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CHAPTER 2

(RESERVED)

Court

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SECTION 6-101 ORGANIZATION OF MUNICIPAL COURT

This chapter shall govern the organization and operation of the municipal criminal court of the Town of Cashion, as put into operation by resolution, duly passed and filed in accordance with law, as authorized by Sections 27-101 and 27-102 of Title II of the Oklahoma Statutes. To the extent of conflict between any provisions of this chapter and the provisions of any ordinance of this town, the provisions of this chapter shall control.

State Law Reference: Municipal courts not of record, organization, rules and procedures, II O.S. Sections 27-101 to 27-131.

SECTION 6-102 DEFINITIONS.

As used in this chapter, unless the context requires a different meaning, the following words shall have the meanings ascribed to them in this section:

1. "Court" means the municipal court of the Town of Cashion;
2. "Judge" means the judge of the municipal court, including any acting judge or alternate judge thereof as provided for by the statutes of this state and this chapter;
3. "Municipality" or "this municipality" means the Town of Cashion, Oklahoma;
4. "Clerk" means the clerk of this municipality, including any deputy or member of the office staff of the clerk while performing duties of the clerk's office;
5. "Governing body" means the town board of trustees of the Town of Cashion;
6. "Chief of police" means the peace officer in charge of the police force of the municipality; and
7. "This judicial district" means the district court judicial district of the State of Oklahoma wherein the government of this municipality is situated.

SECTION 6-103 JURISDICTION OF COURT.

The court shall exercise original jurisdiction to hear and determine all prosecutions wherein a violation of any ordinance of this municipality is charged, including any such prosecutions transferred to the court in accordance with applicable law.

SECTION 6-104 JUDGE; QUALIFICATIONS.

There shall be one judge of the court. A judge shall be an attorney licensed to practice law in Oklahoma. A judge who is a licensed attorney may engage in the practice of law in other courts, but he shall not accept employment inconsistent with his duties as judge, or arising out of facts which give rise to or are connected with cases within the jurisdiction of the court, pending therein or which might become the subject of proceedings therein. He must be a resident of this county or maintain a law office therein. He may serve as judge of other municipal courts, if such service may be accomplished consistently with his duties as judge of this court, with the consent of the mayor and council. If all licensed attorneys residing within this county certify to the clerk that they are not willing to accept appointment as judge, a resident of this municipality, of the age of twenty-five (25) years or older, possessed of good moral character, may be appointed judge.

SECTION 6-105 TERM OF JUDGE.

The official term of the judge shall be two (2) years expiring each odd-numbered year. Each judge, unless sooner removed for proper cause, shall serve until his successor is appointed and qualified.

SECTION 6-106 ALTERNATE JUDGE.

There shall be appointed for each judge of the court an alternate judge possessed of the same qualifications required of the judge in this chapter. His appointment shall be for the same term and made in the same manner as the judge. He shall sit as acting judge of the court in any case if the judge is:

1. Absent from the court;
2. Unable to act as judge; or
3. Disqualified from acting as judge in the case.

SECTION 6-107 ACTING JUDGE.

If at any time there is no judge or alternate judge, duly appointed and qualified, available to sit as judge, the mayor shall appoint some person, possessing the qualifications required by this chapter for the judge, who shall preside as acting judge over the court in the disposition of pending matters until such time as a judge or alternate judge shall be available.

SECTION 6-108 APPOINTMENT OF JUDGE AND ALTERNATE JUDGE.

Judges and alternate judges shall be appointed by the mayor with the consent of the governing body. A proposed appointment shall be submitted in writing to the governing body at the next to the last regularly scheduled meeting prior to the day upon which the appointment is to take effect, and shall be acted upon at the next regularly scheduled meeting. The governing body may decide upon the proposed appointment by a majority vote of a quorum present and acting. Failure of decision upon a proposed appointment shall not prevent action thereon at a later regularly scheduled meeting of the governing body unless the mayor, in writing, withdraws the proposed appointment.

SECTION 6-109 SALARY AND PAYMENTS TO JUDGES.

A. A judge, other than an alternate judge or an acting judge, shall receive a salary as set by the governing body by motion or resolution, paid in the same manner as the salaries of other officials of this municipality.

B. An alternate judge or an acting judge shall be paid an amount as set by motion or resolution of the governing body, however payments to an acting or alternate judge shall not exceed the salary set for a judge in whose stead he sits.

SECTION 6-110 REMOVAL OF JUDGE.

Judges shall be subject to removal from office by the governing body for the causes prescribed by the constitution and laws of this state for the removal of public officers. Proceedings for removal shall be instituted by the filing of a verified written petition setting forth facts sufficient to constitute one or more legal grounds for removal. Petitions may be signed and filed by:

1. The mayor; or
2. Twenty-five (25) or more qualified electors of this municipality. Verification of the number or qualifications of electors shall be executed by one or more of the petitioners.

The governing body shall set a date for hearing the matter and shall cause notice thereof, together with a copy of the petition, to be served personally upon the judge at least ten (10) days before the hearing. At the hearing, the judge shall be entitled to:

1. Representation by counsel;

2. To present testimony and to cross-examine the witnesses against him; and
3. Have all evidence against him presented in open hearing.

So far as they can be applicable, the provisions of the Oklahoma Administrative Procedures Act governing individual proceedings (Sections 309 to 317 of Title 75 of the Oklahoma Statutes as amended) shall govern removal proceedings hereunder. Judgment of removal shall be entered only upon individual votes, by a majority of all members of the governing body, in favor of such removal.

SECTION 6-111 VACANCY IN OFFICE OF JUDGE.

A vacancy in the office of judge shall occur if the incumbent:

1. Dies;
2. Resigns;
3. Ceases to possess the qualifications for the office; or
4. Is removed, and the removal proceedings have been affirmed finally in judicial proceedings or are no longer subject to judicial review.

Upon the occurrence of a vacancy in the office of judge, the mayor shall appoint a successor to complete the unexpired term in the same manner as an original appointment is made.

SECTION 6-112 DISQUALIFICATION OF JUDGE.

In prosecutions before the court no change of venue shall be allowed; but the judge before whom the case is pending may certify his disqualification or he may be disqualified from sitting under the terms, conditions and procedure provided by law for courts of record. If a judge is disqualified, the matter shall be heard by an alternate or acting judge appointed as provided in this chapter.

SECTION 6-113 COURT MARSHAL.

All writs or process of the court shall be directed, in his official title, to the chief of police of this municipality, who shall be the principal officer of the court.

SECTION 6-114 CLERK OF THE COURT; DUTIES.

The clerk, or a deputy designated by him, shall be the clerk of the court. He shall assist the judge in recording the proceedings of the court and in preparing writs, processes and other papers. He shall administer oaths required in proceedings before the court. He shall enter all pleadings, processes, and proceedings in the dockets of the court. He shall perform such other clerical duties relating to the proceedings of the court as the judge shall direct. He shall receive and receipt for forfeitures, fines, deposits, and sums of money payable to the court. He shall pay to the treasurer of this municipality all money so received by him, except such special deposits or fees as shall be received to be disbursed by him for special purposes. All money paid to the treasurer shall be placed in the general fund of the municipality, or in such other funds as the governing body may direct, and it shall be used in the operation of the municipal government in accordance with budgetary arrangements governing the fund in which it is placed.

SECTION 6-115 PROSECUTING ATTORNEY; DUTIES; CONFLICT OF INTEREST.

The attorney for this municipality, or his duly designated assistant, shall be the prosecuting officer of the court. He shall also prosecute all alleged violations of the ordinances of the town. He shall be authorized, in his discretion, to prosecute and resist appeal, proceedings in error and review from this court to any other court of the state, and to represent this municipality in all proceedings arising out of matters in this court.

SECTION 6-116 BOND OF CLERK.

The court clerk of the court shall give bond, in the form provided by Section 27-111 of Title 11 of the Oklahoma Statutes. When executed, the bond shall be submitted to the governing body for approval. When approved, it shall be filed with the clerk of this municipality and retained in the municipal archives.

SECTION 6-117 RULES OF COURT.

The judge may prescribe rules, consistent with the laws of the state and with the ordinances of this municipality for the proper conduct of the business of the court.

SECTION 6-118 ENFORCEMENT OF RULES.

Obedience to the orders, rules and judgments made by the judge or by the court may be enforced by the judge, who may fine or imprison for contempt committed as to him while holding court, or committed against process issued by him, in the same manner and to the same extent as the district courts of this state.

SECTION 6-119 WRITTEN COMPLAINTS TO PROSECUTE ORDINANCE VIOLATIONS.

All prosecutions for violations of ordinances of this municipality shall be styled "The Town of Cashion vs. (naming defendant or defendants)". Except as provided hereinafter, prosecution shall be initiated by the filing of a written complaint, subscribed and verified by the person making complaint, and setting forth concisely the offense charged and approved for filing by the town attorney.

SECTION 6-120 TRAFFIC ORDINANCE VIOLATIONS; PROCEDURES FOR ISSUING CITATION; CUSTODY, ARREST.

A. If a police officer observes facts which he believes constitute a violation of the traffic ordinances of this municipality, committed by a resident thereof, in lieu of arresting such a person, he may take his name, address, operator's license number, and registered license number of the motor vehicle involved and any other pertinent and necessary information and may issue him in writing in form prescribed by the mayor or his duly designated delegate, a traffic citation embracing the above information, and also stating the traffic violation alleged to have occurred, and notifying him to answer to the charge against him at a time, not later than the date specified in the citation. The officer, upon receiving the written promise of the alleged violator, endorsed on the citation to answer as specified, may then release the person from custody. If the person to whom a citation is issued fails to answer as prescribed in the citation, a complaint shall be filed and the case shall be prosecuted as otherwise provided in this chapter.

B. If the alleged traffic violation is committed by a nonresident or resident of this municipality, the police officer may:

1. Release the person after obtaining sufficient information as set out in Subsection A of this section pending his appearance on a day certain in court, as specified in the citation;

2. Take the person in custody and demand that bond for the offense charged be posted according to the provisions of this chapter; or

3. Take the person into custody under arrest. The arrested person either shall be taken immediately before the judge for further proceedings according to law or shall have bail fixed for his release in accordance with the provisions of this chapter. Upon providing bail as fixed, and upon giving his written promise to appear upon a day certain, as provided in Subsection A of this section, the person shall be released from custody.

C. If the alleged offense be a violation of an ordinance restricting or regulating the parking of vehicles, including any regulations issued under such an ordinance, and the operator be not present, the police officer shall place on the vehicle, at a place reasonably likely to come to the notice of the operator, a citation conforming substantially to that prescribed in Subsections A or B of this section, with such variation as the circumstances require, the operator of this vehicle shall be under the same obligation to respond to the citation as if it had been issued to him personally under Subsections A or B of this section. (As amended)

SECTION 6-121 CREATION OF TRAFFIC VIOLATIONS BUREAU.

A. There is hereby established a traffic violations bureau for the town. The judge may establish rules, consistent with the laws of the state and with the ordinances of this municipality, for the traffic violations bureau.

B. The traffic violations bureau shall be staffed by court personnel and be physically separate and apart from the police department.

C. The traffic violations bureau shall accept fines which may be paid in lieu of a court appearance for such traffic offenses as may be designated by the judge under the court's rules. The schedule of fines shall be adopted by the governing body from time to time by motion or resolution. A copy shall be kept in the clerk's office.

D. All such fines shall be the minimum penalty prescribed for such violation, and no costs shall be assessed.

E. In no event shall payment of a fine without court appearance be accepted in the traffic violations bureau for the following offenses:

1. A second or subsequent offense of the same violation;
2. Driving under the influence of intoxicating liquor or drugs or actual physical control of a vehicle while under the influence of intoxicating liquor or drugs;
3. Leaving the scene of an accident;
4. Driving while license is suspended or revoked;
5. Reckless driving;
6. Careless driving; or
7. Any charge made because of a motor vehicle accident in which personal injury or death occurred.

F. Payment of any fine to the traffic violations bureau shall be deemed a final determination of the cause against the defendant. In no event shall any such payment be introduced as evidence in any civil cause arising out of the offense charged.

SECTION 6-122 SUMMONS FOR ARREST.

A. Upon the filing of a complaint charging violation of any ordinance, the judge, unless he determines to issue a warrant of arrest, or unless the defendant previously has been issued a citation or has been arrested and has given bond for appearance, he shall issue a summons, naming the person charged, specifying his address or place of residence, if known, stating the offense with which he is charged and giving him notice to answer the charge in the court on a certain day as specified after the summons is served upon him, and including such other pertinent information as may be necessary.

B. The summons shall be served by delivering a copy to the defendant personally. If he fails to appear and to answer the summons within the prescribed period, a warrant shall be issued for his arrest, as provided by this chapter.

SECTION 6-123 FORM OF ARREST WARRANT.

A. Except as otherwise provided in the ordinances of this municipality, upon the filing of a complaint approved by the endorsement of the attorney of this municipality or by the judge, there shall be issued a warrant of arrest, in substantially the following form:

The Town of Cashion to the Marshal of the Municipal Court of Cashion, Oklahoma.

Complaint upon oath having this day been made by (naming complainant) that the offense (naming the offense in particular but general terms) has been committed and accusing (name of defendant) thereof, you are commanded therefor forthwith to arrest the above named defendant and bring the above named (name of defendant) before me, at the municipal courtroom,

Witness my hand this _____ day of _____, 19____.

 Judge of the Municipal Court
 Cashion, Oklahoma.

B. It is the duty of the marshal, personally, or through a duly constituted member of the police force of this municipality, or through any other person lawfully authorized so to act, to execute a warrant as promptly as possible.

SECTION 6-124 PROCEDURES FOR BAIL OR BOND.

Upon arrest, or upon appearance without arrest in response to citation or summons, or at any time before trial, before or after arraignment, the defendant shall be eligible to be released upon giving bail for his appearance in an amount and upon conditions fixed by this chapter or the judge, who shall prescribe appropriate rules of court for the receipt of bail. In case of arrests made at night or under other conditions or emergency or when the judge is not available, the rules shall authorize the chief of police, or his designated representative, to accept a temporary cash bond of not less than Ten Dollars (\$10.00) nor more than the maximum monetary penalty provided by ordinance for the offense charged.

SECTION 6-125 TRAFFIC BAIL BOND PROCEDURES.

A. In addition to other provisions of law for posting bail, any person, whether a resident of this state or a nonresident, who is arrested by a law enforcement officer solely for a misdemeanor violation of a state traffic law or municipal traffic ordinance shall be released by the arresting officer upon personal recognizance if:

1. The arrested person has been issued a valid license to operate a motor vehicle by this state, another state jurisdiction within the United States which is a participant of the Nonresident Violator Compact, or any party jurisdiction of the Nonresident Violator Compact;
2. The arresting officer is satisfied as to the identity of the arrested person;
3. The arrested person signs a written promise to appear as provided for on the citation; and
4. The violation does not constitute:
 - a. A felony;
 - b. Negligent homicide;
 - c. Driving or being in actual physical control of a motor vehicle while impaired or under the influence of alcohol or other other intoxicating substances;
 - d. Eluding or attempting to elude a law enforcement officer;
 - e. Operating a motor vehicle without having been issued a valid driver's license, or while the license is under suspension, revocation, denial or cancellation;

- f. An arrest based upon an outstanding warrant;
- g. A traffic violation coupled with any offense stated in subparagraphs a through f of this paragraph;
- h. An overweight violation, or the violation of a special permit exceeding the authorized permit weight; or
- i. A violation relating to the transportation of hazardous materials.

B. If the arrested person is eligible for release on personal recognizance as provided for in Subsection A of this section, then the arresting officer shall:

- 1. Designate the traffic charge;
- 2. Record information from the arrested person's driver's license on the citation form, including the name, address, date of birth, personal description, type of driver's license, driver's license number, issuing state, and expiration date;
- 3. Record the motor vehicle make, model and tag information;
- 4. Record the arraignment date and time on the citation; and
- 5. Permit the arrested person to sign a written promise to appear as provided for in the citation.

The arresting officer shall then release the person upon personal recognizance based upon the signed promise to appear. The citation shall contain a written notice to the arrested person that release upon personal recognizance based upon a signed written promise to appear for arraignment is conditional and that failure to timely appear for arraignment shall result in the suspension of the arrested person's driver's license in this state, or in the nonresident's home state pursuant to the Nonresident Violator Compact.

C. The court, or the court clerk as directed by the court, may continue or reschedule the date and time of arraignment upon request of the arrested person or his attorney. If the arraignment is continued or rescheduled, the arrested person shall remain on personal recognizance and written promise to appear until such arraignment, in the same manner and with the same consequences as if the continued or rescheduled arraignment was entered on the citation by the arresting officer and signed by the defendant. An arraignment may be continued or rescheduled more than one time; provided however, the court shall require an arraignment to be had within a reasonable time. It shall remain the duty of the defendant to appear for arraignment unless the citation is satisfied as provided for in Subsection D of this section. Procedures for arraignment, continuances and scheduling, timely appearances, pleas of guilty or nolo contendere, posting bail, payment of fines and costs, issuance of arrest warrants, and requests for suspension of driver's license, shall be required by the municipality or as provided in state law, Sections 1115.1 through 1115.5 of Title 22 of the Oklahoma Statutes.

D. A defendant released upon personal recognizance may elect to enter a plea of guilty or nolo contendere to the violation charged at any time before he is required to appear for arraignment by indicating such plea on the copy of the citation furnished to him or on a legible copy thereof, together with the date of the plea and his signature. The defendant shall be responsible for assuring full payment of the fine and costs to the court clerk. Payment of the fine and costs may be made by personal,

cashier's, traveler's, certified or guaranteed bank check, postal or commercial money order, or other form of payment approved by the court in the amount prescribed as bail for the offense. However, the defendant shall not use currency for payment by mail. If the defendant has entered a plea of guilty or nolo contendere as provided for in this subsection, such plea shall be accepted by the court and the amount of the fine and costs shall be as prescribed by ordinance for the violation charged or as prescribed by the court or, in the absence of such ordinance, in the amount prescribed by the court.

E. If, pursuant to the provisions of Subsection D of this section, the defendant does not timely elect to enter a plea of guilty or nolo contendere and fails to timely appear for arraignment, the court may issue a warrant for the arrest of the defendant and the municipal or district court clerk, within one hundred twenty (120) calendar days from the date the citation was issued by the arresting officer, shall notify the State Department of Public Safety that:

1. The defendant was issued a traffic citation and released upon personal recognizance after signing a written promise to appear for arraignment as provided for in the citation;

2. The defendant has failed to appear for arraignment without good cause shown;

3. The defendant has not posted bail, paid a fine, or made any other arrangement with the court to satisfy the citation; and

4. The citation has not been satisfied as provided by law.

The court clerk shall request the State Department of Public Safety to either suspend the defendant's driver's license to operate a motor vehicle in this state, or notify the defendant's home state and request suspension of the defendant's driver's license in accordance with the provisions of the Nonresident Violator Compact. Such notice and request shall be on a form approved or furnished by the State Department of Public Safety. The court clerk shall not process the notification and request provided for in this subsection if, with respect to such charges:

1. The defendant was arraigned, posted bail, paid a fine, was jailed, or otherwise settled the case;

2. The defendant was not released upon personal recognizance upon a signed written promise to appear as provided for in this section or if released, was not permitted to remain on such personal recognizance for arraignment;

3. The violation relates to parking or standing, an overweight violation, an overweight permit, or the transportation of hazardous materials; or

4. A period of one hundred twenty (120) calendar days or more has elapsed from the date the citation was issued by the arresting officer.

F. The court clerk shall maintain a record of each request for driver's license suspension submitted to the State Department of Public Safety pursuant to the provisions of this section. When the court or court clerk receives appropriate bail or payment of the fine and costs, settles the citation, makes other arrangements with the defendant, or otherwise closes the case, the court clerk shall furnish proof thereof to such defendant, if the defendant personally appears, or shall mail such proof by first class mail, postage prepaid, to the defendant at the address noted on the citation or at

such other address as is furnished by the defendant. Additionally, the court or court clerk shall notify the home jurisdiction of the defendant as listed on the citation, if such jurisdiction is a member of the Nonresident Violator Compact, and shall in all other cases, notify the State Department of Public Safety of the resolution of the case. The form of proof and the procedures for notification shall be approved by the State Department of Public Safety. Provided however, the court or court clerk's failure to furnish such proof or notice in the manner provided for in this subsection shall in no event create any civil liability upon the court, the court clerk, the state or any political subdivision thereof, or any state department or agency or any employee thereof but duplicate proof shall be furnished to the person entitled thereto upon request. (As amended)

SECTION 6-126 ARRAIGNMENT AND PLEADINGS BY DEFENDANT.

Upon making his appearance before the court, the defendant shall be arraigned. The judge, or the attorney of the municipality, shall read the complaint to the defendant, inform him of his legal rights, including the right of trial by jury, if available, and of the consequences of conviction, and ask him whether he pleads guilty or not guilty. If the defendant pleads guilty, the court may proceed to judgment and sentence or may continue the matter for subsequent disposition. If the plea is not guilty, and the case is not for jury trial, the court may proceed to try the case, or may set it for hearing at a later date.

SECTION 6-127 TRIALS AND JUDGMENTS.

A. Before trial commences, either party, upon good cause shown, may obtain a reasonable postponement thereof.

B. The defendant must be present in person at the trial.

C. In all trials, as to matters not covered in this chapter, or by the statutes relating to municipal criminal courts, or by rules duly promulgated by the Supreme Court of Oklahoma, the procedure applicable in trials of misdemeanors in the district courts shall apply to the extent that they can be made effective.

D. If the defendant pleads guilty or is convicted after the trial, the court must render judgment thereon, fixing the penalty within the limits prescribed by the applicable ordinance and imposing sentence accordingly.

E. At the close of trial, judgment must be rendered immediately by the judge who shall cause it to be entered in his docket.

F. If judgment is of acquittal, and the defendant is not to be detained for any other legal cause, he must be discharged at once.

G. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied at the rate of one day imprisonment for each Five Dollars (\$5.00) of fine. If the defendant is without means to pay the fine or costs, the municipal judge may direct the total amount due to be entered upon the court minutes and to be certified to the district court of the county wherein the status of government is situated where it shall be entered upon the district court judgment docket and shall have the full force and effect of a district court judgment. Thereupon the same remedies shall be available for the enforcement of the judgment as are available to any other judgment creditor.

SECTION 6-128 WITNESS FEES.

Witnesses in any proceeding in the court other than the police officers or peace officers shall be entitled to a sum per each day of attendance, plus mileage for each mile actually and necessarily traveled in going to and returning from the place of attendance if their residence is outside the limits of the municipality. However, no witness shall receive fees or mileage in more than one case for the same period of time or the same travel. A defendant seeking to subpoena witnesses must deposit with the clerk a sum sufficient to cover fees and mileage for one day of attendance for each witness to be summoned, but such deposit shall not be required from an indigent defendant who files an affidavit setting out:

1. The names of no more than three (3) witnesses;
2. That the defendant, by reason of his poverty, is unable to provide the fees and mileage allowed by law;
3. That the testimony of the witnesses is material; and
4. That their attendance at the trial is necessary for his proper defense.

The fees of such witnesses shall be paid by the municipality.

SECTION 6-129 SUSPENSION OF SENTENCE.

After conviction and sentence, the judge may suspend sentence, in accordance with the provisions of, and subject to the conditions and procedures imposed by Sections 27-123 and 27-124 of Title 11 of the Oklahoma Statutes.

SECTION 6-130 IMPRISONMENT, WORK BY PRISONERS.

A. If, after conviction, judgment of imprisonment is entered, a copy thereof, certified by the clerk, shall be delivered to the chief of police, the sheriff of the county or other appropriate police officer. Such copy shall be sufficient warrant for execution of the sentence.

B. All prisoners confined to jail on conviction or on plea of guilty may be compelled, if their health permits, to work on the public streets, avenues, alleys, parks, buildings, or other public premises or property. For each day of such work, the prisoner shall be credited for serving two (2) days of imprisonment under his sentence.

C. The chief of police, subject to the direction of the governing body, shall direct where the work shall be performed. The head of the department in charge of the place where the work is to be performed, himself, or by some person designated by him, shall oversee the work. If a guard is necessary, the chief of police shall make provision therefor.

SECTION 6-131 FINES AND COSTS.

If judgment of conviction is entered, the clerk of the court shall tax the costs to the defendant, plus the fees and mileage of witnesses and jurors, but the total amount of fine may not exceed the amount set for in Section 1-108 of this code and up to thirty (30) days in jail.