

## PART II

### CODE OF ORDINANCES

#### Chapter 1

### GENERAL PROVISIONS

#### **Sec. 1-1. How code designated and cited.**

The ordinances embraced in this and the following chapters and sections shall constitute and be designated “Code of Ordinances of the City of Killeen, Texas,” and may be so cited. Such code may also be cited as the “Killeen City Code of 1991.”

**State law reference(s)**--Ordinance codification, V.T.C.A., Local Government Code § 53.001 et seq.

#### **Sec. 1-2. Definitions and rules of construction.**

(a) In the construction of this code, and of all ordinances and resolutions passed by the city council, the following definitions and rules shall be observed, unless such construction would be inconsistent with the manifest intent of the city council:

*City.* The term “city” shall mean the city of Killeen, Bell County, Texas.

*Code.* The word “code” shall mean the “code of ordinances of the city of Killeen, Texas,” as designated in section 1-1.

*Computation of time.* In computing a period of days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday or legal holiday. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

**State law reference(s)**--Similar provisions, V.T.C.A., Government Code § 311.014.

*Council, city council.* Whenever the term “council” or “city council” is used, it shall mean the city council of the city of Killeen, Texas.

*County.* The term “county,” shall mean Bell County, Texas.

*Day.* A day is the period of time between any 12:00 midnight and 12:00 midnight following.

*Delegation of authority.* Whenever a provision appears requiring a city officer or employee to do some act or make certain inspections it is to be construed to authorize the head of the department to designate, delegate and authorize subordinates to perform the required act or make the required inspection unless the terms of the provision or section designate otherwise.

*Gender.* A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

*Highway.* The term “highway” shall include any street, alley, highway, avenue or public place or square, bridge, viaduct, tunnel, underpass, overpass and causeway in the city dedicated or devoted to public use.

*Joint authority.* Words purporting to give authority to three (3) or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it is otherwise declared.

*May.* The word “may” is to be construed as being permissive.

*May not.* The words “may not” shall have a prohibitory effect.

*Month.* The word “month” shall mean a calendar month.

*Must.* The word “must” is to be construed as being mandatory.

*Number.* Any word importing the singular number shall include the plural and any word importing the plural number shall include the singular.

*Oath.* The word “oath” shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words “swear” and “sworn” shall be equivalent to the words “affirm” and “affirmed.”

*Officers, boards, etc.* Whenever reference is made to any officer, board or commission, the same shall be construed as if followed by the words “of the city of Killeen.” Reference to any specific officer shall also be deemed to include his duly authorized assistants and representatives.

*Or, and.* “Or” may be read “and,” and “and” may be read “or” if the sense requires it.

*Owner.* The word “owner,” applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety of the whole or of a part of such building or land.

*Person.* The word “person” shall extend and be applied to associations, corporations, firms, partnerships and bodies politic and corporate as well as to individuals.

*Personal property.* The words “personal property” include every species of property, except real property as defined in this section.

*Preceding following.* The words “preceding” and “following” mean next before and next after, respectively.

*Property.* The word “property” includes real and personal property.

*Public place.* A public place shall mean any public street, alley, square, highway, grounds, house or premises; or any hotel, restaurant, boardinghouse, grocery, saloon, garden, workshop or

other place, or part of the same, to which people usually resort, or have a right to resort for business or pleasure.

*Real property.* The words “real property” include land, tenements, and hereditaments.

*Roadway.* The word “roadway” shall mean that portion of a street improved, designed or ordinarily used for vehicular traffic.

*Shall.* The word “shall” is to be construed as being mandatory.

*Sidewalk.* The word “sidewalk” shall mean any portion of the street between the curb, or the lateral line of the roadway and the adjacent property line intended for the use of pedestrians.

*Signature or subscription.* The word “signature” or “subscription” shall include a mark when a person cannot write.

*State.* The word “state” shall mean the State of Texas.

*Street.* The term “street” shall include any highway, alley, street, avenue or public place or square, bridge, viaduct, underpass, overpass, tunnel or causeway in the city dedicated or devoted to public use.

*Tense.* Words used in the past or present tense include the future as well as the past and present.

*Written or in writing.* The term “written” or “in writing” shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

*Year.* The word “year” shall mean a calendar year.

(b) The provisions of Titles 1, 2 and 3 of the Penal Code shall apply in the interpretation of all penal provisions of this Code to the extent that the Penal Code mandates that they shall apply.

**State law reference(s)**--Application of Titles 1, 2 and 3 of Penal Code, V.T.C.A., Penal Code § 1.03.

### **Sec. 1-3. Catchlines of sections; history notes, etc.; references to Code.**

(a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

(b) The history or source notes appearing in parentheses after sections in this code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the section. Cross references and state law references which appear after sections or subsections of this code or which otherwise appear in footnote form are provided for the convenience of the user of this code and have no legal effect.

(c) All references to chapters, articles or sections are to the chapters, articles and sections of this code unless otherwise specified.

**Sec. 1-4. Burden of proof of exceptions; mental culpability.**

(a) In any prosecution for the violation of any provision of this code, it shall not be necessary for the complaint to negate or for the state to prove any exception contained in this code concerning any prohibited act; provided, that any such exception made therein may be urged as a defense by the person charged by such complaint.

(b) Requirement of culpability.

(1) The definition of an offense may prescribe as a culpable mental state either intent, knowledge, recklessness or criminal negligence, with intent being the highest culpable mental state and negligence being the lowest.

(2) If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element. In those instances, intent, knowledge or recklessness suffices to establish mental responsibility.

(3) Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged.

(Ord. No. 98-64, § I, 9-22-98)

**State law reference(s)**--Proof of exception, V.T.C.A., Penal Code § 2.02.

**Sec. 1-5. Effect of repeal of an ordinance.**

(a) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

**Sec. 1-6. Amendments or additions to code.**

(a) Amendments to any of the provisions of this code may be made by amending such provisions by specific reference to the section number of this code in the following language:

“That section \_\_\_\_\_ of the code of ordinances, city of Killeen, Texas, is hereby amended to read as follows:....” The new provisions may then be set out in full as desired.

(b) In the event a new section not heretofore existing in the code is to be added, the following language may be used: “That the code of ordinances, city of Killeen, Texas, is hereby amended by adding a section, to be numbered \_\_\_\_\_, which said section reads as follows:....” The new section may then be set out in full as desired.

## **Sec. 1-7. Supplementation of code.**

(a) By contract or by city personnel, supplements to this code shall be prepared and printed whenever authorized or directed by the city council. A supplement to the code shall include all substantive permanent and general parts of ordinances passed by the city council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the code. The pages of a supplement shall be so numbered that they will fit properly into the code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this code, all portions of the code which have been repealed shall be excluded from the code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions;
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the code printed in the supplement, and make changes in such catchlines, headings and titles;
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the words “this ordinance” or words of the same meaning to “this chapter,” “this article,” “this division,” etc., as the case may be, or to “sections \_\_\_\_\_ to \_\_\_\_\_” (inserting section numbers to indicate the sections of the code which embody the substantive sections of the ordinance incorporated into the code); and
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the code; but, in no case, shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the code.

## **Sec. 1-8. General penalty; continuing violations; citation authority.**

(a) In this section “violation of this code” means:

- (1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance;
- (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance; or
- (3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(b) In this section “violation of this code” does not include the failure of a city officer or employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.

(c) Except as otherwise provided, a person convicted of a violation of this code shall be punished by a fine not exceeding five hundred dollars (\$500.00), except that a fine not exceeding two thousand dollars (\$2,000.00) may be imposed for violation of provisions that govern fire safety, zoning, or public health and sanitation, including dumping of refuse. The penalty imposed for a violation of this code shall not exceed or be less than the penalty prescribed by state law for the same offense. With respect to violations of this code that are continuous with respect to time, each day the violation continues is a separate offense.

(d) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise.

(e) Violations of this code that are continuous with respect to time may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief or civil or quasi-judicial enforcement of a violation of this code.

(f) All persons duly designated to be code enforcement officers are hereby authorized to enforce all provisions of this code by prescribed administrative procedures for relief, or to issue and serve citations for violations of this code, save and except violations of chapter 4, ambulances; chapter 9, cemeteries; section 16-108 and articles V, VI, and VII of chapter 16, miscellaneous provisions and offenses; and chapter 28, traffic, save and except sections 28-132, 28-134, 28-135, and 28-241. The citation authority granted by this section shall be in addition to, and not to the exclusion of, all other remedies, methods, or proceedings provided by law for enforcement of this code. Moreover, unless specifically stated elsewhere in this code, the enforcement and citation authority granted herein to code enforcement officers shall not be construed to limit or impinge upon the authority or actions of police officers, firefighters, fire marshals, or inspectors of any department, to discharge their respective duties in the enforcement of this code. (Ord. No. 94-22, § I, 4-12-94; Ord. No. 06-116, § I, 10-17-06)

**State law reference(s)**--Penalties for ordinance violations, V.T.C.A., Local Government Code § 54.001 et seq.

### **Sec. 1-9. Severability of parts of code.**

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this code are severable and, if any phrase, clause, sentence, paragraph or section of this code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this code, since the same would have been enacted by the city council without the incorporation in this code of any such unconstitutional phrase, clause, sentence, paragraph or section.

### **Sec. 1-10. Provisions considered as continuation of existing ordinances.**

The provisions appearing in this and the following chapters and sections, so far as they are the same as those of ordinances existing at the time of the adoption of this code shall be considered as a continuation thereof and not as new enactments.

**Sec. 1-11. Code does not affect prior offenses, rights, etc.**

(a) Nothing in this code or the ordinance adopting this code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this code.

(b) The adoption of this code shall not be interpreted as authorizing or permitting any use or the continuance of any use of a structure or premises in violation of any ordinance of the city in effect on the date of adoption of this code.

**Sec. 1-12. Certain ordinances not affected by code.**

Nothing in this code or the ordinance adopting this code shall be construed to repeal or otherwise affect the validity of any of the following:

- (1) Any ordinance promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness;
- (2) Any appropriation ordinance or ordinance providing for the levy of taxes or for an annual budget;
- (3) Any ordinance annexing territory to the city or discontinuing territory as a part of the city;
- (4) Any ordinance granting any franchise, permit or other right;
- (5) Any ordinance approving, prescribing or otherwise relating to rates to be charged by utility companies;
- (6) Any ordinance approving, authorizing or otherwise relating to any contract or agreement;
- (7) Any ordinance accepting, dedicating, improving, vacating or otherwise relating to any specific street or easement;
- (8) Any ordinance accepting any plat of a subdivision;

and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length herein.