

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF CITY COMMISSIONERS FOR THE CITY OF MANGUM, OKLAHOMA, AMENDING TITLE 1, CHAPTER 4, SECTION 1-4-1(C) TO CLARIFY ANY FINE SET IN ACCORDANCE WITH ORDINANCE IS IN ADDITION TO COURT COSTS AND OTHER PENALTIES INCLUDING RESTITUTION; AMENDING TITLE 1, CHAPTER 8, SECTION 1-8-7-6 BY ELIMINATING THE FINE OF FAILURE TO APPEAR; AMENDING TITLE 1, CHAPTER 8, SECTIONS 1-8-8-3 AND 1-8-8-4 AND ADDING -SECTIONS 1-8-8-5, 1-8-8-6, 1-8-8-7, AND 1-8-8-8 TO BRING THE CITY'S ORDINANCES REGARDING COLLECTION OF COURT COSTS, FINES, AND FEES IN COMPLIANCE WITH STATE LAW; PROVIDING FOR CRITERIA FOR ABILITY TO PAY; PROVIDING FOR COST HEARINGS; PROVIDING FOR ISSUANCE OF CITE AND RELEASE WARRANTS; PROVIDING FOR WILLFULNESS HEARINGS; ADOPTING STATE DEFINITIONS; UPDATING STATUTORY REFERENCES, MODERNIZING WORDING, AND MAKING OTHER NON-SUBSTANTIVE CHANGES; PROVIDING SEVERABILITY; AMENDING ALL ORDINANCES, POLICIES, OR RESOLUTIONS AT VARIANCE; AND DECLARING AN EMERGENCY

Whereas, House Bill No. 2259 changed how a court, including a municipal court, can charge or collect fees;

Whereas, the provisions of House Bill No. 2259 were codified and became effective November 1, 2023;

Whereas, after reviewing the City of Mangum's Ordinances, it is necessary to amend portions of our ordinances regarding the City's court proceedings and cost collection efforts to comply with the provisions of the new law.

NOW THEREFORE, be it ordained by the Mayor and the Board of Commissioners of the City of Mangum, Oklahoma, the following:

Section 1. Section 1-4-1(c) is amended to read as follows:

Fines are additional. Fines specified by any ordinance or statute shall be in addition to municipal court costs and other penalties, including restitution, required by State law.

Section 2. Section 1-8-7-6 is amended to read as follows:

Sec. 1-8-7-6. - Failure to appear.

If, without sufficient cause, a defendant fails to appear according to the terms or conditions of his bond, whether for hearing, arraignment, trial, cost hearing, or judgment, or upon any other occasion when his presence in court or before the Judge may be lawfully required, the Judge may direct that fact to be entered upon the court minutes, thereby declaring the bond to be forfeited. Without advancing court costs, the Judge shall then cause the forfeiture to be certified to the District Court of Greer County, where it shall be entered upon the judgment docket with the full force and effect of a District Court judgment. Court costs shall be collectible from the proceeds of the bond.

Section 3. Section 1-8-8-3 is amended to read as follows:

Sec. 1-8-8-3. - Determining the Ability to Pay Fines, costs, or fees.

(a) All definitions set forth in 22 O.S. § 983 of the Oklahoma Statutes is adopted and incorporated within this ordinance.

(b) When the judgment and sentence of the court, either in whole or in part, imposes court financial obligations upon a defendant, the court at the time of sentencing may immediately, or at any point thereafter until the debt is either paid or waived, determine the ability of a defendant to pay the court financial obligations. The court may make such determinations at a cost hearing or upon written motion or affidavit by the defendant. The ability of a defendant to pay court financial obligations may not impact the sentence imposed.

(c) Defendants with court financial obligations who are found by the court to be unable to pay, in whole or in part, shall be relieved of the debt by the court through a hardship waiver of the court financial obligations, either in whole or in part. In determining the ability of a defendant to pay, the court will consider the following factors:

- (1) individual and household income;
- (2) household living expenses;
- (3) number of dependents;
- (4) assets;

(5) child support obligations;

(6) physical or mental health conditions that diminish the ability to generate income or manage resources;

(7) additional case-related expenses to be paid by the defendant, and

(8) any other factors relevant to the ability of the defendant to pay.

(d) In determining the ability of a defendant to pay, the following may not be considered income or assets:

(1) child support income;

(2) any monies received from a federal, state, or tribal government need-based or disability assistance program; or

(3) assets exempt from bankruptcy.

(e) Defendants under the following circumstances are presumed unable to pay and eligible for relief in accordance with this section:

(1) designated as totally disabled by any federal, state, or tribal disability service program including but not limited to military disability, Social Security Disability Insurance, Supplemental Security Income, or tribal disability benefit;

(2) receives support from Temporary Assistance for Needy Families program, Supplemental Nutrition Assistance Program, the Special Supplemental Nutrition Programs for Women, Infants, and Children nutrition education and supplemental food programs, or any other federal need-based financial support;

(3) receives subsidized housing support through the Housing Choice Voucher program, the United States Department of Housing and Urban Development, or other state, local, or federal housing subsidy program, or

(4) total income is below 150% of the federal poverty level.

Section 4. Section 1-8-8-4 is amended to read as follows:

Sec. 1-8-8-4. - Selecting payment terms or requesting a Cost Hearing

(a) At the time of plea or sentencing, the court will inform the defendant of the total court financial obligation owed, the consequences of failing to pay the court financial

obligations, and that the defendant may request a cost hearing if at the time he or she is unable to pay the court financial obligations, at which point the court may waive all or part of the debt owed. If the total amount of the financial obligations owed is not available at the time of the plea or sentencing, the court will inform the defendant that the court financial obligations have been incurred and the time and location where the defendant may learn of the total amount owed.

(b) The court will order the defendant to immediately provide contact information and select payment terms or request a cost hearing. Failure to set up a payment plan or cost hearing will result in the entire amount becoming due within 30 days of the date of plea or sentencing.

(c) Payment of the obligation may be made under the following terms: (1) payment in full or (2) payment in terms. The defendant may request a cost hearing before the court by contacting the clerk if the defendant's ability to pay changes.

(d) The municipal court will provide a cost hearing upon request. If the cost hearing is requested after plea or sentencing, the defendant will receive a summons by personal service or by United States mail to appear in court. If the defendant fails to appear, the court may issue either a cost cite and release warrant or a cost arrest warrant. No fees will be assessed or collected from the defendant as a consequence of either requesting a cost hearing or issuing of a cost cite and release warrant.

(e) If at the initial cost hearing or any subsequent cost hearing, the court determines that the defendant is able to pay some or all of the court financial obligations, the court may order any of the following conditions for payment:

(1) payment in full;

(2) payment in installments;

(3) financial incentive under a set of conditions determined by the court; or

(5) community service in lieu of payment; provided, the defendant will receive credit for no less than two times the amount of the minimum wage specified in accordance with state law for each hour of community service.

(f) *If Court determines ability to pay after cost hearing.*

(1) After a cost hearing where the defendant is found able to pay court financial obligations, either in whole or in part, and then becomes delinquent in that

payment, a court may conduct a willfulness hearing at any time beginning immediately after a cost hearing has been held and a decision rendered on the court financial obligations. Findings of a defendant's prior ability to pay may be considered as evidence of ability to pay or willfulness at the hearing.

(2) at the willfulness hearing, the court shall evaluate the following:

(i) Whether a cost hearing has been held previously where evidence relating to ability to pay was presented and the court found the defendant was able to pay the court financial obligations, either in whole or in part;

(ii) Whether there is any new evidence of ability to pay not previously considered or a change in circumstances since the cost hearing;

(iii) Whether the defendant was afforded sufficient time and opportunity to fulfill the obligation to pay the court financial obligations;

(iv) Whether the defendant made any efforts to satisfy the court financial obligations; and

(v) Whether there are any other relevant facts or circumstances.

(g) Any documents supporting a motion or affidavit for relief from court financial obligations or any other documents taken into evidence during a cost hearing or willfulness hearing will not be viewable by the public on a court-controlled website.

Section 5. A new Section 1-8-8-5 is added to read as follows:

Sec. 1-8-8-5. - Waiver of court financial obligations

If the Court determines that a waiver of court financial obligations is warranted, the court will apply the same percentage reduction equally to all fines, costs, fees, and assessments, excluding restitution.

Section 6. A new Section 1-8-8-6 is added to read as follows:

Sec. 1-8-8-6. - Delinquent on court financial obligations; when; remedies

(a) A defendant is considered delinquent in the payment of court financial obligations under the following circumstances:

(1) when the total amount due has not been paid by the due date; or

(2) when no installment payments have been received in the most recent ninety-day period

(b) The court clerk will periodically review cases for delinquency at least once every six months and, upon identifying a delinquent defendant, notify the court which will, within 10 days, set a court hearing to determine if the defendant is able to pay. The cost hearing will be set within 45 days of the issuance of the summons. The hearing will be set on a date that will allow the court clerk to issue a summons 14 days prior to the cost hearing. Defendants will incur no additional costs or fees associated with the issuance of the summons.

(c) At least 14 days prior to the cost hearing, the court clerk will issue one summons to the defendant to be served by United States mail to the mailing address of the defendant on file in the case. The summons will be in substantial compliance with 22. O. S. § 983(G)(3).

(d) In lieu of mailing the summons provided by this subsection, the Court Clerk can deliver the summons to the defendant in person at the time of sentencing or subsequent appearance on a specific date, time, and place, not fewer than 30 days nor more than 120 days from the date of sentencing to appear for a cost hearing if the court financial obligation remains unpaid.

Section 7. A new Section 1-8-8-7 is added to read as follows:

Sec. 1-8-8-7. – Procedures regarding return of cite and release warrant; issue of subsequent warrants; failure to appear

(a) Any defendant notified of an outstanding cite or release warrant has ten days to report to the court clerk.

(b) If the defendant reports to the office of the court clerk within the ten days, the court clerk will (1) inform the court of the defendant contact; (2) schedule a cost hearing for the next subsequent court date; and (3) submit the warrant to the court for the recall pending the cost hearing.

(c) If the defendant fails to report within ten days, the court may issue a cost arrest warrant for the arrest of the defendant.

(d) At the hearing following the arrest for failure to appear, the court will conduct a cost hearing or a willfulness hearing, as the court deems appropriate within 72 hours unless

(1) The defendant pays \$100 toward the court financial obligation, is released from custody, and the new cost hearing date is provided or

(2) the court releases the defendant on the defendant's own recognizance and a new cost hearing date is provided.

(f) The provisions for issuing a separate summons is not required where the court has previously provided actual personal notice to the defendant on an opportunity for a cost hearing. If such notice was given and the defendant fails to appear, the municipal court may issue either a cost cite and release warrant or a cost arrest warrant.

Section 8. A new Section 1-8-8-8 is added to read as follows:

Sec. 1-8-8-8. – Suspension of driving privileges

In addition, the court, within one hundred twenty (120) days from the date upon which the person was originally ordered to make payment, and if the court finds and memorializes into the record that the defendant is financially able but willfully refuses to pay the court financial obligations, or an installment due, may send notice of nonpayment of any court-ordered fine and costs for a moving traffic violation to Service Oklahoma with a recommendation of suspension of driving privileges of the defendant until the total amount of any court financial obligation has been paid. Upon receipt of payment of the total amount of the court financial obligations for the moving traffic violation, the court shall send notice thereof to Service Oklahoma, if a nonpayment notice was sent as provided for in this subsection. Notices sent to Service Oklahoma shall be on forms or by a method approved by Service Oklahoma.

Section 9. Emergency Clause

It being immediately necessary for the preservation of public peace, health, and safety of the City of Mangum, Oklahoma, and its inhabitants, an emergency is declared to exist. By reason of the emergency, it is necessary that this ordinance goes into effect and be in force immediately upon its passage and publication.

Section 10. Publication

The City Clerk is authorized and directed to publish this ordinance in accordance with 11 O.S. § 14-106 & 14-107 in the Mangum Star-News within 15 days of its adoption and cause proof of such publication to be attached to this ordinance.

ADOPTED and EMERGENCY DECLARED by three-fourths of all members of the Board of Commissioners this ___ day of _____, 2024.

ADPOTED without emergency declared by three-fourths of all members of the Board of Commissioners this ___ day of _____, 2024. If no emergency declared, this ordinance will be effective 30 days after the passage of this Ordinance.

Jackie Menasco, Mayor

Attest:

Ally Kendall, Interim City Clerk