall stop at light/stop line. If no stop line, stop before crosswalk on near side of intersection.

Exp. Inspection Sticker - T.C. §548.602 - After 5th day following expiration of inspection sticker, person may not operate vehicle unless current inspection sticker is displayed. Exception: Defense if inspection certificate for vehicle is in effect at time of offense. Note: If sticker is no more than 60 days expired, Def. gets 20 days after citation to get inspection & pay administration fee (\$20) to dismiss ticket. For **registration stickers**, no matter how long it's expired, Def. gets 20 days after citation to register & pay administration fee to dismiss ticket.

Parking - T.C. §545.302 - Can't park vehicle where official sign prohibits. Exceptions: If necessary to avoid conflict with other traffic or operator is complying with the law, directions of police, or official traffic-control device.

Driving While License Invalid (DWLI) - T.C. §521.025 - Person operating vehicle shall carry valid state issued driver's license. Multiple violations within 1 year period can raise penalty. Exceptions: Defense if Def. produces in ct. a driver's license that was valid at time of offense. If expired license, judge may dismiss charge if Def. remedies this defect within 20 working days or before Def's 1st ct. appearance date, whichever's later. Note: Different from driving with license suspended.

Failure to Maintain Financial Responsibility (FMFR) - T.C. §601.051 - Person may not operate motor vehicle unless financial responsibility is established. Per §601.191, violation of §601.051 is misdemeanor punishable by fine not <\$175 or >\$350. If convicted, Def. pays surcharge on license for 3 consecutive years. 1st offense surcharge is \$250 per year, 2nd offense \$500 per year, 3rd offense \$1,000 per year. Exceptions:

(continued on back)

Former military vehicle or vehicle that is at least 25 years old, motor vehicle used only for exhibitions, and & vehicle that owner filed with TxDOT an affidavit stating it is a collectors item are exempt. Volunteer fire department's vehicle also exempt. Defense if Def. produces to ct. proof of financial responsibility in effect at time of offense.

Seat Belt - T.C. §545.413 - (a)15 years or older riding in front seat equipped with seat belt while vehicle is operated must wear seat belt. Failure to wear is punishable by fine not <\$25 or >\$50. (b)Person who allows child younger than 17 years who is not required to be secured in child passenger safety seat to not wear seat belt is committing an offense punishable by fine not <\$100 or >\$200. Note: Judge may elect to require Def. in violation of (b) to attend & present proof that they have successfully completed a 4 hour driving safety course. Exceptions: Defense if Def. possesses written statement from licensed physician stating that for medical reasons the person should not wear seat belt, or presents to the ct., no later than 10th day after date of offense, such statement. On duty U.S. postal employees, newspaper delivery persons, meter-readers, & commercial farm vehicle operators are exempt.

Failure to Yield to Emergency Vehicle - T.C. §545.156 - Upon approach of emergency vehicle, driver shall yield to right of way, immediately drive to position parallel to & as close as possible to right-hand edge of road, stop & remain standing until emergency vehicle passes.

Passing Emergency Vehicle - T.C. §545.157 - On approaching emergency vehicle, driver shall vacate lane closest to emergency vehicle when driving on highway with 2 or more lanes, or slow to 20mph when the posted limit is 25mph or more. Enhancements: Fine of \$500 if violation results in property damage or Class B if violation results in bodily injury.

Theft under \$50 - TPC §31.03 - Class C if value of property stolen is <\$50 or <\$20 & Def. obtained property by issuing check with insufficient funds.

Disorderly Conduct - TPC §42.01 - Class C if Def. intentionally or knowingly: (a)uses language or makes gesture that incites immediate breach of peace; (b)creates unreasonable odor in public place; (c)abuses or threatens person(s) in public place (defense if Def. had significant provocation for abusive or threatening conduct); (d)unreasonable noise in public place or private residence that Def. has no right to occupy (defense if Def. was not given order to move, disperse, or stop making noise first, or that such order was unreasonable, or that order was promptly obeyed); (e) fights with another in public place; (f)discharges firearm on or across public road; (g)discharges firearm in public place other than shooting range (Class B); (h) displays firearm or other deadly weapon in public place in manner calculated to alarm (Class B); (i)exposes their anus or genitals in public; (j)looks into someone else's dwelling or privacy area (e.g. restroom &/or dressing room) for lewd or unlawful purpose. Exceptions: Defense to (f), (g), & (h) if Def. had reasonable fear of bodily injury to their person or another by dangerous wild animal.

Open Container - TPC §49.031 - Class C if Def. knowingly possess open container(s) (with alcohol in it) in passenger area

of motor vehicle located on public road regardless of whether vehicle is being operated, stopped, or parked. Note: "Passenger area" does NOT include glove compartment or similar storage container that is locked, the trunk, or area behind last upright seat if vehicle does not have trunk. Exceptions: If at time of offense Def. was a passenger in the living quarters of a motorized house coach, motorized house trailer, taxi, limo, or bus.

PI - TPC §49.02- Class C if Def. appears in public place while intoxicated to degree that they may endanger themselves or another. Exceptions: Defense if alcohol or other substance was administered for therapeutic purposes & as part of Def's medical treatment by doctor.

MIP - TABC §§106.05 & 106.071 - Class C if Def. under 21 possesses alcoholic beverage. Def. must also attend Alcohol Awareness Classes per §106.115. Exceptions: Minor may possess alcohol: (a)while in scope of employment; (b)in visible presence of their adult parent, guardian, or spouse; or (c) minor is under immediate supervision of commissioned peace officer engaged in enforcing TABC. Enhancements: Minor who commits this offense that was previously adjudicated 2x or more of offenses under this section is NOT eligible for deferred disposition or deferred adjudication. If minor was previously convicted at least 2x for alcohol offense, punishment is fine not <\$250 or >\$2,000, confinement in jail not >180 days, or both fine & confinement. Ct. shall order minor placed on deferred disposition for, or convicted of, alcohol offense to perform community service; 8-12hrs for 1st offense & 20-40hrs for 2nd offense. Ct. shall order DPS to suspend drivers license of minor for 30 days if 1st offense, 60 days if 2nd, 180 days if 3rd or higher.

MIC - TABC §§106.04 & 106.071 - Class C if Def. under 21 consumes alcoholic beverage. Def. must also attend Alcohol Awareness Classes per §106.115. Exception: Affirmative defense if alcohol consumed in visible presence of minor's adult parent, guardian, or spouse. Enhancements: Same as for MIP.

Poss. Drug Paraphernalia - H & S.C. §481.125 - Class C if Def. knowingly or intentionally uses or possesses with intent to use drug paraphernalia in order to store, contain, or conceal a controlled substance, or to ingest, inhale, or otherwise introduce into the human body a controlled substance.

City Ordinance - L.G.C. §54.001 - Fine or penalty for violation of rule, ordinance, or police regulation may not >\$500. Violation of rule governing fire safety, zoning, or public health & sanitation, including dumping of refuse, may not >\$2,000.

-DISCLAIMER-

This abbreviated guide is NOT comprehensive. It is intended only as an educational tool for municipal prosecutors.