

**TITLE III: ADMINISTRATION**

**Chapter**

- 30. FORM OF GOVERNMENT**
- 31. MUNICIPAL PROCEDURES AND POLICIES**
- 32. DEPARTMENTS, BOARDS, AND COMMISSIONS**
- 33. MUNICIPAL COURT**
- 34. FINANCE AND REVENUE; TAXATION**
- 35. CITY OFFICIALS; CITY EMPLOYEES**

## CHAPTER 30: FORM OF GOVERNMENT

### Section

#### **Type A General Law Municipality**

- 30.01 Type A general-law municipality
- 30.02 Ordinance adopting Type A municipality status to be filed

#### **Type A General Law Municipality<sup>1</sup>**

#### **§ 30.01 Type A General Law Municipality**

The City of Overton shall be and is hereby changed to a Type A general-law municipality and said City of Overton shall hereafter possess and be authorized to exercise all powers and authority conferred by the laws of the State of Texas upon Type A general-law municipalities.

#### **§ 30.02 Ordinance Adopting Type A Municipality Status to Be Filed**

The City Secretary shall be and is hereby directed to cause a copy of the Ordinance adopting Type A municipality status to be filed and recorded in the office of the County Clerk of Rusk/Smith County, Texas in accordance with the provisions of V.T.C.A., Local Government Code, Section 6.012(4).

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<sup>1</sup> **State law reference** - V.T.C.A., Local Government Code, Section 6.011, authorizes general law municipalities to adopt Type A general-law form of government.

## CHAPTER 31: MUNICIPAL PROCEDURES AND POLICIES

### Section

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### **Official Newspaper**

#### **§ 31.01 Official Newspaper Designated<sup>2</sup>**

The Overton Press a weekly newspaper published in Texas is hereby declared the official newspaper for required publications by the City.

### **City Map<sup>3</sup>**

#### **§ 31.10 Official City Map Required**

(a) A map showing the boundaries of the City and the boundaries of the City's extraterritorial jurisdiction shall be kept in the office of the City Secretary.

(b) Whenever any territory is annexed into the City, the City map shall be immediately updated to include the newly annexed territory and any associated change in the City's extraterritorial jurisdiction. The map shall be annotated to indicate the date of annexation, the number of the annexation ordinance, and a reference to the minutes or ordinance in which the annexation is recorded in full.

(c) If there is any change in the City's extraterritorial jurisdiction, the map shall be immediately corrected to indicate the change and the map shall also be annotated to indicate the date the extraterritorial jurisdiction was changed, the number of the ordinance, if any, by which the change was made, and a reference to the minutes or ordinance in which the change is recorded in full.

(d) Copies of the revised map shall be furnished to the County Clerk's office and to the Secretary of State at the time such annexation becomes effective.

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<sup>2</sup> **State law reference** - V.T.C.A., Local Government Code, § 52.004, requires municipalities to designate an official newspaper.

<sup>3</sup> **State law reference** - V.T.C.A., Local Government Code, § 41.001 et seq., requires municipality to develop, designate and display an official map of the municipality.

## **Abandoned, Seized, and Surplus Property<sup>4</sup>**

### **§ 31.20 Disposition of Abandoned, Seized, or Recovered Personal Property**

(a) All abandoned, stolen, or recovered personal property of every kind which shall remain unclaimed with the City for a period of at least thirty (30) days without being claimed or reclaimed by the owners, whether known or not shall be delivered to the City Manager. This section does not apply to motor vehicles, outboard motors, motorboats, and other vessels as defined in V.T.C.S., Article 4477-9a, Sec. 5.01 (Texas Litter Abatement Act); to beer, whisky, or wine; to contraband subject to forfeiture under Vernon's Ann. C.C.P., Chapter 59; to property being held as evidence in a pending case; or when a magistrate orders destruction of the property.

(b) The City Manager shall give notice to the owner of any abandoned, stolen, or recovered personal property that remains unclaimed for thirty (30) days. If the owner is known, notice shall be given by certified mail to the last known address of the owner of the property and include a description of the property, the name and address of the officer holding such property, and a statement indicating that if the owner does not claim the property within six (6) months from the date of the notice, the property will be sold and the proceeds of such sale placed in the municipal treasury. If the owner is unknown or the owner's address is unknown, then the City Manager shall publish a notice of the description of the property, name of the owner, if known, the name and address of the officer holding such property, and a statement indicating that if the owner does not claim the property within six (6) months from the date of the notice, the property will be sold and the proceeds of such sale placed in the municipal treasury.

(c) Before selling any unclaimed personal property, the City Secretary or City Manager shall post a notice of the sale in a newspaper of general circulation in the city at least twenty-one (21) days before the date of the sale. The notice of the sale shall describe the property, the name of the owner if known, and designate the time, date, and place of sale.

(d) The City Manager or his designee shall conduct the sale or public auction at which unclaimed personal property is to be sold to the highest bidder. An accurate description of each piece of property sold, the sale price, and the name and address of the bidder shall also be kept. The Mayor or his designee shall provide a copy of such report to the City Secretary as soon as possible after the close of sale. A bill of sale of the property shall be executed by the City to the purchaser.

(e) The City may consider any bid as insufficient and decline such bid and re-offer the property for sale.

(f) The real owner of any personal property sold shall have the right to file a claim to the proceeds of such sale with the City Council. If the claim is allowed by the City Council, the owner shall be paid such funds as were paid into the treasury of the City as proceeds of the sale,

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<sup>4</sup> **State law reference** - Unclaimed or abandoned property, Vernon's Ann. C.C.P., Art. 18.17 - 18.19; disposition of controlled substances, V.T.C.A., Health & Safety, §§ 481.159 - 481.160.

after deducting the reasonable expense of keeping such property and the costs of such sale. If the claim is denied by the City Council or the City Council fails to act upon such claim within ninety (90) days, the claimant may sue the City in a court of competent jurisdiction, and upon sufficient proof of ownership recover judgment against the City for recovery of the proceeds of the sale.

(g) If the provisions of this section have been met and the property is scheduled for sale, the police department may have any property originally seized by the department converted to department use. The police department shall return the property to the custody of the Mayor for sale when the department has completed the intended use of the property.

### **§ 31.21 Disposition of Surplus Property**

(a) Property that is owned by the City and is determined to be surplus property may be sold through public auction. The City Manager or his designee shall conduct the public auction at which such property is to be sold to the highest bidder. An accurate description of each piece of property sold, the sale price, and the name and address of the bidder shall also be kept. The City Manager or his designee shall provide a copy of such report to the City Secretary as soon as possible after the close of sale. A bill of sale of the property shall be executed by the City to the purchaser.

(b) In lieu of selling surplus property of the City, the City Manager may offer the property in trade for other property as he considers being in the best interest of the City.

### **§ 31.22 Proceeds Credited To General Fund**

All funds received on account of the sale of unclaimed, seized, recovered, or surplus property shall be delivered to the City Secretary who shall deposit the proceeds of the sale in the general fund of the City, after deducting reasonable expenses of keeping such property and any costs of the sale.

### **§ 31.23 Worthless Property**

Any property which has been listed and offered for sale under the provisions of this chapter and for which no price or sum has been offered, if deemed in the opinion of the City Manager to be worthless and without value, shall be disposed of in such manner as he shall prescribe. A written description of all property destroyed or disposed of as worthless or without value shall be filed with the City Secretary, together with the date and manner of disposal.

### **§ 31.24 Disposition of Controlled Substances**

All controlled substances, marijuana, drug paraphernalia, and money seized by the police department shall be taken into custody and disposed of in accordance with V.T.C.A., Health & Safety, §§ 481.159 -481.160.

### **§ 31.25 Abandoned, Stolen, And Recovered Firearms and Weapons**

(a) All abandoned, stolen, or recovered firearms or other weapons and ammunition that have remained unclaimed or unidentified by the rightful owner thereof for a period of sixty (60) days and which are not being held as evidence pending a case filed by record shall be destroyed by a police officer in the presence of the City Manager and/or Police Chief. Before any such firearms or weapons shall be destroyed, any case numbers make, model, type, and serial numbers, if available, shall be prepared and kept on record along with the scheduled time, date, place, and manner of destruction.

(b) Any handguns, rifles, and/or shotguns that have been classified as antiques or collector's items as may be determined by the Police Chief or by a firearms expert selected by the Police Chief can be sold in the public interest in accordance with § 31.20 to any person holding a federal firearms license, provided that their sale is not restricted by law.

(c) Any weapon or ammunition that the Police Chief has determined to be serviceable or usable may be kept for use by the police department.

### **§ 31.26 Disposition of Seized Weapons**

(a) Weapons seized in connection with an offense involving the use of a weapon or an offense committed under Chapter 46 of the Penal Code shall be kept by the police department, subject to the following provisions, unless:

- (1) The weapon is a prohibited weapon identified in Chapter 46 of the Penal Code; or
- (2) The weapon is alleged to be stolen property.

(b) When a weapon described in paragraph (a) is seized, and the seizure is not made pursuant to a search or arrest warrant, the person seizing the weapon shall prepare and deliver to a magistrate a written inventory of each weapon seized.

(c) A person convicted under Chapter 46 of the Penal Code is entitled to the seized weapon upon request to the police department. However, the court entering the judgment of conviction shall order the weapon destroyed or forfeited to the state for use by the police department if:

- (1) The person does not request the weapon within sixty (60) days after the date of the judgment of conviction;
- (2) The person has been previously convicted under Chapter 46 of the Penal Code; or
- (3) The weapon is defined as a prohibited weapon under Chapter 46 of the Penal Code.

(e) If the person found in possession of a weapon is convicted of an offense involving the use of the weapon, the court entering judgment of conviction shall order destruction of the weapon or forfeiture to the state for use by the police department.

### **§ 31.27 Deposit of Money Pending Disposition of Charges**

If money is seized by the police department in connection with a violation of Chapter 47 of the Texas Penal Code, the City may deposit the money in an interest-bearing bank account until a final judgment is rendered concerning the violation. If a final judgment is rendered concerning the alleged violation, the money shall be distributed according to the terms of Chapter 18, Vernon's Ann. C.C.P.

## **Equal Opportunity Policy<sup>5</sup>**

### **§ 31.30 Nondiscrimination Policy**

It is the policy of the City or any employee or officer of the City not to discriminate on the basis of race, color, national origin, sex, religion, age, or handicap status in employment, contracting, or the provision of services. Discrimination against any person in the recruitment, examination, appointment, training, promotion, discipline, or any other aspect of personnel administration; contracting for construction, rehabilitation, alteration, conversion, extension, demolition or repair of City facilities; and the provision of City services shall be prohibited unless such discrimination constitutes a bona fide occupational qualification. A nondiscriminatory clause shall be provided in all solicitations or advertisements whenever practicable or feasible.

## **Identification of City Vehicles and Equipment<sup>6</sup>**

### **§ 31.40 City Vehicles to Be Marked**

The City Manager shall have printed upon each side of every City-owned motor vehicle displaying exempt tags (except undercover law enforcement vehicles) and piece of heavy equipment the name of the City in letters that are plainly legible. Lettering shall be at least \_\_\_\_ inches.

## **Copying Charges for Public Records**

### **§ 31.50 Fee for Copying Authorized**

A service fee for copying public records shall be as prescribed in the Schedule of Fees (Appendix A of this Code).

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<sup>5</sup> State law reference-V.T.C.A., Civil Practice and Remedies Code, Chapter 106, prohibits discrimination in refusing to issue licenses, permits or certificates or to use or participate in any public programs or public facilities.

<sup>6</sup> State law reference-V.A.C.S., Art. 6701 m-2, requires identification of City owned vehicles and heavy equipment.



## **Claims for Damages<sup>7</sup>**

### **§ 31.60 Notices to Be Served Upon City Secretary**

All notice required by this ordinance shall be effectuated only by personally serving them upon the City Manager or City Secretary at the Overton City Hall, 1200 Commerce, Overton, Texas, 75684.

### **§ 31.61 Exception**

The above written notice requirements shall be waived if the City has actual knowledge of death, injury or property damage likely to result in a claim against the City. The city shall not be deemed to have actual knowledge unless that knowledge is attributable to an appropriate City official whose job duties include the authority to investigate and/or settle claims against the City.

### **§ 31.62 Sworn Statement Required**

The written notice required under this ordinance shall be sworn to by the person claiming the damage or injuries or by someone authorized by him to do so on his behalf. Failure to swear to the notice as required herein shall not render the notice fatally defective, but failure to so verify the notice may be considered by the City Council as a factor relating to the truth of the allegations and to the weight to be given to the allegations contained therein.

## **Emergency Actions by Officers, Agents, or Employees of the City**

### **§ 31.70 Emergency Actions Authorized<sup>8</sup>**

Every officer, agent or employee of the City, while responding to emergency situations, is hereby authorized to act in such a manner as to most effectively deal with the emergency. This provision shall prevail over every other ordinance of the City and, to the extent to which the City has the authority to so authorize, over any other law establishing a standard of care in conflict with this section. Neither the City nor the employee shall be liable for any failure to use ordinary care in such emergency.

## **Municipal Memberships**

### **§ 31.80 Membership in East Texas Council of Governments**

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<sup>7</sup> State Law reference-See immunity of certain governmental functions, V.T.C.A., Civil Practice & Remedies Code, § 101.055; for limitation on amount of liability, see V.T.C.A., Civil Practice & Remedies Code, § 101.023; tort claim payments, V.T.C.A., Civil Practice & Remedies Code, Chapter 102; for volunteer firefighters, see V.T.C.A., Civil Practice & Remedies Code, § 78.001.

<sup>8</sup> **State law reference** - Immunity of certain governmental functions, V.T.C.A., Civil Practice & Remedies Code, § 101.055; for volunteer firefighters, see V.T.C.A., Civil Practice and Remedies Code, § 78.001.

The City of Overton shall be a member of the East Texas Council of Governments for the purpose of joint planning and coordination of governmental services and policies as authorized by V.T.C.A., Local Government Code, Chapter 391, and the City Secretary is hereby authorized to pay the annual dues required for membership in said Council of Governments.

### **§ 31.81 Membership in Texas Municipal League**

The City of Overton shall be a member of the Texas Municipal League for the purpose of better representation, information, advice, and other such services that may be provided. The City Manager is hereby authorized to pay the annual dues required for membership in said league.

## **Incorporation of State Law**

### **§ 31.90 Incorporation of Local Government Code**

The provisions of V.T.C.A., Local Government Code of Texas, insofar as its provisions are applicable to this City, are hereby adopted and incorporated by reference as fully set forth herein.

## **Smoking in City Buildings**

### **§ 31.100 Smoking In City Buildings Prohibited**

(a) It shall be unlawful for a person to smoke in a building owned or leased by the City of Overton and used for City purposes:

(b) "Smoke", "smokes", or "smoking" includes:

- (1) Carrying or holding a lighted pipe, cigar, or cigarette of any kind or any other lighted smoking equipment or device;
- (2) Lighting a pipe, cigar or cigarette of any kind or any other smoking equipment or device; or
- (3) Emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind or any other smoking equipment or device.

(c) The City Manager shall place signs visible at each entrance of all buildings owned or leased by the City and used for City purposes to notify persons entering that smoking is prohibited.

## CHAPTER 32: DEPARTMENTS, BOARDS, AND COMMISSIONS

### Section

#### **Creation of Departments, Commissions, and Committees**

- 32.01 Creation of departments
- 32.02 Creation of commissions and committees

#### **Police Department**

- 32.10 Police department created
- 32.11 Appointment of police officers; oath of office
- 32.12 Bond
- 32.13 Qualifications
- 32.14 Duties generally
- 32.15 Uniforms, badges, and armament
- 32.16 Police department policies manual adopted
- 32.17 Courteous behavior required of officers

#### **Police Reserve Force**

- 32.20 Police reserve separate and distinct from police department
- 32.21 Powers of Chief of Police relative to reserve
- 32.22 Composition
- 32.23 Diminishing or expanding membership
- 32.24 Application for membership
- 32.25 Applicant's qualifications and references
- 32.26 Oath required of applicants
- 32.27 Duties
- 32.28 Power to arrest
- 32.29 Termination of membership

#### **Creation of Departments, Commissions, and Committees**

### **§ 32.01 Creation of Departments**

The City Council may by ordinance create such departments as it determines to be in the best interest of the City and its inhabitants.

### **§ 32.02 Creation of Commissions and Committees**

The City Council may by ordinance create such commissions and committees as it determines to be in the best interest of the City and its inhabitants.

## **Police Department<sup>9</sup>**

### **§ 32.10 Police Department Created**

(a) There is hereby created and established a police department in the City of Overton which shall consist of a Chief of Police and such police officers as the City Council may from time to time deem necessary and proper.

(b) The Chief of Police shall be the commander and administrative head of the police department.

### **§ 32.11 Appointment of Police Officers; Oath of Office**

(a) All police officers shall be appointed and/or terminated by the Chief of Police with the approval of the City Manager.

(b) All police officers appointed to the police department shall take and subscribe to the official oath prescribed by the Constitution of the State of Texas.

### **§ 32.12 Bond**

Each police officer shall execute a bond, payable to the City, as required by law, conditioned that the police officer will faithfully perform the duties of the office. The City Council shall determine the amount of the bond at least annually. If the council fails to determine the amount of the bond for the succeeding year, the amount last prescribed shall continue to be the amount of bond required to be executed. Such bond shall be a corporate surety bond and the City shall pay all costs, premiums, and expenses associated with the bond.

### **§ 32.13 Qualifications**

All police officers shall meet the minimum standards for licensing as a peace officer as established by the Texas Commission on Law Enforcement Officer Standards and Education and have a current and valid peace officer license at the time of appointment. All police officers shall retain such license during their employment as a police officer with the City and will be subject to discharge if such license is suspended, revoked, or becomes invalid for any reason. In addition, all police officers must have a valid Texas vehicle operator's license and must be insurable as a vehicle driver by the City's automobile insurance carrier.

### **§ 32.14 Duties Generally**

All Police officers and other members of the police department shall be and are hereby invested with all the power and authority given to them as peace officers under the laws of the State of

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<sup>9</sup> **State law reference** - Authority of City to establish and regulate a municipal police force, V.T.C.A., Local Government Code, § 341.001.

Texas in enforcing the criminal and traffic laws of the state and the ordinances of this City within the jurisdictional limits of the City. It shall also be the general duty of all police officers to quell riots, disorders and disturbances. Of the peace and to take into custody all persons so offending against the public peace. Such officers shall further use their best endeavors to prevent the commission within the city of offenses against the laws, of the state and of the ordinances of the City; to observe and enforce all such laws and ordinances; to detect and arrest offenders against the same; to preserve the good order of the City and to secure the inhabitants thereof from violence, and the property therein from injury. Such officers shall have no power or authority in civil matters, but shall execute any criminal warrant or warrant of arrest which may be placed in their hands by the duly constituted authorities of the City. In addition, all police officers shall execute all writs and processes issued from the municipal court of the City.

### **§ 32.15 Uniforms, Badges, and Armament**

The Chief of Police shall prescribe the uniforms and badges for the members of the police department and direct the manner in which the members of said force shall be armed.

### **§ 32.16 Police Department Policies Manual Adopted**

The Overton Police Department Manual, as amended, containing the general policies, procedures, and rules for operation of the police department of the City is hereby adopted as the official departmental policy manual of the police department

### **§ 32.17 Courteous Behavior Required Of Officers**

It shall be the duty of all policemen to treat all City officers, as well as other persons with whom they come in contact in the discharge of their duties, in a courteous and respectful manner.

## **Police Reserve**

### **§ 32.20 Police Reserve Separate and Distinct From Police Department**

An auxiliary police force to be known as the police reserve is hereby established.

### **§ 32.21 Powers of Chief of Police Relative to Reserve**

The Chief of Police shall be the head of the police reserve and the members of the reserve shall be under the authority, control and command of the chief of police, subject to all ordinances of the City and provisions of this chapter.

The Chief of Police may, by order, establish rules and regulations to govern the police reserve force, to fix specific duties of its members, and to provide for the maintenance of discipline. He may change such orders from time to time, and he may command members of the police reserve force to obey the instructions of regular police officers in carrying out their orders.

### **§ 32.22 Composition**

The police reserve force shall be composed of personnel who have volunteered to join the organization and whose applications for membership have been accepted and who have complied with all the rules, regulations and orders provided for the conduct and control of the members thereof. It shall be composed of not more than twenty (20) members.

### **§ 32.23 Diminishing Or Expanding Membership**

The Chief of Police may by order diminish or expand the membership of the police reserve force as exigency may require, within the limit established by § 33.24.

### **§ 32.24 Application for Membership**

Application for membership in the police reserve shall be filed with the police department. Such application shall be on a form prescribed by the Chief of Police.

### **§ 32.25 Applicant's Qualifications And References**

Each applicant for membership in the police reserve shall furnish satisfactory proof of good character, temperate habits, freedom from communicable diseases, and physical ability to perform the duties of the position for which he seeks appointment.

### **§ 32.26 Oath Required Of Applicants**

Every police reserve shall subscribe to an oath that he will observe and obey the Constitution of the United States, the Constitution of this state, and the laws of this nation, this state, and this City and that he will carry out the duties of a member of the police reserve force to the best of his ability.

### **§ 32.27 Duties**

The duties of the police reserve force, subject at all times to the direction, supervision and control of the Chief of Police, shall be to assist the regular members of the police department in the enforcement of law and the maintenance of peace and order during periods of emergency designated by the Chief of Police. The Chief of Police may prescribe other duties than those mentioned herein to be performed by the police reserve force, not inconsistent with the provisions of this article.

### **§ 32.28 Power to Arrest**

A member of the police reserve force shall have the following powers of arrest and none other.

- (1) He may arrest only while on active duty.

- (2) He may arrest for a breach of the peace or a felony committed in his presence.
- (3) He may lend physical aid to any regular member of the police department in making any lawful arrest, when authorized by the Chief of Police or requested by any regular member of the police department.

### **§ 32.29 Termination of Membership**

Membership of any person in the police reserve may be terminated by the Chief of Police at any time for any cause deemed sufficient by the Chief of Police, and any member may resign from the police reserve at any time, but it shall be his duty to notify the Chief of Police of his resignation.

In addition to the penalties provided by law, any violation of law under color of the performance of his duty as a member of the police reserve force, and any breach of the rules and regulations established by the Chief of Police, shall subject any member to summary expulsion and the fact thereof may be published at the order of the chief.

## CHAPTER 33: MUNICIPAL COURT

### Section

#### **Municipal Court**

- 33.01 Municipal court created
- 33.02 Practices and procedures
- 33.03 Warrant of arrest fee
- 33.04 Dismissal fee

#### **Municipal Judge**

- 33.20 Office of municipal judge created; appointment and term; compensation; oath
- 33.21 Vacancy or incapacity
- 33.22 Removal of judge
- 33.23 Mayor as ex: officio judge
- 33.24 Qualifications

#### **Court Clerk**

- 33.30 Office of court clerk created; appointment
- 33.31 Duties of court clerk

#### **City Prosecutor**

- 33.40 City prosecutor - office established
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#### **Municipal Court Technology Fund**

- 33.50 Municipal Court Technology Fund Established
- 33.51 Payment into Fund
- 33.52 Collection and Administration
- 33.53 Use of Funds

### **§ 33.01 Municipal Court Created<sup>10</sup>**

There is hereby created a court in and for the City that shall be known as the Municipal Court of the City of Overton, Texas. This court shall have exclusive original jurisdiction within the city with power to hear and determine all cases of alleged violations of the ordinances of the City and all other cases over which municipal courts are given jurisdiction by state law.

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<sup>10</sup> **State law reference** - Municipal courts created and jurisdiction established, V.T.C.A., Government Code, §§ 29.002 - 29.003.



### **§ 33.02 Practices and Procedures**

The rules prescribed by state law governing trials in the state justice of the peace courts shall govern the procedures and practices of the municipal court. The City Council may prescribe such additional rules of practice and procedure as are not inconsistent with state law. The municipal judge shall have the power to set time for court sessions as the docket may require.

### **§ 33.03 Warrant of Arrest Fees**

If any person fails to appear before the court, either in compliance with a personal bond or as directed by notice from the municipal court clerk's office, a warrant for his arrest shall be issued and a special expense of \$200.00 shall be charged for the issuance of such warrant, which sum shall be deposited in the general fund. The fee shall not be refundable except on the finding by the court that notice was not properly given.

### **§ 33.04 Dismissal Fee, Safety Driving Course**

The municipal court, at its discretion, may collect a special expense as prescribed in § 3.00 of the Fee Schedule (Appendix I of this Code) from each defendant as a condition of dismissal of any case against the defendant because of actions by or on behalf of the defendant subsequent to the date of the alleged offense, such as the completion by the defendant of a safety driving course. Said sum shall be paid into the general funds of the City.

## **Municipal Judge<sup>11</sup>**

### **§ 33.20 Office of Municipal Judge Created; Appointment and Term; Compensation; Oath**

(a) There is hereby created the office of judge of the municipal court who shall have all the powers and authority as granted by state law and the ordinances of this City and shall perform all the duties as prescribed by the laws of the State of Texas and the ordinances of this City.

(b) The office of municipal judge shall be filled by appointment by the City Council. The term of the Municipal Judge shall continue until such time as the City Council removes the appointed Judge and relieves the Judge from his or her duties and responsibilities.

(c) Compensation for the office of municipal judge shall be set from time to time by the City Council.

(d) Prior to taking office, the judge of the municipal court shall take the oath of office required by the Constitution and laws of the State of Texas.

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<sup>11</sup> **State law reference** - Municipal judges, V.T.C.A., Government Code, §§ 29.004 - 29.007.

### **§ 33.21 Vacancy Or Incapacity**

The City Council may appoint by resolution one or more persons to sit for the regular judge of the municipal court or for the presiding judge or any of the associate judges of such court, while such judge or judges, any or all, are temporarily unable to act for any reason. Such appointee or appointees shall possess the same qualifications required of the regular municipal judge, and shall have all the powers and duties of such office and shall receive the compensation set by the City Council for the regular municipal judge. A vacancy in the office of municipal judge shall be filled by the City Council for the unexpired term only.

### **§ 33.22 Removal of Judge**

The judge of the municipal court may be removed by a majority of the City Council for incompetency, corruption, misconduct, or malfeasance in office, after due notice and an opportunity to be heard in his defense. The judge of the municipal court may also be removed from office by a City Council resolution declaring a lack of confidence in the judge, provided that two-thirds (2/3) of the City Council vote in favor of said resolution.

### **§ 33.23 Mayor as Ex Officio Judge**

The Mayor shall serve as ex officio judge of the municipal court and shall have and exercise the authority, jurisdiction, and powers that are conferred by law upon the judge. In case of the absence, disqualification, or inability of the Mayor, for any cause, to act, then the Mayor Pro Tem shall act as such judge.

### **§ 33.24 Qualifications**

Any person appointed to the office of municipal judge shall have the qualifications required by law for municipal judges by the laws of the State of Texas, as the same may be amended from time to time.

### **Court Clerk<sup>12</sup>**

### **§ 33.30 Office Of Court Clerk Created; Appointment**

- (a) The office of municipal court clerk is hereby created.
- (b) The clerk for the municipal court shall be appointed and may be removed by the Chief of Police and City Manager.

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<sup>12</sup> **State law reference** - Municipal court clerks authorized and duties defined, V.T.C.A., Government Code, §§ 29.010 -29.011.

### **§ 33.31 Duties of Court Clerk**

The clerk shall keep records of the proceedings of the municipal court, issue all process, and generally perform the duties of the clerk of a court as prescribed by law for a municipal clerk in so far as the same may be applicable. The clerk, or deputy clerk, shall perform the duties described in V.T.C.A., Government Code, § 29. 010, as the same may be amended from time to time.

### **City Prosecutor**

#### **§ 33.40 City Prosecutor - Office Established**

The position of prosecutor of the municipal court of the City is hereby established and the person occupying said position shall be known as the city prosecutor. Said position may be filled by the city attorney.

#### **§ 33.41 Appointment; Compensation**

The city prosecutor shall be appointed by the City Council. He shall be paid such compensation for his services as may be provided by the City Council.

#### **§ 33.42 Term of Office**

The city prosecutor shall serve for an indefinite term and his services may be terminated at any time by the City Council.

#### **§ 33.43 Duties**

The duties and responsibilities of the city prosecutor shall be as follows:

- (1) To assist in the preparation of all complaints to be used in the municipal court.
- (2) To prosecute all cases in the municipal court.
- (3) To assist in the preparation of records for cases appealed from the municipal court.
- (4) To perform such other duties in connection with the operation of the municipal court as may be fixed by the City Council.

## **Municipal Court Technology Fund**

### **§ 33.50 Municipal Court Technology Fund Established**

There shall hereafter be and be established a special fund to be known as the "municipal court technology fund."

### **§ 33.51 Payment into Fund**

(a) Every defendant convicted for a misdemeanor offense in the Municipal Court of the City of Overton, Texas, on or after September 1, 1999, shall be required to pay a four dollars (\$4.00) technology fee as a cost of court.

(b) A person is considered "convicted" if:

(1) A sentence is imposed on the person;

(2) A person receives community supervision, including deferred adjudication community supervision; or

(3) A court defers final disposition of the person's case.

### **§ 33.52 Collection And Administration**

(a) The court clerk shall collect the court costs as established herein and shall pay them to the municipal treasurer, or to any other official who discharges the duties commonly designated to the municipal treasurer, for deposit in a fund to be known as the municipal court technology fund;

(b) The municipal court technology fund shall be administered by or under the direction of the City Council of the City of Overton, Texas.

### **§ 33.53 Use of Funds**

The fund collected as set forth herein may be used only to finance the following items when used for the purpose of providing technological enhancements for the municipal court:

(1) Computer systems;

(2) Computer networks;

(3) Computer hardware;

(4) Computer software;

- (5) Imaging systems;
- (6) Electronic kiosks;
- (7) Electronic ticket writers; and
- (8) Docket management systems.

## CHAPTER 34: FINANCE AND REVENUE; TAXATION

### Section

#### **Fiscal Year**

34.01 Fiscal year designated

#### **City Depository**

34.10 Official depository designated

#### **Annual Budget**

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34.21 Budget required

34.22 Budget content

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#### **Audit of City Funds**

34.30 Annual audit required

34.31 Financial reporting of agencies funded by city

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#### **Ad Valorem (Property) Tax**

34.40 Authority to levy property tax

34.41 Participation in appraisal district

34.42 Tax due date

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34.44 Tax authorized on tangible personal property; exceptions

#### **Local Sales and Use Taxes**

34.50 Local sales tax authorized

34.51 Section 4B sales tax authorized

34.52 Local sales tax on residential gas and electricity

34.53 Telecommunications tax authorized

#### **Bidding Procedures**

34.60 Bidding procedures and exemptions

## **Fiscal Year**

### **§ 34.01 Fiscal Year Designated**

The fiscal year of the City is hereby designated as beginning with the first day of October of each year and ending the last day of September next ensuing thereafter.

## **City Depository<sup>13</sup>**

### **§ 34.10 Official Depository Designated**

The City of Overton is hereby designated as the official depository of the City. Checking accounts or savings accounts, as authorized by the City Council, shall be established at said bank with the requirement that all checks written against any such account(s) shall require at least two signatures. The authorized persons who may sign City checks are the City Manager, Mayor, Mayor Pro Tem, and a City Secretary.

## **Annual Budget<sup>14</sup>**

### **§ 34.20 Budget Officer**

The budget officer shall be the Mayor of the City.

### **§ 34.21 Budget Required**

The City Manager or his designated appointee shall annually prepare a budget to cover all proposed expenditures of the City for the succeeding year.

### **§ 34.22 Budget Content**

The budget shall show all expenditures proposed and shall be carefully itemized to make as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes for the preceding year. The budget must also clearly show each of the various projects for which appropriations are made in the budget and the budgeted sums for each of such projects. The budget shall also contain a complete financial statement of the City showing all outstanding obligations of such City, the cash on hand to the credit of each and every fund, and funds expected to be received from all sources during the ensuing year, the estimated revenue available to cover the proposed budget, and the estimated rate of tax, if any, which will be required.

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<sup>13</sup> **State law reference** - V.T.C.A., Local Government Code, Chapter 105, requires municipalities to designate an official depository for municipal funds.

<sup>14</sup> State law reference-V.T.C.A., Local Government Code, Chapter 102, requires annual budget, prescribes that Mayor serve as budget officer, and describes the minimum contents of the annual budget.

### **§ 34.23 Cooperation Required**

The City Manager shall have the authority to require any officer, department head, or other unit of the City government to furnish such information as may, in the Mayor's discretion, be necessary to properly prepare the proposed budget.

### **§ 34.24 Time Of Filing and Public Inspection**

The budget shall be filed with the City Secretary ten (10) days prior to the time the City Council makes its tax levy for the current fiscal year, or as close as is practical. The budget as filed with the City Secretary shall be available for public inspection during all reasonable business hours.

### **§ 34.25 Public Hearing Required**

The City Council shall hold a public hearing on the proposed budget. Such public hearing shall occur after the fifteenth (15th) day after the proposed budget has been filed with the City Secretary but before the City Council makes its tax levy. Public notice of the date, time and location of the hearing shall be given in accordance with the Texas Open Meetings Law and Chapter 102 of the Local Government Code.

### **§ 34.26 Filing Adopted Budget**

On final approval of the budget by the City Council, a copy of the budget shall be filed with the City Secretary and the Rusk County and Smith County Clerk's office.

## **Audit of City Funds<sup>15</sup>**

### **§ 34.30 Annual Audit Required**

The City shall have its records and accounts audited annually and shall have an annual financial statement prepared. The audit shall be performed by a licensed certified public accountant or a public accountant who holds a permit to practice from the Texas State Board of Public Accountancy. Such audit and financial statement shall be filed with the City Secretary within one hundred and twenty (120) days after the last day of each fiscal year.

### **§ 34.31 Financial Reporting Of Agencies Funded By City**

The City Council may condition funding of volunteer or other groups requesting City support on availability of adequate periodic financial information listing income and expenditures by type, amount, and date.

### **§ 34.32 Forfeiture Proceedings**

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<sup>15</sup> State law reference-V.T.C.A., Local Government Code, Chapter 103, requires municipalities to prepare and file an annual audit.



(a) All money received from forfeitures by the police department or from forfeitures of any other law enforcement agency shall be immediately deposited into a special bank account maintained in the City's authorized depository. Such funds shall be subject to the same signature requirements as other City accounts and payment authorizations shall be documented by the police department by case number or other reference to an eligible expenditure.

(b) In the case of monies required for the payment of informants or other criminal investigatory matters, the Police Chief shall be responsible for request documentation and for keeping the amounts withdrawn to the minimum required for the particular prospective activity. He shall also be responsible for the redeposit of unused amounts. The police department case files shall reflect amounts paid for drugs, informants, or other criminal investigatory activity with appropriate safeguards for the protection of individuals or the criminal investigatory process. Sums not required for informants or drug buys may be expended only after receiving budget approval.

(c) The City Secretary shall maintain a separate account for the special forfeiture account. Amounts budgeted for drug buys or payment of informants shall be deposited into the special account where forfeiture funds are paid.

### **Ad Valorem (Property) Tax**

#### **§ 34.40 Authority to Levy Property Tax**

There is hereby established the authority to levy and collect an annual ad valorem (property) tax not exceeding one and one-half percent (1-1/2%) on one hundred dollars (\$100.00) valuation of taxable property within the City. The tax rate shall be set annually by the City Council in an amount to fund the annual budget of the City.

#### **§ 34.41 Participation in Appraisal District**

The City hereby authorizes participation in the Rusk County Appraisal District. The said appraisal district shall be authorized to perform all appraisal and assessment functions required under the State Property Tax Code. The City shall be responsible for the collection of its municipal taxes unless other contractual arrangements are made.

#### **§ 34.42 Tax Due Date**

The property taxes levied by the City each year shall become due 90 days from receipt of the tax statement for the applicable taxing year. Penalties and interest for delinquent taxes shall be incurred in accordance with Section 34-01 of the Texas Property Tax Code.

### **§ 34.43 Additional Penalty for Collection Costs of Delinquent Taxes**

To enforce the collection of delinquent taxes pursuant to Section 6.30 of the Texas Property Tax Code, it is hereby provided, as authorized in Section 34.07 of the Texas Property Tax Code, that taxes that remain delinquent on July 1 of the year in which they become delinquent shall incur an additional penalty in the amount of fifteen percent (15%) of the amount of taxes, penalty, and interest due, to defray the costs of collection.

### **§ 34.44 Tax Authorized on Tangible Personal Property; Exceptions**

(a) A tax is hereby authorized on all goods, wares, merchandise, other tangible personal property, and ores, other than oil, natural gas, and other petroleum products as defined in Article V111, Sec. 1-j of the Constitution of the State of Texas and in Sec. 11.251, Texas Property Tax Code in Tax Year 1990 and each year thereafter.

(b) The application of the exemption provided for in Art. VII, Sec. 1-j of the Constitution of the State of Texas is hereby repealed by the City of Overton, Texas, as authorized by Subsection (b) thereof.

(c) The rate of tax imposed by this section shall be the same as the rate imposed by the City of Overton, Texas, for all other ad valorem taxes as authorized by the legislature of the State of Texas.

(d) This section shall be cumulative of all other ordinances and regulations of the City of Overton and shall not operate to repeal or affect any of such other ordinances.

(e) The tax provided for in this section shall not serve as an offset to, be in lieu of, or in any way reduce any amount payable to the City, it being the express intent hereof that all obligations, impositions, and agreements of every kind and nature shall remain in full force and effect without reduction or limitation hereby.

(f) This section is to be liberally construed to achieve its remedial purposes.

## **Local Sales and Use Taxes**

### **§ 34.50 Local Sales Tax Authorized**

In accordance with Chapter 321 of the Tax Code, a local sales and use tax of one percent (1%) has been adopted and is imposed as a result of an election held on January 1, 1972.

### **§ 34.51 Section 4A Sales Tax Authorized**

In accordance with 4A Section 413, art. 5190.6, V.T.C.S., as amended by the "Development Corporation Act of 1979", a local sales and use tax of one-half of one percent (0.5%) has been adopted and is imposed as a result of an election held on August 9, 1997, said election being

authorized by Ordinance No. 97.3, passed June 16, 1997. Ballots from said election were canvassed and ratified through adoption of Ordinance No. 97.4, passed August 12, 1997. Proceeds from said sales and use tax are to be used and applied to projects as authorized by the "Development Corporation Act of 1979".

### **§ 34.52 Local Sales Tax on Residential Gas and Electricity**

The imposition of the one percent (1%) City sales tax on residential use of gas and electricity within the corporate limits of the City of Overton shall be continued beyond October 1, 1979.

### **§ 34.53 Telecommunications Tax Authorized<sup>16</sup>**

(a) A tax is hereby authorized on all telecommunications services sold within the City. For purposes of this section, the sale of telecommunications services is consummated at the location of the telephone or other telecommunications device from which the call or other communication originates. If the point of origin cannot be determined, the sale is consummated at the address to which the call or other communication is billed.

(b) The application of the exemption provided for in V.T.C.A., Tax Code, § 321.210, is hereby repealed by the City, as authorized by § 321.210(b) thereof.

(c) The rate of tax imposed by this section shall be the same as the rate imposed by the City for all other local sales and use taxes as authorized by the legislature of the State of Texas.

(d) The City Secretary shall forward to the Comptroller of the State of Texas by United States registered or certified mail a copy of this section with a copy of the minutes of the City Council's vote and discussion of this section.

(e) The tax provided for herein shall not serve as an offset to, be in lieu of, or in any way reduce any amount payable to the City pursuant to any franchise, street use ordinance, statute, or without limitation by the foregoing enumeration, otherwise payable by any provider of telecommunications service, it being the express intent hereof that all such obligations and impositions of every kind and nature shall remain in full force and effect without reduction or limitation hereby.

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<sup>16</sup> **State law reference** - Authority to impose tax on telecommunications services is found in V.T.C.A., Tax Code, 321.210.

## **Bidding Procedures<sup>17</sup>**

### **§ 34.60 Bidding Procedures and Exemptions**

(a) Except in the case of exempted procurements, the City may not purchase or enter into a contract that requires an expenditure of more than fifteen thousand dollars (\$25,000) without first submitting such to competitive sealed bidding, except in the case of high technology procurements in which case the City may take competitive sealed proposals. Exempted procurements shall include the following:

- (1) A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the City's residents or to preserve City property;
- (2) A procurement necessary to preserve or protect the public health or safety of the City's residents;
- (3) A procurement necessary because of unforeseen damage to public machinery, equipment, or other property;
- (4) A procurement for personal or professional services;
- (5) A procurement for work that is performed and paid for by the day as the work progresses;
- (6) A purchase of land or right-of-way;
- (7) a procurement of items that are available from only one source;
- (8) A purchase of rare books, papers, and other library materials for a public library;
- (9) paving, drainage, street widening, and other public improvements, or related matters, if at least one-third (1/3) of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements; and
- (10) a public improvement project authorized by the voters for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters.
- (11) a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212; and

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<sup>17</sup> **State law reference** - The primary regulations and limitation relative to competitive bidding by municipalities are found in V.T.C.A., Local Government Code, Chapters 252 and 271; for trenching safety standards, see V.T.C.A., Health & Safety, §§ 756.021 - 756.022.

(12) Personal property sold at an auction by a state licensed auctioneer, at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code, or by a political subdivision of this state, a state agency of this state, or an entity of the federal government.

(b) Notice of the time and place at which competitive sealed bids or proposals must be published in accordance with the provisions of V.T.C.A., Local Government Code, §§ 252.023, 252.041, and 271.025.

(c) Bids may be opened by the City Council at a public meeting or by an officer or employee of the City at or in an office of the City.

(d) A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.

## CHAPTER 35: CITY OFFICIALS; CITY EMPLOYEES

### Section

#### **City Officers, Generally**

35.01 City council to provide for officers of city

#### **City Secretary**

35.10 Office of City Secretary created

35.11 Bond required

35.12 Duties generally

#### **City Attorney**

35.30 Office of City Attorney created; appointment and termination

35.31 Authority to contract with person or firm

#### **Chief of Police**

35.40 Office of Chief of Police created; appointment and termination

#### **City Manager**

35.50 Office of City Manager created; appointment and termination

#### **Building Inspector**

35.60 Office of Building Inspector; appointment and removal

35.61 Duties

35.62 Right to enter premises

35.63 Building inspector not personally liable

#### **Personnel Policies & Rules**

35.70 Adoption of Personnel Policies & Rules

#### **Social Security**

35.80 Social Security benefits authorized

35.81 Mayor to act as agent

35.82 City Secretary to administer

#### **City Officers, Generally**

### **§ 35.01 City Council to Provide For Officers of City**

The City Council may provide for officers and agents of the City as it may from time to time direct to be appointed or elected.

#### **City Secretary<sup>18</sup>**

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<sup>18</sup> **State law reference** - Authority to appoint, remove and establish duties for City Secretary is found in V.T.C.A., Local Government Code, §§ 22.071 - 22.074 and § 22.077.

### **§ 35.10 Office of City Secretary created**

The office of City Secretary is hereby created and shall receive such compensation as may be fixed by the City Council. The City Secretary shall be recommended by the City Manager appointed by a majority vote of the City Council.

### **§ 35.11 Bond Required**

The City Secretary shall execute a bond, payable to the City, as required by law, conditioned that the City Secretary will faithfully perform the duties of the office. The City Council shall determine the amount of the bond at least annually. If the council fails to determine the amount of the bond for the succeeding year, the amount last prescribed shall continue to be the amount of bond required. Such bond shall be a corporate surety bond and the City shall pay all costs, premiums, and expenses connected therewith.

### **§ 35.12 Duties Generally**

The City Secretary shall perform all duties of the City Secretary as set forth in V.T.C.A., Local Government Code, § 22.073, and as assigned by the City Manager and the City Council.

### **City Attorney**

### **§ 35.30 Office of City Attorney created; appointment and termination**

The office of City Attorney is created. The City Attorney shall be appointed and/or terminated by the City Council.

### **§ 35.31 Authority to Contract with Person or Firm**

The City Council may contract with a private firm or person in private legal practice to perform the duties and fill the office of City Attorney.

### **Chief of Police**

### **§ 35.40 Office of Chief of Police created; appointment and termination**

The position of Chief of Police is created. The Chief of Police shall be appointed and/or terminated by the City Manager.

## **City Manager**

### **§ 35.50 Office of City Manager created**

The position of City Manager has been created by the voters of the City of Overton. The City Manager shall act as the Chief Administrative Officer for the City. The terms and conditions of the City Manager's employment may be governed by contract agreed upon and approved by the City Council.

## **Building Inspector**

### **§ 35.60 Office of Building Inspector; appointment and removal**

The office of Building Inspector shall be filled through contract with a private person or firm, subject to approval of said contract by the City Manager.

### **§ 35.61 Duties**

It shall be the duty of the Building Inspector to enforce all laws relating to the construction, alteration, removal, and demolition of buildings and structures.

### **§ 35.62 Right to Enter Premises**

The Building Inspector, in the discharge of his official duties and upon proper identification, shall have authority to enter a building, structure, or premises at any reasonable hour, when there is legal cause and authority to do so.

### **§ 35.63 Building Inspector Not Personally Liable**

The Building Inspector, acting in good faith and without malice in the discharge of his official duties for the City, shall not thereby render himself liable personally and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of his duties.



## **Personnel Rules and Policies**

### **§ 35.70 Adoption of Personnel Policies**

Personnel rules and policies for the City of Overton are hereby adopted as set forth in the document entitled *Personnel Policies and Procedures* included in this Code as Appendix C.(Ord. 2014-12-18A)

### **Social Security<sup>19</sup>**

#### **§ 35.80 Social Security Benefits Authorized**

The City Council acting for and on behalf of the City shall enter into all necessary agreements with the State Department of Human Services for the purpose of securing the benefits of Federal Old Age and Survivors Insurance for City employees.

#### **§35.81 Mayor to Act as Agent**

The Mayor is hereby appointed as agent of the City Council and of the City to execute all necessary agreements and instruments for and in behalf of the City Council and the City relative to the Federal Old Age and Survivor's Insurance program.

#### **§ 35.82 City Secretary to Administer**

The City Secretary is hereby directed to be the person responsible for making assessments, collections, payments and reports as required by the State Department of Human Services.

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<sup>19</sup> **State law reference** - Social security coverage for municipal employees, V.A.C.S., Art. 695g.