



ORDINANCE 2018-91

AN ORDINANCE TO ESTABLISH AND ORGANIZE A MUNICIPAL COURT

WHEREAS, *Code of Alabama* § 12-14-1 establishes a municipal court for all municipalities except for those which elected not to have such court by ordinance adopted before December 27, 1977; and,

WHEREAS, the City of Semmes did not exist in 1977, having been incorporated in 2011, and has never previously ordained to establish and organize its municipal court; and,

WHEREAS, although misdemeanors and other violations of state law are enforced in the City of Semmes and its police jurisdiction by the Mobile County Sheriff and prosecuted in Mobile County District Court or Circuit Court, the City of Semmes is in need of a court system in which to prosecute violations of city ordinances inside its corporate limits and police jurisdiction; and,

WHEREAS, the City Council of the City of Semmes finds that it would be in the best interest of the City of Semmes and its citizens to establish and organize a municipal court so that city ordinance violations and misdemeanors may be prosecuted in the City of Semmes Municipal Court.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEMMES, ALABAMA, AS FOLLOWS:

ARTICLE I. – IN GENERAL

Sec. 1 – Establishment of Municipal Court.

There is hereby established a municipal court for the City of Semmes (the “city” or “municipality”) pursuant to *Code of Alabama* § 12-14-1, et seq., and other applicable law.

Sec. 2 – Jurisdiction.

The municipal court of the city shall have jurisdiction of all prosecutions for the breach of ordinances of the municipality within its corporate limits and police jurisdiction. This jurisdiction shall also extend to all prosecutions for violations of state misdemeanors committed within the corporate limits and police jurisdiction of the municipality where such offenses have been made offenses against the municipality.

Sec. 3 – Time and Place of Holding Court.

All sessions of court shall take place between the hours of 9:00 A.M. and 5:00 P.M at City Hall or at such other places as may be convenient or necessary for the transaction of official court business as determined by the mayor with the advice of the presiding judge.

Sec. 4 – Procedure Generally.

The procedure in the municipal court of the city shall, so far as not set out herein or otherwise be declared by law, conform as nearly as practicable to that before district courts in the state in analogous cases.

Sec. 5 – Judicial Notice of Ordinances.

The municipal court shall take judicial notice of the ordinances of the municipality.

Sec. 6 – Oaths, Subpoenas, Etc.

Each municipal judge may administer oaths, compel the attendance of witnesses and compel the production of books and papers, punish any person found and adjudged to be in contempt of court by fine not exceeding fifty dollars (\$50.00) and/or imprisonment not exceeding five (5) days) or the maximum punishment permitted under *Code of Alabama* § 12-14-3, and in contempt of court cases brought pursuant to *Code of Alabama* § 12-19-311(c) and (d), a municipal judge may punish by a fine not exceeding five hundred dollars (\$500.00). Each municipal judge shall have power coextensive with the jurisdiction of the district court to issue writs and other process, and to approve and declare bonds forfeited. The presiding municipal judge shall designate any other municipal officers who shall be authorized to approve appearance and appeal bonds.

Sec. 7 – Issuance of Warrants.

Each municipal judge is authorized to issue arrest and search warrants upon affidavit for municipal ordinance violations returnable to the municipal court and for violations of state law returnable to any state court.

Sec. 8 – Execution of Warrants.

The sheriff of the county and all law enforcement officers of the municipality shall obey the municipal judge having legal authority in faithfully executing the warrants and processes committed to them for service according to their mandates.

Sec. 9 – Appearance Bond.

Each municipal judge shall have the power to admit to bail any person charged with the violation of any municipal ordinance by requiring an appearance bond, with good security, to be approved by the municipal judge in an amount not to exceed one thousand dollars (\$1,000.00), or the maximum amount permitted under *Code of Alabama* § 12-14-5, and may, in his discretion, admit to bail such persons on a personal recognizance bond conditioned on the appearance of such person before him on a day named therein to answer the charges preferred against him. The presiding judge shall designate any other municipal officer or officers who shall be authorized to approve appearance bonds. Such designee of the presiding judge shall have the same powers and privileges given the municipal judge in this section.

Sec. 10 – Non-jury Trial.

All cases in municipal court shall be tried by a municipal judge without a jury.

Sec. 11 – Penalty.

Each municipal judge shall have the authority to punish any person convicted of violating any municipal ordinance in accordance with the punishment prescribed in such ordinance or any other applicable ordinance or state law provided, however, that no fine or sentence of imprisonment shall exceed the maximum fine or sentence provided by the city ordinance violated nor shall the fine or sentence exceed the maximum fine and sentence provided for violation of a substantially similar offense under state law. The penalty imposed on a corporation shall consist of the fine only, plus costs of court.

Sec. 12 – Forfeiture of Bond Upon Conviction.

Upon conviction, the court may, upon a showing of inability to make immediate payment of fines and costs, accept defendant's bond with or without surety and with waiver of exemptions as to personalty payable within ninety (90) days, upon nonpayment of which execution may issue as upon judgments in state courts.

Sec. 13 – Working Out Judgment.

Each municipal judge in his judgment may provide that if a fine and costs are not paid within the time prescribed, the defendant, unless indigent, shall work out the amount of the judgment under the direction of the municipal authority allowing not less than ten dollars (\$10.00) for each day's service, or such other amount as may be set by City Council resolution.

Sec. 14 – Court Costs.

Upon each conviction in municipal court for a violation of any ordinance of the city, there shall be taxed against the defendant as court costs the sum of ten dollars (\$10.00), and there shall also be taxed as costs the additional costs and fees imposed by the statutes of the state, and the latter such costs and fees shall be remitted pursuant to the statutes. All costs taxed for the city, as hereinabove provided, shall be paid into the city treasury.

Sec. 15 – Judge's Authority to Continue Cases, Remit Fines, Etc.

Each municipal judge shall have the authority to continue any case from time to time to permit the fine and costs to be paid, remit fines, costs and fees, impose intermittent sentences, establish work release programs, require attendance at educational, corrective or rehabilitative programs, suspend driving privileges for such times and under such conditions as provided by law and order hearings to determine the competency of the defendant to stand trial; provided further, that the judge may enter an order authorizing the defendant to drive under the conditions set forth in the order.

Sec. 16 – Probation.

Each municipal judge may suspend execution of sentence and place a defendant on probation for varying periods of time, not to exceed two (2) years, under the procedures and conditions set out in *Code of Alabama* § 12-14-13.

Sec. 17 – Corporations – Affidavit to be Docketed; Notice to Corporation.

When an affidavit is filed in the municipal court against a corporation doing business in the city or within its police jurisdiction, such affidavit shall be forthwith docketed in the court, and the clerk of the court, or the judge thereof, shall issue a notice thereof to the defendant corporation, accompanied by a certified copy of the affidavit. Such notice and copy may be served upon any officer or agent of the defendant corporation authorized by the laws of the state to receive service of summons or other civil process issuing against such corporation and upon the return of the same showing proper service, the cause shall stand for trial before the judge of the municipal court.

Sec. 18 – Corporations – Failure to Appear.

If a defendant corporation fails to appear and plead to the affidavit filed against it, the judge of the municipal court shall cause a plea of not guilty to be entered for it and the trial shall proceed as if the corporation had appeared and pleaded not guilty but in such case proof must be made to the judge of the municipal court that the person upon whom the notice and copy of the affidavit was served, as provided in this ordinance, was an officer or agent of the corporation authorized by law to receive such service.

Sec. 19 – Corporations – Judgment; Execution.

Upon the conviction of a corporation in the municipal court, judgment shall be rendered against it for the fine imposed, together with the costs of the prosecution, and execution thereon shall forthwith issue against the property of the corporation. Other executions may issue thereon until such judgment is satisfied. In case of appeal from such judgment, the execution thereof may be superseded by giving a supersedeas bond as in civil cases.

Sec. 20 – Remission of Fines; Commutation or Reduction of Sentence.

(a) The mayor may remit fines and such costs as payable to the municipality and commute sentences imposed by municipal judges of the court to which an appeal was taken for violations of municipal ordinances, and may grant pardons, after conviction, for violation of such ordinances; and he shall report his action to the governing body of the city at the first regular meeting thereof in the succeeding month with his reasons therefor in writing.

(b) Any judge of the municipal court may reduce or remit any fine or sentence or may pardon any person convicted of violating any provision of this Code or other city ordinance, upon proper cause shown to him.

Sec. 21 – Control of Courtroom.

The city courtroom shall be under the control and direction of the judge of the municipal court.

Sec. 22 – Property Held by Municipal Court.

Property held by the municipal court is presumed abandoned and shall be deposited into the city general funds, if it is unclaimed by the apparent owner, one year after the property becomes distributable.

Sec. 23 to 29 – Reserved.

ARTICLE II. – JUDGES

Sec. 30 – Number; Term.

The municipal court shall initially consist of one (1) part-time judge. The city council may increase the number of judges of the municipal court, and determine whether such additional judge positions will have full-time or part-time status, by resolution at any time. All judges of the municipal court shall be appointed by resolution of the city council approved by a vote of the majority of its members. The term of office of each full-time municipal judge shall be for a term of four (4) years. The term of office of each part-time municipal judge shall be for a term of two (2) years. The term of either full-time or part-time municipal judges shall continue until a successor has been appointed and qualified. The municipal judges shall be eligible for reappointment upon the expiration of their terms.

Section 31 – Qualification; Other Employment.

Each municipal judge must be licensed to practice law in the state, and must be a qualified elector of the state. No judge shall be otherwise employed in any capacity by the city during his term of office.

Section 32 – Vacancy.

The office of a municipal judge shall be vacant if he or she dies, resigns, or is removed; and vacancies shall be filled by the city council in the same manner as original appointments are made.

Section 33 – Oath.

Each municipal judge shall, before assuming office, take and sign the oath provided by the constitution of the state, and a copy thereof shall be filed in the office of the secretary of state, the administrative director of courts, and the city clerk; provided, however, that failure to file as required by this section shall not render invalid any act, order, or judgment of said judge.

Section 34 – Presiding Judge.

(a) One of the full-time municipal judges or, if none, one of the part-time judges, shall serve as presiding judge, who shall have primary responsibility for the administration of the municipal court, to include such duties as the scheduling of cases and such additional duties as may from time to time be provided by ordinance. The mayor shall designate which of the full-time judges or, if none, which of the part-time judges, shall serve as presiding judge. The presiding judge shall be entitled to receive such additional compensation as provided by ordinance or resolution.

(b) The presiding judge shall be the chief judicial officer of the municipal court and shall have the power and duty to supervise and direct the judicial and administrative functions of the court. It shall be the obligation of the presiding judge to see that the court docket is kept as current as is reasonably possible; and to such end the presiding judge shall establish a court calendar of cases and shall have the authority to set dockets and assign cases for trial and disposition before such municipal judges as shall be appointed. The presiding judge shall also prescribe and publish reasonable rules and regulations for the dispatch of the business of the court.

(c) The presiding judge, in order to maintain a current docket, shall have the authority to hold, or direct to be held, such sessions of court as shall be necessary, subject to the limitations set forth in this ordinance. All sessions of court shall be presided over by the presiding judge or by a judge assigned by the presiding judge.

(d) The presiding judge shall designate any other municipal officers who shall be authorized to approve appearance and appeal bonds.

(e) The presiding judge shall make quarterly reports to the city council and mayor on the operation of the municipal court. The quarterly report shall include, at a minimum, information stating the number of new cases filed during the quarter, the number of cases still pending at the end of the quarter, the number of cases resolved or disposed of during the quarter, the number of cases that were appealed to the circuit court during the quarter, the presiding judge's recommendations for improving access to justice and the operations of the court, and any other information or statistics that the presiding judge determines to be pertinent. The information concerning the number of cases filed, pending, resolved or disposed of, and appealed shall be arranged to separately reflect the number of traffic offenses initiated by issuance of a uniform traffic ticket and complaint, the number of non-traffic offenses initiated by issuance of a uniform non-traffic citation and complaint, the number of offenses initiated by arrest, and any other categorization of offenses as the presiding judge shall deem necessary to fully and accurately report on the operations of the municipal court.

Sec. 35 – Disqualification on Specific Cases.

Each municipal judge shall be subject to all grounds of disqualification from hearing specific cases that are applicable to circuit court judges.

Sec. 36 – Full-Time Judges Not to Engage in the Practice of Law.

No full-time municipal judge shall, during his or her continuance in office, engage in the practice of law or receive any remuneration for judicial service, except the salary and allowances authorized by ordinance.

Sec. 37 – Acting Municipal Judge.

In the event of the absence from the city, death, disability or disqualification of a municipal judge, for any reason, the mayor shall have the authority to designate persons, licensed to practice law in the state and who are qualified electors of the state, not otherwise employed in any capacity by the city, to serve as acting municipal judges with all the power and authority of a duly appointed municipal judge. No such acting judge may serve for more than thirty (30) successive days or a total of sixty (60) days in any calendar year; provided, that when the duly appointed municipal judge is disqualified pursuant to the constitution, the time of service limitations for acting judges shall not apply during such disqualification.

Sec. 38 – Compensation.

The salary of the municipal judges shall be fixed by resolution of the council. This salary shall not be diminished during the judges' term of office. Any general increase in the compensation of all or substantially all city employees shall be applied proportionately to the salary of the municipal judges. The council may provide for the retirement of municipal judges, with such conditions, retirement benefits and pensions for them and their dependents as the council may prescribe by resolution.

Sec. 39 – Work Hours.

The full-time municipal judges, if any, shall work five (5) days per week, Monday through Friday, from 9:00 a.m. to 5:00 p.m., at City Hall or at such other places as may be convenient or necessary for the transaction of official court business.

The part-time judges shall preside over such dockets as may be assigned by the presiding judge, including dockets held at the county metro jail if determined to be necessary by the presiding judge, and at such other places as may be convenient or necessary for the transaction of official court business.

Sec. 40 to 49 – Reserved.

ARTICLE III. – OTHER PERSONNEL

Sec. 50. – Magistrates.

The presiding municipal judge shall take steps to have a magistrate appointed for the city pursuant to Rule 18 of the Alabama Rules of Judicial Administration. The powers of the magistrate shall be limited to:

- (a) Issuance of arrest warrants;
- (b) Granting of bail in minor misdemeanor prosecutions;
- (c) Receiving of pleas of guilty in minor misdemeanors where a schedule of fines has been prescribed by law, rule or resolution;
- (d) Accountability to the municipal court for all uniform traffic tickets and complaints, moneys received and records of offenses; and
- (e) Such other authority as may be granted by law.

Sec. 51 – Bailiff.

The presiding municipal judge may appoint a person to serve as bailiff of the municipal court and if such an appointment is made, the municipal governing body shall set the compensation of such bailiff.

Sec. 52 – Clerk and Assistant Clerks – Generally.

The mayor may appoint a person other than the judge of the municipal court to act as clerk of the municipal court, who shall keep the docket and perform all other necessary clerical duties connected with the municipal court, but the judge of the municipal court shall take all affidavits and sign all process, civil or criminal, except as otherwise set forth in this ordinance or state law. The mayor may also appoint as many assistant clerks as may be necessary to assist the clerk of the municipal court in the performance of his duties.

Sec. 53 – Clerk and Assistant Clerks – Bonds.

The clerk and assistant clerks of the municipal court, and of the traffic violations bureau of the city, if any, shall be bonded in an amount not less than five thousand dollars (\$5,000.00) and such other amounts to be determined by the city council.

Sec. 54 – Other Appointments.

The mayor may appoint one (1) or more persons to act as secretary to the judge of the municipal court, any assistant judges of the municipal court.

Sec. 55 – Prosecutor – Appointment; Duties.

The mayor may appoint full-time or part-time attorneys to serve as prosecutors in the municipal court of the city. The persons so appointed shall represent the city in all cases involving a violation of a provision of this Code or other city ordinance which may appear before the municipal court of the city.

Sec. 56 – Prosecutor – Official Title.

The official title of the person performing the duties of prosecutor in the municipal court shall be prosecutor for the municipal court of the city.

Sec. 57 to 69 – Reserved.

ARTICLE IV. – APPEAL PROCEDURES

Sec. 70 – Where Appeals Lie.

All appeals from judgments of the municipal court shall be to the circuit court of the circuit in which the violation occurred for trial de novo.

Sec. 71 – Invalid Ordinance.

The municipality may appeal within sixty (60) days without bond from a judgment of the municipal court holding a municipal ordinance invalid.

Sec. 72 – Appeal Bond.

A defendant may appeal in any case within fourteen (14) days from the entry of judgment by filing notice of appeal and giving bond with or without surety, approved by the court or the clerk in an amount not more than twice the amount of the fine and costs, as fixed by the court, or in the event no fine is levied the bond shall be in an amount not to exceed one thousand dollars (\$1,000.00), conditioned upon the defendant's appearance before the circuit court. The municipal court may waive appeal bond upon satisfactory showing that the defendant is indigent or otherwise unable to provide a surety bond. If an appeal bond is waived, a defendant sentenced to imprisonment shall not be released from custody, but may obtain release at any time by filing a bond approved by the municipal court. If the defendant is not released, the municipal court clerk shall notify the circuit clerk and the case shall be set for trial at the earliest practicable time.

Sec. 73 – Default by City.

When an appeal has been taken, the municipality shall file the notice and other documents in the court to which the appeal is taken within fifteen (15) days, failing which the municipality shall be deemed to have abandoned the prosecution, the defendant shall stand discharged and the bond shall be automatically terminated.

Sec. 74 – Sentence on Appeal.

Upon trial or plea of guilty in the circuit court on appeal, the court may impose any penalty or sentence which the municipal court might have imposed.

Sec. 75 – Default by Appellant.

Upon failure of an appellant to appear in circuit court when the case is called for trial, unless good cause for such default is shown, the court shall dismiss the appeal and enter judgment of default on the appeal bond, and may also issue a warrant for arrest of the appellant. A copy of the order shall be delivered by the circuit clerk to the clerk of the municipal court. The circuit court may on motion of defendant made within thirty (30) days of the order of dismissal, set aside the dismissal and other orders and reinstate the appeal on such terms as the court may prescribe for good cause shown by the defendant.

Sec. 76 – Arrest of Defendant Upon Dismissal of Appeal.

Upon receipt of notice of dismissal of an appeal, the municipal court may issue a warrant for arrest of the defendant, who may also be arrested without a warrant as an escapee. Upon arrest the defendant shall be delivered to the municipal authorities and punished in accordance with the judgment of the municipal court.

Sec. 77 – Remand of Defendant.

If a judgment is entered against a defendant upon appeal, the circuit court shall remand the defendant to the municipal authorities for punishment in accordance with the judgment of the circuit court, unless, when the judgment is for fine and costs only, the judgment is paid or a judgment is conferred therefor in favor of the municipality with sureties or as otherwise provided for convictions under state law.

Sec. 78 – Disposition of Fines and Costs.

Upon receipt of payment of fines and costs upon appeals, the clerk of the circuit court shall within thirty (30) days pay ninety (90) percent of such fines and forfeitures, and ten (10) percent of the costs, to the treasurer of the municipality. The circuit clerk shall be liable on his bond for such fines and costs plus a penalty of five (5) percent per month for default in such payments.

Sec. 79 – Appeal to Court of Criminal Appeals.

From the judgment of the circuit court, the municipality, in a case holding invalid an ordinance, or the defendant in any case, may appeal to the court of criminal appeals in like manner as in cases of appeals for convictions of violation of the criminal laws of the

state. If the appeal is taken by the municipality, it shall not be required to give surety for the cost of the appeal. When taken by the defendant, he may give bail with sufficient sureties, conditioned that he will appear and abide by the judgment of the appellate court, and failing to give bail he must be committed to the municipal jail; but he may give such bail at any time pending the appeal. When an appeal is taken by the defendant and bail is given pending the appeal, and the judgment of conviction is affirmed or the appeal is dismissed, the defendant is bound by the undertaking of bail to surrender himself to the municipal authorities within fifteen (15) days from the date of such affirmance or dismissal, and if he shall fail to do so, the clerk of the circuit court from which the appeal is taken, upon motion of the municipality, must endorse the bail bond forfeited, and a writ or writs of arrest must be issued by the clerk to the sheriff. Upon arrest the defendant shall be delivered to the municipal authorities and the sentence must without delay be carried out as if no appeal has been taken. If bail is forfeited as herein provided, a conditional judgment must be rendered by the court in favor of the municipality and the same proceedings had thereon for the municipality as is authorized by law to be had in the name of the state in state cases.

Sec. 80 to 89 – Reserved.

ARTICLE V – MISCELLANEOUS PROVISIONS

Sec. 90 – Publication; Effective Date; Effective Area.

This Ordinance shall become effective within the City limits and Police Jurisdiction of the City upon publication pursuant to applicable law for thirty consecutive (30) days.

Sec. 91 – Mayor’s Authority.

The Mayor of the City of Semmes is authorized to perform any and all administrative duties and enter into any appropriate contracts necessary to effect the purpose of this ordinance provided, however, that any proposed expenditure of funds in relation to same shall first be brought before the Semmes City Council for consideration.

Sec. 92 – Codification.

Upon the codification of city ordinances, authority is hereby granted to reassign the section numbers of this ordinance as may be found to be appropriate at such time, this

ordinance to remain in full force in effect under such newly assigned number(s) as though assigned herein.

Sec. 93 – Pronouns, etc.

Whenever the context may require, any pronouns used in this ordinance shall include the corresponding masculine, feminine or neuter forms, and the singular form of pronouns shall include the plural, and vice versa.

Sec. 94 – Repealer.

This ordinance shall supersede and repeal any and all other previous ordinances or provisions of ordinances in conflict with this ordinance.

Sec. 95 – Severability.

If any article, section, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional by a declaration of any court of competent jurisdiction, such declaration shall not affect the validity of the remaining portions of this ordinance.

Sec. 96 to 99 – Reserved.

Adopted and approved this 15th day of May, 2018.

/S/ David Baker- Mayor

Attest:

/s/ Debra A. Hanbury, MMC - City Clerk