

**CHAPTER 1**  
**GENERAL PROVISIONS**

# CHAPTER 1

## GENERAL PROVISIONS

### § 1-00. CODE OF ORDINANCES

#### § 1-01. How Code Designated and Cited

The ordinances embraced in this and the following chapters shall constitute and be designated the "Code of Ordinances, City of Payne Springs, Texas", and may be so cited.

#### § 1-02. Catchline of Sections

The catchlines of the several sections of this Code 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, unless expressly so provided, shall they be so deemed when any such sections, including the catchlines are amended or reenacted.

#### § 1-03. Definitions and Rules of Construction

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

Chapter - Whenever the words "this ordinance," "section," "subsection," "paragraph," or "article" are used, they shall pertain to the chapter or section of this Code of Ordinances in which they are found unless specifically and clearly in reference to a separate chapter or section.

City - The words "city" or "town" shall mean the City of Payne Springs, County of Henderson, State of Texas.

City Council - Whenever the words "city council", "the council", "board of aldermen", or "governing body" are used they shall mean the City Council of Payne Springs, Texas.

Gender - Throughout this Code, words used expressing masculine gender shall be construed to include the feminine.

Person - Whenever the word "person" or its plural form are used in this Code it shall mean any person, firm, corporation, partnership, association of persons, owner, agent or occupant.

Public Place - Whenever the word "public place" is used, unless otherwise specifically defined, it shall mean any public road, street, alley, park, building, or other property of the city or any other places to which people commonly resort for the purpose of business, recreation, or amusement.

§ 1-04. Amendments or Additions to Code

(a) All ordinances passed subsequent to the adoption of this Code, which amend, repeal, or in any way affect this Code, may be numbered in accordance with the numbering system of this Code and printed for inclusion therein. When subsequent ordinances repeal any chapter, section, or subsection, or any portion thereof, such repealed portions may be excluded from the Code by omission from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code by the city council.

(b) Amendments to any of the provisions of this Code shall be made by amending such provisions by specified reference to the section number of this Code in the following language:

"That Chapter \_\_\_\_, Section \_\_\_\_, of the Code of Ordinances, City of Payne Springs, Texas is hereby amended to read as follows..."

The provisions shall then be set out in full as desired.

(c) In the event of a new section not heretofore existing in the Code is to be added, the following language shall be used:

"That Chapter \_\_\_\_ of the Code of Ordinances City of Payne Springs, Texas, is hereby amended by adding Section \_\_\_\_, which said section reads as follows..."

The new section shall then be set out in full as desired.

(d) In the event it is desired to delete a section from the Code of Ordinances, the following language shall be used:

"That Chapter \_\_\_\_, Section \_\_\_\_, of the Code of Ordinances, City of Payne Springs, Texas, is hereby deleted from said Code of Ordinances.

(e) It is hereby provided, however, that any subsequent ordinance which fails to amend this Code in the manner provided for above, shall not be deemed invalid as a result of such failure to follow the procedure outlined in this section.

§ 1-05. Supplementation of Code

(a) Supplements to this Code of Ordinances 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 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.

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

(b) 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 section," "this subsection," etc., as the case may be; 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.

#### **§ 1-06. General Penalty for Violations of Code**

Whenever in this Code or in any ordinance of the city, an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinance shall be punished by a fine of not exceeding \$500.00, except for violations of municipal ordinances that govern fire safety, zoning, public health and sanitation, including dumping of refuse, vegetation and litter violations in which the maximum fine shall be \$2,000.00 for each offense. Provided, however, that no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state. Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense. Any violation of any provision of this Code of Ordinances which constitutes an immediate danger to the health, safety, and welfare of the public may be enjoined in a suit brought by the city for such purposes.

#### **§ 1-07. 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 unconstitutional phrase, clause, sentence, paragraph, or section. (Ordinance adopting Code)

## § 2-00. FORM OF GOVERNMENT

At a regular meeting of the City Council of the City of Payne Springs, Texas, held on \_\_\_\_\_, the city council accepted the provisions of a Type A general-law municipality (formerly Title 28, Chapters 1-10, Revised Civil Statutes of the State of Texas and the subsequent amendments thereto). The city shall also assume the corporate name of "the City of Payne Springs." (Ordinance adopting Code)

## § 3-00. CITY COUNCIL AND MEETINGS

### § 3-01. Governing Body Established

The city council shall be the governing body of the city. The city council shall consist of a mayor and five councilmembers, all of whom shall be elected at large. The mayor and two councilmembers shall be elected in even numbered years, and three councilmembers shall be elected in odd numbered years. The terms of the mayor and councilmembers shall be for two years. (Ordinance adopting Code)

### § 3-02. Meetings

The city council shall hold at least one regular meeting each month and may hold as many special meetings as may be necessary to conduct city business. The regular meeting of the city council shall be held on the third Tuesday of each month at 7:30 p.m. in the Community Center Building located on Highway 90. The mayor, of his own motion, or on the application of three councilmembers, may call special meetings by notice to each member of the city council, the city secretary, and the city attorney, served personally or left at their usual place of abode. Notice of all meetings shall be posted in accordance with the Texas Open Meeting Laws. The procedure at all meetings of the city council shall be in accordance with the provisions of the latest edition of Roberts Rules of Orders. (Ordinance No. 21 adopted March 13, 1984)

### § 3-03. Mayor to Preside at Meetings; Mayor Pro Tem

The mayor shall preside at all meetings of the city council and shall only be allowed to vote in case of a tie vote on any matter except one relating to an election. At the first meeting of each new city council after election, or as soon thereafter as practicable, the council shall elect one councilmember to serve as mayor pro tempore for a term of one year and to perform the duties of the mayor in the event of the mayor's failure, inability, or refusal to act.

### § 3-04. Quorum

The mayor shall, with three councilmembers, constitute a quorum for the transaction of business. In the mayor's absence, any four councilmembers shall constitute a quorum. The quorum has the power to appoint any councilmember as a presiding officer at any meeting at which the mayor and mayor pro tempore are absent. The quorum shall have the power to enact such resolutions and ordinances not inconsistent with the laws and constitution of this state and conduct any official city business as shall be deemed proper for the government of the city.

§ 3-05. Order of Business

The order of business at meetings of the city council shall be established by the mayor or presiding officer.

§ 3-06. Vacancies on City Council

In the event of a vacancy or vacancies from any cause in the office of mayor or councilmembers, such vacancy or vacancies may be filled as follows:

(a) If no more than one vacancy on the city council exists, a majority of the remaining members of the city council, excluding the mayor, may fill such vacancy by appointment and such appointee shall serve the term of the vacated position until the next regular city election. The mayor shall only vote in case of a tie.

(b) In lieu of filling one vacancy on the city council by appointment, as provided for above, a special election may be called to fill such vacancy.

(c) If two or more vacancies on the city council exist at the same time, a special election shall be called to fill such vacancies.

When any special election is needed, they shall be ordered, held and conducted in accordance with the general laws of the State of Texas. (Ordinance adopting Code)

§ 4-00. *FISCAL YEAR*

The fiscal year of the City of Payne Springs is hereby designated as beginning with the first day of January of each year and ending the last day of December next ensuing thereafter. (Ordinance adopting Code)

§ 5-00. *CITY DEPOSITORY*

The Bank of Mabank, Mabank, Texas, is hereby designated as the official depository of the City of Payne Springs, Texas. 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 accounts(s) shall be duly signed by both the mayor and city secretary. (Ordinance adopting Code)

§ 6-00. *ANNUAL BUDGET*

§ 6-01. Mayor is Budget Officer

The budget officer shall be the mayor of the city.

§ 6-02. Budget Required

The mayor shall annually prepare a budget to cover all proposed expenditures of the government of the city for the succeeding year.

§ 6-03. Budget Content

The budget shall show all expenditures proposed and shall be carefully itemized so as 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 show as definitely as possible 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 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.

§ 6-04. Cooperation Required

The mayor 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 afford proper preparation of the proposed budget.

§ 6-05. Time of Filing and Public Inspection

The budget shall be filed with the city secretary thirty (30) days prior to the time the council makes its tax levy, if any, 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.

§ 6-06. Public Hearing Required

The city council shall hold a public hearing on the proposed budget. Such public hearing shall occur after the 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. (Ordinance adopting Code)

§ 7-00. *AUDIT OF CITY FUNDS*

The city shall have its records and accounts audited annually and shall have an annual financial statement prepared based on the audit. Such audit and financial statement shall be filed with the city secretary within 120 days after the last day of each fiscal year. (Ordinance adopting Code)

§ 8-00. *OFFICIAL NEWSPAPER*

The Cedar Creek Pilot, a semi-weekly newspaper published in Seven Points, Texas, is hereby declared the official newspaper for required publications by the city. (Ordinance adopting Code)

§ 9-00. CITY MAP AND BOUNDARY SURVEY

A map showing the boundaries of the city, along with the field notes of the survey, shall be kept in the office of the city secretary. Whenever any territory is annexed into the city, the city map shall be immediately updated to include the newly annexed territory. (Ordinance adopting Code)

§ 10-00. ORDINANCES AND RESOLUTIONS

§ 10-01. Regulatory Authority

The city council shall have the power to pass, publish, amend, repeal and enforce all ordinances, rules and police regulations, not contrary to the Constitution of this State, for the good government, peace, and order of the city and the trade and commerce thereof, that may be necessary or proper to carry into effect the powers vested to local governments.

§ 10-02. Style of Ordinances and Resolutions

The style of all ordinances shall be "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PAYNE SPRINGS, TEXAS" and the style of all resolutions shall be "BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PAYNE SPRINGS, TEXAS."

§ 10-03. Introduction and Action on Ordinances

All ordinances and resolutions shall be in writing and shall be introduced by some member of the city council at an open meeting of the city council when it shall be read and acted upon. It shall only be necessary to provide a brief explanation and read the caption of the ordinance or resolution unless a motion is made by any councilmembers to read the entire ordinance or resolution.

§ 10-04. Disposition of Ordinances and Resolutions

All ordinances and resolutions upon passage shall be approved by the mayor, numbered, and attested by the city secretary, and shall be recorded by the city secretary in a book of ordinances or in the minutes for resolutions. Such book of ordinances shall by authority touch all questions arising under the laws and ordinances of the city.

§ 10-05. Publication of Ordinances

Every ordinance imposing any penalty, fine, or forfeiture shall after passage thereof, be published in every issue of the official newspaper for a ten day period, and such ordinances shall take effect and be in force from and after the publication thereof, unless otherwise expressly provided. Ordinances not required to be published shall take effect from their passage, unless otherwise provided. In lieu of the publication of the entire ordinance, the city council may in its discretion provide for the publication of a descriptive caption or title, stating in summary the purpose of the ordinance and the penalty for violation thereof.



§ 10-06. Veto Power of Mayor

Every ordinance or resolution passed by the city council must be filed with the city secretary. Thereupon, the mayor may either sign or refuse to sign the ordinance or resolution. If the mayor refuses to sign the ordinance or resolution, his or her objections must be set forth in writing and submitted to the city secretary within three days of the time the ordinance or resolution was filed. (If the mayor's statement of objections is not filed within three days, the ordinance or resolution automatically goes into effect without his or her signature.) If the mayor timely files a statement of objections to the ordinance or resolution, it is killed unless a majority of the whole number of councilmembers (not just a majority of those present and voting) votes to override the mayor's veto by adopting the ordinance or resolution as originally proposed, with the votes of each councilmember entered in the minutes of meeting at which the vote was taken. (Ordinance adopting Code)

§ 11-00. *MUNICIPAL ELECTIONS*

§ 11-01. Governed by State Law

All elections pertaining to municipal affairs shall be governed by the election laws of the State of Texas. Annual elections for city officials shall be held on the first Saturday in May of each year. Runoff elections required as a result of the election held on the first Saturday in May shall be held on the last Saturday in May. The election shall be held in accordance with the Texas Election Laws. The Federal Voting Rights Act is also applicable to any change affecting voting including a change of polling place, annexation, and method of electing city councilmembers. Proposed changes affected by the Federal Voting Rights Act must be submitted to the U. S. Attorney General for approval.

§ 11-02. Election Order

In all city elections, the mayor, or if he or she fails to do so, the city council shall order the election, give notice and appoint election officers to hold the election. The election order shall be issued at least forty-five (45) days prior to election, but preferably sixty (60) days.

§ 11-03. Adoption of Voting System

The voting system to be used in city elections shall be the paper ballot unless otherwise designated by the city council.

§ 11-04. Election Officers

(a) The city secretary shall be the absentee voting clerk for all city elections. A deputy absentee voting clerk may be appointed to assist the absentee voting clerk and shall have the same authority as the absentee voting clerk in conducting absentee voting, subject to the city secretary's supervision.

(b) A presiding election judge and an alternate presiding election shall be appointed for each election precinct in which an election is held. The appointment of election judges must be made by written order by the city council.

(c) The presiding election judge shall appoint the election clerks to assist the election judge in the conduct of an election at the polling place served by the judge. The city council shall prescribe the maximum number of clerks that each presiding judge may appoint for each election.

(d) An election judge or clerk is entitled to compensation for services rendered at an hourly rate not to exceed five dollars (\$5.00). The election judge or clerk who delivers the precinct election records, keys to the ballot boxes, or other election equipment and unused election supplies after an election, is entitled to compensation for that service in an amount not to exceed twenty-five dollars (\$25.00)

(e) Only a qualified voter and resident of the city may be appointed as an election officer; provided such person does not hold a public office or is running for public office, employed by an opposed candidate for city office, related to an opposed candidate for city office, or serves as a campaign treasurer of a candidate.

Cross reference—See absentee ballot board in subsection § 11-06(b) hereof.

#### § 11-05. Application for Place on Ballot

(a) Any eligible person may file an application to have his or her name printed on the official ballot as a candidate for the office of mayor or councilmember. Such application must be filed in the office of the city secretary no later than 5:00 p.m. of the 45th day before the election. Any application may not be filed earlier than the 30th day before the date the filing deadline. The Secretary of State is required to prescribe the design and content of the forms necessary for the administration of the State Election Code including the application form.

(b) The city secretary shall review each application to determine whether it complies with the requirements as to form, content and procedure it must satisfy for the candidate's name is to be placed on the ballot. Such review shall be completed no later than the 5th day after the date the application is received. If an application does not comply, the city secretary shall reject the application and immediately deliver to the candidate written notice of the reason for rejection.

(c) Any filed candidate for a city office may withdraw his or her candidacy by filing a written, acknowledged withdrawal request with the city secretary. Such request must be acknowledged before a notary public. A withdrawal request must be received by the city secretary not later than 5:00 p.m. of the 36th day before the election day. In a runoff election, the withdrawal deadline is 5:00 p.m. of the third day after the main election.

#### § 11-06. Absentee Voting and Ballot Board

(a) Any qualified voter is eligible to vote absentee by personal appearance. A person is entitled to vote absentee by mail if such person is:

- (1) expected to be absent from the county on election day;
- (2) sick or physically disabled which prevents him or her from appearing at the polling place on election day;
- (3) sixty-five (65) years of age or older on election day;
- (4) confined in jail; or

(5) prevented from attending the polling place because of religious beliefs.

(b) The presiding election judge, or alternate presiding judge if the person appointed presiding judge cannot serve, and the two election clerks appointed for the general election shall also serve as the absentee ballot board for the counting of the absentee ballots. The alternate judge shall serve on the board when the regular presiding judge serves at the election. Absentee ballots shall be delivered to the board by the absentee voting clerk on or before election day. The absentee ballot board shall count the absentee ballots and process the results on election day. The ballots and results of such absentee voting shall be kept separate from those ballots cast on election day.

#### **§ 11-07. Time and Place of Voting**

All polling places shall open at 7:00 a.m. and shall close at 7:00 p.m. The election order shall contain the designated location of all polling places. During the absentee voting period, the city secretary shall allow absentee voting by personal appearance during regular office hours each weekday.

All polling places shall be located inside a public building if practicable; but if a suitable public building is unavailable, the polling place may be located in a private building. Each polling place shall be accessible to and usable by the elderly and physically handicapped. Such polling place or places must be designated before the election notice is issued.

#### **§ 11-08. Election Notice to be Posted and Published**

Notice of an election must be given by publication in a newspaper and by posting at one or more specified locations. The city secretary shall post properly executed copies of the election notice in three public places within the city. The last day for posting notice shall be the 21st day before the election. The period for publishing notice in the official newspaper is no earlier than the 30th day or later than the 10th day before the election day.

#### **§ 11-09. Eligibility Requirements for Candidate for Mayor and Councilmember**

To be eligible to be a candidate for mayor or councilmember a person must:

- (a) Be a United States citizen;
- (b) Be 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable;
- (c) Have not been determined mentally incompetent by a final judgement of a court;
- (d) Have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;
- (e) Have resided continuously in the state for twelve months and in the city for 6 months. Provided; however, that the mayor must have resided in the city for 12 months next preceding the election.

§ 11-10. ELIGIBILITY REQUIREMENTS FOR VOTING

To be eligible to vote in a city election a person must:

- (a) Be 18 years of age or older;
- (b) Be a United States citizen;
- (c) Have not been determined mentally incompetent by a final judgement of a court;
- (d) Have not been convicted of a felony or, if so convicted, has received a certificate of discharge by the Board of Pardons and Paroles or completed a period of probation ordered by a court and at least 2 calendar years have elapsed from the date of receipt or completion; or been pardoned or otherwise released from resulting disability to vote;
- (e) Be a resident of the city; and
- (f) Be registered as a voter in the city for at least 29 days on the day of election.

§ 11-11. Election Supplies

- (1) The city secretary shall procure the election supplies necessary to conduct an election and shall determine the quantity of the various types of supplies to be provided at each polling place and absentee polling place.
- (2) The city secretary shall provide for each election precinct a number of ballots equal to at least the percentage of voters who voted in that precinct in the most recent corresponding election plus 25% of that number, except that the number of ballots provided may not exceed the total number of registered voters in the precinct.
- (3) If paper ballots are used, indelible marking instruments (pens) shall be provided for marking ballots.

§ 11-12. Voting Booths and Ballot Boxes

Voting booths must provide privacy for voters while marking their ballots at each polling place. Four (4) ballot boxes shall be used at each polling place in an election and shall be marked accordingly.

§ 11-13. Political Contributions and Expenditures by Candidates to be Filed

All candidates and office holders shall file campaign expenditure statements and office holder statements of contributions and expenditures with the city secretary as required by the State Election Code.

§ 11-14. Canvass of Election Returns

- (a) Except as otherwise provided by law, the election returns shall be canvassed by the city council. The city council shall convene to conduct the local canvass not earlier than the second day or later than the sixth day after the election day at such time set by the mayor.

(b) After the completion of the canvass, the mayor shall prepare a certificate of election for each candidate who is elected to an office for which the official result is determined by the canvass.

(c) When the returns of such election are canvassed, the person receiving the highest number of votes for each elective office shall be declared to be elected. When two candidates are to be elected for councilmember, the two candidates receiving the highest number of votes shall be elected. When three candidates are to be elected for councilmember, the three candidates receiving the highest number of votes shall be elected, and so forth.

#### **§ 11-15. PRESERVATION OF ELECTION RECORDS**

All election records and returns shall be preserved for a period of 60 days except for the following:

(a) Application for a place on a ballot—2 years after date of election.

(b) Appointment of campaign treasurer—2 years after the date the appointment is terminated.

(c) Campaign and officeholder reports—2 years after the date of filing.

(d) Order appointing election judges—the longer of: (a) the term for which the appointment is made or (b) the period for preserving precinct election records in the last election in which an appointee serves under the order.

However, in the event of an election contest or a criminal investigation or proceeding in connection with an election to which the records pertain is pending, the records shall be preserved until the contest, investigation, or proceeding is contemplated and the judgement, if any, becomes final.

#### **§ 11-16. Recount of Ballots**

A petition requesting a recount in any city election must be submitted to the mayor not later than 5:00 p.m. of the fifth day after the election day or 5:00 p.m. after the second day after the day of the original canvass, whichever is later. The recount shall be conducted under the supervision of the mayor and the recount returns shall be canvassed by the city council.

#### **§ 11-17. Taking Office**

Elected officers may enter upon their duties as soon as they take and subscribe to the official oath of office. An elected officer is entitled to take office immediately upon completion of the official canvass and issuance of a certificate of election to him or her. If a newly elected officer fails to qualify for office within 30 days after the date of election, the office shall be considered vacant.

## § 12-00. MUNICIPAL COURT & PROCEDURES

### § 12-01. Creation of Municipal Court; Appointment of Judge

The mayor shall appoint a person, who in his judgment, is suitable to be the Municipal Judge of the Municipal Court of the City of Payne Springs, Texas, with the approval and consent of the city council, and the mayor, with the consent and approval of the city council, shall provide for or designate a place for a municipal court for the City of Payne Springs, Texas to be presided over by the appointed judge for the enforcement of the laws of the State of Texas and the ordinances of the City of Payne Springs. (Ordinance No. 10 of May 1, 1974)

### § 12-02. Office of Judge

(a) Duties of Judge; Ex-Officio Judge - There is hereby created the office of judge of the municipal court who shall have all the powers and authority as granted by law, and shall perform all the duties as required by state law and ordinances of the city. The mayor is the ex officio judge of the municipal court and shall serve as judge of the municipal court until a judge is appointed or the vacancy filled.

(b) Term of Office; Compensation - The judge shall be appointed for a two year term to correspond with the term of the mayor. The term of the initial appointment shall be made so as to correspond with the mayor's term even if less than two years. Vacancies in the position of judge shall also be appointed by the city council for the remainder of the unexpired term. The amount of compensation to the judge shall be set from time to time by the city council and paid out of the city treasury.

(c) Removal of Judge - The judge of the municipal court may be removed from office by a city council resolution declaring a lack of confidence in the judge, or incompetence, corruption, misconduct or malfeasance in office; provided, that two-thirds (2/3rds) of the city council vote in favor of said resolution.

(d) Oath Requirement for Judge - The judge of the municipal court, prior to taking office, shall take the oath of office required by the state constitution and state laws. This is the oath required by state law for mayors of cities.

(e) Continuing Judicial Education - The judge of the municipal court shall each year meet the annual continuing judicial education requirements of the State Government Code, § 29.008.

### § 12-03 Office of Court Clerk

(a) Appointment of Court Clerk - The city secretary shall serve as ex officio court clerk of the municipal court. The city secretary shall hold such office during his or her term of office as city secretary unless otherwise designated by the city council.

(b) Duties - The court clerk of the municipal court shall keep minutes of the proceedings of the municipal court, issue all process, and generally perform all duties of the clerk of a court as prescribed by law for a county clerk in so far as the same may be applicable.

§ 12-04. City Prosecutor

The duly appointed city attorney or deputy city attorney as designated by the city attorney shall serve as ex officio prosecutor in the municipal court. The city council shall prescribe the compensation for the prosecutor in accordance with any contractual terms and conditions, which shall be paid out of the city treasury.

§ 12-05. Court Bailiff

Any peace officer may serve as bailiff to preserve order and decorum while court is in session at the request of the judge.

§ 12-06. Warrant Officer

Any peace officer in Henderson County may serve as warrant officer to serve all process or papers issued by the municipal court.

§ 12-07. Court Practices and Procedures

The rules prescribed by state law governing trials in the state justice of peace courts shall govern the procedure and practice of the municipal court, and the city council may prescribe such additional rules of practice and procedures as are not inconsistent with state law.

§ 12-08 Cash Bail

(a) Acceptance and Forfeiture of Bail - The judge of the municipal court is authorized to receive from any person arrested for a violation of any section of the city code or any state law over which the municipal court has jurisdiction, cash bail for the appearance of such person before the municipal court. If such person voluntarily signs a written agreement in which he agrees that, in the event of failure to make an appearance by or upon the date therein named, his bail may be forfeited by the municipal court to the city by an order or judgment of the court entered upon its minutes, without service of notice or citation of any kind upon him, and such person shall, in the same instrument, authorize such officer to plead "guilty" for him in the event of his failure to appear on said date, then, said cash bail shall be applied to the payment of the fine and the costs which may be assessed against him.

(b) Amount of Bail - The judge of the municipal court so accepting any cash bail shall fix the same at any amount not less than \$50.00 which, in his judgment, shall be deemed to be sufficient to compel the appearance of such person on the date fixed; provided, that no cash bail shall be accepted unless voluntarily offered by the person charged.

(c) Issuance of Receipt for Payment of Bail - When a cash bail is tendered and accepted, the judge of the municipal court accepting the same shall issue a special cash bail receipt therefor to the person tendering such cash bail, a copy of which is to remain in the cash bail receipt book. When a cash bail is returned to the person who deposited it, a receipt shall be taken therefor.

The same procedure shall apply whether or not the person who has deposited money is present or orders such bail to be applied on the payment of any fine and cost assessed against him. When such person fails to make his appearance and a guilty plea is entered for him, the judge shall apply as much of the cash bail as may be necessary for the satisfaction of such fine and cost, and the balance shall be returned to the defendant. In

the event such cash bail is forfeited, then the entire sum shall be paid to the city.  
(Ordinance adopting Code)

### § 13-00. MUNICIPAL MEMBERSHIPS

#### § 13-01. Membership in East Texas Council of Governments

The City of Payne Springs, Texas 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, ch. 391, and the city secretary is hereby authorized to pay the annual dues required for membership in said council of governments.

#### § 13-02. Membership in Texas Municipal League

The City of Payne Springs, Texas shall be a member of the Texas Municipal League for the purpose of better representation, information, advice, and other such services which may be provided. The city secretary is hereby authorized to pay the annual dues required for membership in said league. (Ordinance adopting Code)

### § 14-00. ANNEXATION

#### § 14-01. Petitions Required

In order for the city to consider annexation of property into the city, a petition must be presented to the city secretary by either a majority of the inhabitants of the land to be annexed or by the owner or owners of the property to be annexed as follows:

(a) Inhabitants Petition - The majority of the inhabitants of the area to be annexed who are qualified to vote must present a petition for annexation with an attached affidavit of any three of the inhabitants certifying to the vote. The petition must contain a description of the land to be annexed.

(b) Owners Petition - The owner or owners of land desiring to be annexed must present a petition requesting annexation. The petition must contain an acknowledged description of the land to be annexed. The land to be annexed by owners petition must contain less than three qualified voters.

#### § 14-02. Service Plan Required

Prior to the publication of notice of the first hearing, the mayor shall cause to be prepared a service plan that provides for the extension of municipal services into the area to be annexed. This service plan shall be made available for inspection and explained to the inhabitants of the area to be annexed at the scheduled public hearings. Such service plan shall be attached with the ordinance annexing the proposed area.

#### § 14-03. Public Hearings Required

Before the city may institute annexation proceedings, the city council shall provide an opportunity for all interested persons to be heard at two public hearings to be held not



more than 40 days nor less than 20 days prior to consideration of the ordinance annexing the property. If within 10 days after the publication of the notice required herein, more than 20 adult residents who reside in the territory proposed to be annexed protest in writing to the city secretary of the institution of the annexation proceedings, then at least one of the public hearings must be held within the area proposed to be annexed. Each written protest shall contain the name, address, and age of each protestor signed.

§ 14-04. Public Notices Required

The mayor shall establish dates for public hearings and the city secretary shall publish notice of the public hearings in the official newspaper not more than 20 days nor less than 10 days before the public hearings. If the area to be annexed contains any railroad rights-of-way, the city secretary shall mail a notice of the public hearings to the railroad company by certified mail.

§ 14-05. Property to be Annexed within Ninety Days

Annexation of territory shall be brought to completion within 90 days of the date on which the city council institutes annexation proceedings or be null and void. Provided, however, any period of time during which the city is restrained or enjoined from annexing any such territory by a court of competent jurisdiction shall not be computed in such 90 day limitation period.

§ 14-06. Property to be Annexed upon Majority Vote

When a majority of the inhabitants qualified to vote for members of the State legislature of any territory adjoining the limits of the City of Payne Springs, to the extent of one-half (1/2) mile in width, shall vote in favor of becoming a part of the city, any of three of them may make affidavit to the fact to be filed before the mayor, who shall certify the same to the city council. The city council may, by ordinance, receive them as part of the city and from thenceforth the territory so received shall be a part of the city. The city secretary shall file a certified copy of the ordinance annexing the property together with a duplicate copy of the petition in the office of the county clerk. The originals are to be kept on file in the city's permanent records.

§ 14-07. Annexation of Property Occupied by Less than Three Voters

When the owner or owner(s) of any property which is vacant and without residents or on which less than three qualified voters reside and which is contiguous and adjacent to the city petitions in writing to the city requesting annexation of such property, the city council shall hear such petition and the arguments for and against the same and grant or refuse such petition as it may see fit. The petition must also describe the mete and bounds of the proposed area to be annexed. Such hearing must be had not less than five and not more than 30 days after the filing of such petition. If the city council decides to grant such petition, the property must be annexed by ordinance. The city secretary shall file a certified copy of the ordinance annexing the property together with a duplicate copy of the petition in the office of the county clerk. The originals are to be kept on file in the city's permanent records.

§ 14-08. Disannexation for Failure to Provide Services

A majority of the qualified voters of an annexed area may petition the city council to disannex the area if the city fails or refused to provide services or to cause services to be provided within the area if construction of any new facilities has not begun within two

years or substantially completed within four and one-half (4-1/2) years after the date of annexation. If the area is disannexed, it may not be annexed again within five years.

**§ 14-09. Disannexation by Petition**

(a) Whenever 50 qualified voters of any property within the limits of the city shall sign and present a petition to the mayor requesting such territory be declared no longer a part of the site, the mayor thereof shall order an election within 30 days thereafter to be held. If a majority of the legal voters of Payne Springs voting at such election cast their votes in favor of discontinuing said territory no longer a part of the city and shall enter an order to that effect on the minutes or records of the city council. From and after the date of such order, said territory shall cease to be a part of the city; provided, it shall not reduce the city to a less area than one square mile or one mile in diameter around the center of the original corporate limits.

(b) Whenever any property is withdrawn as provided above and the city shall, at the time of such withdrawal, owe any debts by bond or otherwise, such property shall not be released from the payment of its pro rata of such indebtedness. The city shall continue to levy an ad valorem tax each year on the property at the same rate as is levied upon other property of the city until the taxes collected from said territory shall equal its pro rata share of the indebtedness at the time of the withdrawal. The taxes so collected shall be charged only with the cost of levying and collecting the same, and the same shall be applied exclusively to the payment of said pro rata share of indebtedness. Nothing herein shall be construed to prevent the inhabitants of said territory from paying in full, at any time, their pro rata share of the indebtedness of said city.

**§ 14-10. Disannexation by Ordinance**

Whenever there exists within the city limits of the city to the extent of at least 10 acres, contiguous and adjoining the lines of the city, which is uninhabited or on which there are fewer than one occupied residence or business structure for every two acres of such territory and fewer than three occupied residences or business structures on any one acre of such territory, the city council may by ordinance duly passed discontinue said territory as a part of the city. When said ordinance has been duly passed, the mayor shall enter an order to that effect on the minutes or records of the city council; and from and after the entry of such order said territory shall cease to be a part of the city.

**§ 14-11. Limitations on Annexations**

The city shall not annex property in violation of the following limitations imposed by state law:

(a) The area to be annexed must be within the city's extraterritorial jurisdiction unless such property is owned by the city.

(b) The area to be annexed must not exceed one-half mile in width and must be contiguous to the city limits.

(c) The area must have a width of at least 1,000 feet at its narrowest point, unless the property is contiguous with the city limits on two sides or such annexation was initiated upon a written petition by an owner or a majority of the qualified voters of the area.

(d) A city cannot annex territory in any year in excess of 10% of the total corporate area of the city as of the first day of that calendar, unless such territory is requested to be

annexed by the owner or a majority of qualified voters of the area or is owned by the city, county, the State or the Federal Government.

(e) If the area to be annexed is within the extraterritorial jurisdiction of another city, that city's permission is required prior to annexation. (Ordinance adopting Code)

## § 15-00. EMERGENCY MANAGEMENT

### § 15-01. Office of Emergency Management Director Created

There exists the office of emergency management director of the City of Payne Springs, which shall be held by the mayor in accordance with state law. The director shall be responsible for conducting a program of comprehensive emergency management within the city and for carrying out the duties and responsibilities set forth in this section. He may delegate authority for execution of these duties to a coordinator, but ultimate responsibility for such execution shall remain with the director.

### § 15-02. Powers and Duties of Emergency Management Director

(a) The powers and duties of the director shall include an on-going survey of actual or potential major hazards which threaten life and property within the city; and an on-going program of identifying and requiring or recommending the implementation of measures which would tend to prevent the occurrence or reduce the impact of such hazards if a disaster did occur. As part of his responsibility in hazard mitigation, the director shall supervise the development of an emergency management plan for the City of Payne Springs, and shall recommend that plan for adoption by the city council along with any and all mutual aid plans and agreements which are deemed essential for the implementation of such emergency management plan. The powers of the director shall include the authority to declare a state of disaster, but such action may be subject to confirmation by the city council at its next meeting. The duties of the director shall also include the causing of a survey of the availability of existing personnel, equipment, supplies and services which could be used during a disaster, as provided for herein, as well as continuing study of the need for amendments and improvements in the emergency management plan.

(b) Additional duties and responsibilities of the emergency management director shall also include the following:

(1) The direction and control of the actual disaster operations of the Payne Springs emergency management organization as well as the training of emergency management personnel;

(2) The determination of all questions of authority and responsibility that may arise within the emergency management organization of the city;

(3) The maintenance of necessary liaison with other municipal, county, district, state, regional, federal, or other emergency management organizations;

(4) The marshaling, after declaration of a disaster as provided for above, of all necessary personnel, equipment or supplies from any department of the city to aid in the carrying out of the provisions of the emergency management plan;

(5) The issuance of all necessary proclamations as to the existence of a disaster and the immediate operational effectiveness of the city emergency management plan;

(6) The issuance of reasonable rules, regulations or directives which are necessary for the protection of life and property in the City of Payne Springs. Such rules and regulations shall be filed in the office of the city secretary and shall receive widespread publicity unless publicity would be of aid and comfort to the enemy;

(7) The supervision of the drafting and execution of mutual aid agreements, in cooperation with the representatives of the state and of other local political subdivisions of the state, and the drafting and execution, if deemed desirable, of an agreement with the county and with other municipalities within the county, for the county-wide coordination of emergency management efforts;

(8) The supervision of, and final authorization for the procurement of all necessary supplies and equipment, including acceptance of private contributions which may be offered for the purpose of improving emergency management within the city;

(9) The authorizing of agreements, after approval by the city attorney, for use of private property for public shelter and other purposes.

(c) The emergency management director may also appoint an emergency management coordinator to assist him in carrying out his duties. In the event that the director is unable to perform the duties of office, the emergency management coordinator shall perform those duties. The emergency management coordinator shall serve at the pleasure of the director. (Ordinance adopting Code)

#### § 15-03. Inclusion in County-Wide Emergency Plan

The City of Payne Springs is included as part of the Emergency Management Organization of Henderson County, under the auspices of the Commissioner's Court of said County. The City of Payne Springs expresses a desire to cooperate fully in this emergency program and hereby embraces the requirements for carrying out such program that is necessary for the preparedness against potential hazards that may confront the city and surrounding area. (Ordinance No. 20 adopted March 13, 1984)

#### § 15-04. Functions and Duties of Emergency Management Organization

The operational emergency management organization of the City of Payne Springs shall consist of the officers and employees of the city so designated by the director in the emergency management plan, as well as all organized volunteer groups. The functions and duties of this organization shall be distributed among such officers and employees in accordance with the terms of the emergency management plan. Such plan shall set forth the form of the organization, establish and designate divisions and functions, assign tasks, duties and powers, and designate officers and employees to carry out the provisions of this section. Insofar as possible, the form of organization, titles and terminology shall conform to the recommendations of the State Division of Emergency Management of the State of Texas and of the Federal Government.

§ 15-05. Unauthorized Use of Warning Signal

Any unauthorized person who shall operate a siren or other device so as to simulate a warning signal, or the termination of a warning, shall be deemed guilty of a misdemeanor if convicted.

§ 15-06. Conflicting Regulations

(a) At all times when the orders, rules, and regulations made and promulgated pursuant to this section shall be in effect, they shall supersede and override all existing ordinances, orders, rules, and regulations insofar as the latter may be inconsistent therewith.

(b) This section shall not be construed so as to conflict with any state or federal statute or with any military or naval order, rule, or regulation.

§ 15-07. Exemption from Liability

This section is an exercise by the city of its governmental functions for the protection of the public peace, health, and safety and neither the City of Payne Springs, the agents and representatives of said city, nor any individual, receiver, firm, partnership, corporation, association, or trustee, nor any of the agents thereof, in good faith carrying out, complying with or attempting to comply with, any order, rule, or regulation promulgated pursuant to the provisions of this section shall be liable for any damage sustained to persons as the result of said activity. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants to the City of Payne Springs a license of privilege, or otherwise permits the city to inspect, designate, and use the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending, or practice enemy attack shall, together with his successors in interest, if any, not be civilly liable for the death of, or injury to, any person on or about such real estate or premises under such license, privilege or other permission or for loss of, or damage to, the property of such person.

§ 15-08. Expenditure of Public Funds for Emergency Management

No person shall have the right to expend any public funds of the city in carrying out any emergency management activity authorized by this section without prior approval by the city council, nor shall any person have any right to bind the city by contract, agreement or otherwise without prior and specific approval of the city council.

§ 15-09 Interference with Emergency Operations; Impersonation

It shall be unlawful for any person willfully to obstruct, hinder, or delay any member of the emergency management organization in the enforcement of any rule or regulation issued pursuant to this section, or to do any act forbidden by any rule or regulation issued pursuant to the authority contained in this section. It shall likewise be unlawful for any person to wear, carry or display any emblem, insignia or any other means of identification as a member of the emergency management organization of the City of Payne Springs, unless authority to do so has been granted to such person by the proper officials. (Ordinance adopting Code)

§ 16-00. SALE OF ABANDONED, UNCLAIMED PROPERTY

§ 16-01. Abandoned, Stolen or Recovered Property to Be Sold

All abandoned, stolen, or recovered property of every kind, except motor vehicles, outboard motors, motorboats and other vessels as defined in Article 4477-9a V.T.C.S. of the Texas Litter Abatement Act, which shall remain unclaimed with the city for a period of 30 days without being claimed or reclaimed by the owners, whether known or not, may be sold at public auction.

§ 16-02. Public Auction of Unclaimed Property

(a) Before selling any unclaimed property, the mayor shall post two notices of the sale, one at the county courthouse and the other at city hall, and shall cause a copy of the notice of public sale to be published in the official newspaper of the city at least once a week for two consecutive weeks, with the date of the first publication to be at least 14 days prior to the day of the sale. The notice of the sale shall describe the impounded property, state that same is unredeemed and therefore will be sold at public auction, designate the time, date, and place of sale which shall not be less than 14 days from the date of the first publication and posting of such notice.

(b) The mayor, or such person as may be designated by him, shall conduct the public auction, at which such property is to be sold to the highest bidder. An accurate statement of each piece of property sold, the sale price, and the name and address of the bidder shall also be kept. He 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.

(c) All funds received on account of such auction shall be delivered to the city secretary who shall give his or her receipt therefor.

§ 16-03. Proceeds Credited to General Fund

After deducting any costs of the sale, the proceeds of the sale are to be deposited in the general fund of the city and disbursed as the city council shall order.

§ 16-04. Worthless Property

Any property which has been listed and offered for sale under the provisions of this section and for which no price or sum has been offered, if deemed in the opinion of the mayor to be worthless and without value, shall be disposed of in such manner as he shall prescribe. The description of all property destroyed or disposed of as worthless or without value shall be reported to the city council, together with the date and manner of disposal.

§ 16-05. Controlled Substances to be Destroyed

All controlled substances and marijuana taken into custody and which is not being held as evidence pending case filed by record, shall be destroyed by any police officer in the presence of the mayor or at least one councilmember.

§ 16-06. Abandoned, Stolen and Recovered Firearms and Weapons

(a) All abandoned, stolen, or recovered firearms or other weapons and ammunition that has remained unclaimed or unidentified by the rightful owner thereof for a period of 60 days and which are not being held as evidence pending case filed by record, shall be destroyed by a police officer in the presence of the mayor and at least one councilmember. Before any such firearms or weapons including 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) However, any handguns, rifles, and/or shotguns that have been classified as antiques or collector's items by a firearms expert selected by the mayor or has been determined by the mayor can be sold in the public interest, may be sold to any person holding a federal firearms license; provided, that their sale is not restricted by criminal law and that such handguns are not so called "Saturday Night Specials."

(c) In addition, any handgun, rifle, and/or shotgun that the mayor has determined to be serviceable which shall be kept in reserve by the police department for use in the event of civil disorder or disaster, or may be used for training purposes, or whose parts are needed for repair of departmental weapons are also exempt from destruction. (Ordinance adopting Code)

§ 17-00. *CLAIMS FOR DAMAGES AGAINST CITY*

Before the city shall be liable for property damages or for damages for the death or personal injury to any person, the person injured, if living, or his representative if dead, shall give the city secretary notice in writing of such death or injury or property damage duly verified, within 60 days after same has been sustained, stating in such written notice when, where, and how the death or injury or property damage occurred, and the apparent extent of any such injury, the amount of damages sustained, the actual residence of the claimant by street and number at the date the claim is presented, the actual residence of such claimant for six months immediately preceding the occurrence of such damage, death, or injury, and the names and addresses of all witnesses upon whom it is relied to establish the claim for damages. Failure to so notify the city within the time and in the manner specified herein shall exonerate, excuse, and exempt the city from any liability whatsoever. (Ordinance adopting Code)

§ 18-00. *EQUAL OPPORTUNITY POLICY*

It is the policy of the City of Payne Springs 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 bonafide occupational qualification. A nondiscriminatory clause shall be provided in all solicitations or advertisements whenever practicable or feasible. (Ordinance adopting Code)

§ 19-00. *COMPETITIVE BIDDING*

(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 \$5,000, 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 a 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 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.

(b) Notice of the time and place at which competitive sealed bids or proposals must be published at least once a week for two consecutive weeks in the official newspaper of the city. The date for the first publication must be before the 14th day before the date set to incur the expenditure or the letting of the contract.

(c) For any construction project which involves trench excavation that exceeds a depth of five feet, the bid documents and the contract must include detailed plans and specifications for trench safety systems that meet Occupational Safety and Health Administration (OSHA) standards and that these plans and specifications include a pay item for these safety systems. **(Ordinance adopting Code)**



*§ 20-00. IDENTIFICATION OF CITY VEHICLES AND EQUIPMENT*

The mayor shall have printed upon each side of every city-owned motor vehicle and piece of heavy equipment the name of the city in letters that are plainly legible at a distance of not less than 100 feet. Such inscription shall be in a color sufficiently different from the body of the vehicle or piece of equipment. A decal may be used in lieu of printing. (Ordinance adopting Code)

*§ 21-00. EMERGENCY ACTION BY OFFICERS, EMPLOYEES OR AGENTS OF THE CITY*

Every officer, employee or agent of the City of Payne Springs while responding to or engaging in emergency situations is hereby authorized to act in such manner as to most effectively deal with the emergency in order to prevent injury or damage to most effectively deal with the emergency in order to prevent injury or damage to persons or property or to prevent violations of law or to apprehend persons or property or to prevent violations of law or to apprehend persons that the officer or employee has reasonable cause to believe has violated the criminal laws of the city, state or federal government. The exception for emergency actions as provided by V.T.C.A., Civil Practice & Remedies Code, § 101.055 is hereby claimed for all purposes in emergency situations. This section shall prevail over any other ordinance or any other law establishing a standard of care that may conflict with this section. Neither the city nor its agent, officer or employee shall be liable for failure to use ordinary care in an emergency situation. (Ordinance adopting Code)