

ORDINANCE NO. 178-2004

AN ORDINANCE TO ESTABLISH A MUNICIPAL COURT

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BROOKWOOD, ALABAMA, AS FOLLOWS:

Section 1. **Establishment of a Municipal Court.** That there be and there is hereby established, effective November 1, 2004, a Municipal court for the Town of Brookwood, Alabama, pursuant to the provisions of Title 12, Chapter 14, Code of Alabama, 1975.

Section 2. **Jurisdiction.** The Municipal Court of the Town of Brookwood, Alabama, shall have jurisdiction of all prosecutions for the breach of ordinances of the municipality within its corporate limits and police jurisdiction. The 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.

Section 3. **Time and Place of Holding Court.** The Municipal Court of the Town of Brookwood, Alabama, shall hold court at such time and place as the governing body may determine with the advice of the municipal judge.

Section 4. **Provisions for Judge.**

- A. The Municipal Court shall consist of one municipal judge to be appointed by a vote of a majority of the members elected or appointed to the municipal governing body. The judge shall be appointed for a term of two years. The municipal judge shall be eligible for reappointment upon the expiration of his term. He shall hold office until his successor is appointed and qualified.
- B. The municipal judge must be licensed to practice law in the State of Alabama and must be a qualified elector of the State of Alabama. No judge shall be otherwise employed in any capacity by the municipality during his term of office.
- C. The office of the municipal judge shall be vacant if he dies, resigns, or is removed, and vacancies shall be filled by the municipal governing body in the same manner as original appointments are made. Any person so appointed shall be eligible to serve two years from the date of appointment.
- D. The municipal judge shall, before assuming office, take and sign the oath provided by the constitution, and a copy thereof shall be filed in the office of the Secretary of State, the Administrative Director of Courts and the Clerk of the municipality.

- E. The municipal judge shall be subject to all grounds of disqualification from hearing specific cases applicable to state court judges.

Section 5. **Compensation of Judge.** The annual salary of the municipal judge of the Town of Brookwood, Alabama, shall be payable in twelve equal monthly installments. This salary shall not be diminished during the judge's term of office. Any general increase in the compensation or all or substantially all municipal employees shall be applied proportionately to the salary of the municipal judge.

Section 6. **Powers of the Court.**

- A. The Municipal Judge shall have the power to admit to bail any person.
- B. charged with the violation of any municipal ordinance by requiring an appearance bond, with good security, to be approved by the municipal judge or his designee in an amount not to exceed One Thousand Dollars(\$1,000.00) and may, in his discretion, admit to bail such persons on a personal recognizance bond conditioned on the appearance of such persons before him on a day named therein to answer the charges preferred against them.
- C. The Municipal Judge shall have the authority to punish any person Convicted of violating a municipal ordinance with a fine of not more Than Five Hundred Dollars (\$500.00) and / or a sentence if imprisonment or hard labor for a period not exceeding six (6) months except, when in the enforcement of the penalties prescribed in Section 32-5A-191 (DUI cases), such fine and sentence of imprisonment or hard labor shall not exceed the maximum fine and imprisonment authorized by that Section. The penalty imposed on a corporation shall consist of a fine only, plus costs of court
- D. The 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 Fifteen Dollars (\$15.00) for each day's service.
- E. Upon each conviction in municipal court for a violation of any ordinance of the Town of Brookwood, Alabama, 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 of Alabama, and the latter such costs and fees shall be remitted pursuant to the said statutes. All costs taxed for the Town, as hereinabove provided, shall be paid into the Town treasury.
- F. 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, such fines and

costs to be payable within ninety days, upon non-payment of which executions may issue upon the bond as upon judgments in state courts.

- G. The Municipal Judge shall have the authority to continue the 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 of educational, corrective or rehabilitative programs, suspend driving privileges for such time and under such conditions as provided by law and order hearings to determine the competence 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.
- H. All cases in municipal court shall be tried by a municipal judge without a jury.
- I. The 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 Section 12-14-13, Code of Alabama, 1975.
- J. The Municipal Judge may administer oaths, compel the attendance of witnesses and compel the production of books and papers, punish by fine not exceeding Fifty Dollars (\$50.00) and /or imprisonment not exceeding five days any person found and adjudged to be in contempt of court, and 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 Municipal Judge shall designate any other municipal officers who shall be authorized to approve appearance and appeal bonds.
- K. The Municipal Court shall take judicial notice of the ordinances of the municipality.
- L. 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.

Section 7. **Powers of the Mayor.** The mayor may remit fines and such costs as are payable to the municipality and commute sentences imposed by municipal judges or the court to which an appeal was taken for violations of municipal ordinances, and he shall report his action to the council or other governing body at the first regular meeting thereof in the succeeding month with his reasons therefore in writing.

Section 8. **Appeals.**

- A. 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.

- B. The municipality may appeal within sixty (60) days, without bond, from a judgment of the municipal court holding a municipal ordinance invalid.
- C. A defendant may appeal in any case within fourteen 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), as fixed by the Court, conditioned upon defendant's appearance before the circuit court. The municipal court may waive appearance 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 prosecutor shall notify the circuit clerk and the case shall be set for trial at the earliest practicable time.
- D. 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 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.
- E. 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.
- F. Upon failure of an appellant to appear in the circuit court when the case is called for trial, unless good cause for such default is shown, the court shall dismiss the appeal and upon the expiration of 30 days from such date, unless the dismissal is set aside, the circuit clerk shall return the file, with a copy of the order of dismissal, to the clerk of the municipal court and the judge of the municipal court may enter judgment of default on the appeal bond by utilizing the procedures set forth in Section 15-13-81. The circuit court may, on motion of the defendant made within thirty 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.
- G. Upon receipt of notice of dismissal of an appeal, the municipal court may issue a warrant for arrest to 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.
- H. If a judgment is entered against a defendant on 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 therefore in favor of the municipality with sureties or as otherwise provided for convictions under state law.

- I. Upon receipt of payment of fines, forfeitures and costs upon appeals, the clerk of the circuit court shall within thirty (30) days ninety percent (90%) of such fines and forfeitures and ten percent (10%) of the cost 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 percent (5%) per month for default in such payments.
- J. 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, 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 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 had been taken. If bail is forfeited as herein provided, a conditional judgment must be entered 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.

Section 9. **Warrants.** The 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.

Section 10. **Magistrates.** The Municipal Judge shall take steps to have magistrates appointed as needed for the Town of Brookwood, Alabama, pursuant to Rule 18 of the Alabama Rules of Judicial Administration. The powers of the magistrate shall be limited to: (1) issuance of arrest warrants; (2) setting bail when issuing arrest warrants in accordance with the discretionary bail schedule; provided, however, that no magistrate shall set bail for any offense in excess of the maximum amount posted in the bail schedule, unless approved by the Supreme Court; (3) approving surety bonds and receiving cash bail in municipal ordinance prosecutions;

(4) authorizing the release of defendants on their personal recognizance in misdemeanor prosecutions; (5) receiving pleas of guilty in misdemeanor cases where a schedule of fines has been prescribed pursuant to Rule 20, Alabama Rules of Judicial Administration; (6) accountability to the municipal court for all uniform traffic tickets and complaints, monies received and records of offenses; and (5) such other authority as may be granted by law.

Section 11. **Acting Municipal Judge.** In the absence from the Town, death, disability, or disqualification of a municipal judge, for any reason, the mayor of the municipality shall have the authority to designate a person, licensed to practice law in the state and a qualified elector of the state, not otherwise employed in any capacity by the municipality, to serve as acting municipal judge with all power and authority of a duly appointed municipal judge. No such acting judge may serve for more than thirty successive days or a total of sixty 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.

Section 12. The Municipal Judge shall report on the proceedings of the municipal court as required by law or rule.

Section 13. The Municipal Judge shall be required to make a report to the council on the operation of the municipal court every month.

Section 14. **Severability Clause.** Each and every provision of this ordinance is hereby declared to be an independent provision and the holding of any provision hereof to be void and invalid for any reason shall not affect any other provision hereof, and it is hereby declared that the other provisions of this ordinance would have been enacted regardless of any provisions which might have been invalid.

Section 15. **Repealer.** All ordinances or parts of ordinances inconsistent herewith and in force at the time this ordinance takes effect are hereby repealed.

Section 16. **Effective Date.** This ordinance shall become effective 20 day of July, 2004 following its passage, approval and publication as required by law.

ORDAINED this the 23 day of July 2004.

TOWN OF BROOKWOOD

Alton C. Hyche
Alton Hyche, Mayor

ATTEST: Linda Barger
Town Clerk

CERTIFICATE OF POSTING

I hereby certify that the above and foregoing Resolution was posted on the 23
day of July 2004 at the following locations:

1. Brookwood Town Hall
2. Ken's (C) Store
3. Brookwood Shell
4. Hometown Grocery

Linda Barger
Linda Barger, Town Clerk