

ORDINANCE NO. 2014-0421-01

**CITY OF LORENA MUNICIPAL
COURT OF RECORD**

**AN ORDINANCE OF THE CITY OF LORENA, TEXAS
ESTABLISHING A MUNICIPAL COURT OF RECORD,
INCLUDING PROVIDING FOR FINDINGS OF FACT, PURPOSE,
JURISDICTION, AND DEFINITIONS; PROVIDING FOR THE
CREATION OF A MUNICIPAL COURT OF RECORD,
APPOINTMENT OF A MUNICIPAL COURT JUDGE,
ESTABLISHING SALARY AND TERM OF THE MUNICIPAL
COURT JUDGE; PROVIDING FOR RELATION TO OTHER
ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE;
PROVIDING FOR ENFORCEMENT INCLUDING A FINE NOT TO
EXCEED \$2,000 IN ALL CASES ARISING UNDER ORDINANCES
THAT GOVERN FIRE SAFETY, ZONING OR PUBLIC HEALTH
AND SAFETY, INCLUDING DUMPING OF REFUSE, AND \$500 IN
ALL OTHER CASES; PROVIDING FOR SEVERABILITY;
PROVIDING FOR PROPER NOTICE AND MEETING**

WHEREAS, the City Council of the City of Lorena ("City") seeks to provide for the enforcement of its municipal ordinances through a Municipal Court of Record rather than the current Municipal Court; and

WHEREAS, the City Council determines that the creation of a municipal court of record is necessary to provide a more efficient disposition of cases arising in the municipality; and

WHEREAS, the City Council finds that the appointment of a municipal court judge is necessary;
and

WHEREAS, the City Council is authorized to establish a municipal court of record by virtue of the
Texas Government Code, Chapter 30.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LORENA, TEXAS:

1. INTRODUCTION

A. Findings of Fact

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Lorena and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

B. Purpose

This ordinance is adopted so that the City Council may promote the public health, safety, morals and general welfare within the City through the enforcement of the City of Lorena's ordinances.

2. ESTABLISHMENT OF COURT OF RECORD

A. Scope

The provisions of this article govern the creation, establishment, operation, and jurisdiction of the municipal court of record within the City, including the judges of the court.

B. Creation of the Municipal Court of Record

There is hereby established one (1) municipal court of record within the City, with the numerical designation of "Municipal Court of Record No. 1." The Municipal Court that is operating on the date that this Ordinance is adopted shall complete its pending cases and be abolished, and all cases filed after the date of the adoption of this Ordinance shall be transferred to the new Municipal Court of Record for disposition.

C. Jurisdictional Limits of Court

The municipal court of record has the jurisdiction provided by general law for municipal courts contained in Section 29.003, Texas Government Code, including concurrent jurisdiction with justice courts as provided by Section 29.003. The municipal court of record also has jurisdiction over cases arising outside the territorial limits of the City under ordinances authorized by Texas Local Government Code Sections 215.072, 271.042, 341.903, and 401.002, or otherwise as provided by law.

D. Judges of Court

- (1) The municipal court of record shall be presided over by a judge, who shall be known as the "municipal judge." The judge shall be appointed by ordinance for a term of two (2) years and shall be entitled to a salary set by the City Council. The amount of the judge's salary may not be diminished during the judge's term of office. The salary may not be based directly or indirectly on fines, fees, or costs collected by the court.
- (2) The judge must:
 - a. Be a citizen of the United States;
 - b. Be a resident of this state;

- c. Be a licensed attorney in good standing; and
 - d. Have two or more years of experience in the practice of law in this state.
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- (3) A person may not serve as a municipal judge if the person is otherwise employed by the municipality. A municipal judge who accepts other employment with the municipality vacates the judicial office.
 - (4) If a vacancy occurs in the office of municipal judge, the City Council shall adopt an ordinance appointing a qualified person in fill the office for the remainder of the unexpired term.
 - (5) There shall also be as many as three (3) alternate judges appointed by the City Council, subject to the same qualifications, who shall have all the powers and shall discharge all the duties of a municipal judge while serving as municipal judge. Each alternate judge shall be appointed for a term of two years. If the regular municipal judge is temporarily absent due to illness, family death, and continuing legal or judicial education programs, or any other reason, he shall select one of the alternate judges to serve during his absence.
 - (6) The municipal judges may exchange benches and act for each other in any proceeding pending in the court. An act performed by any of the judges is binding an all parties to the proceeding.
 - (7) The municipal judge shall take judicial notice of state law and the ordinances and corporate limits of the municipality.
 - (8) A municipal judge is a magistrate and may issue administrative search warrants.
 - (9) A municipal judge may be removed from office by the City Council at any time for incompetence, misconduct, malfeasance, or disability.

E. Writ Power

The judges of the municipal court of record may grant writs of mandamus, injunction, attachment, and other writs necessary to the enforcement of the jurisdiction of the municipal court of record and may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the municipal court of record.

F. Court Rules

The Code of Criminal Procedure and the Texas Rules of Appellate Procedure, as modified by Chapter 30, Texas Government Code, govern the trial of cases before the municipal court of record. The court may make and enforce all rules of practice and procedure necessary to expedite the trial of cases before the court that are not inconsistent with law.

G. Clerk of Court

The mayor of the City shall appoint a clerk of the municipal court of record who may hire, direct and remove the personnel authorized in the City's annual budget for the clerk's office. The clerk or the clerk's deputies shall keep the records of the municipal court of record, issue process, and generally perform the duties for the court that a clerk of the county court at law exercising criminal jurisdiction is required by law to perform for that court. In addition, the clerk or the clerk's deputies shall maintain an index of all court judgments in the same manner as county clerks are required by law to prepare for criminal cases arising in county courts. The clerk shall perform the duties in accordance with statutes, and the charter and ordinances of the City.

H. Preserving Court Record

- (1) For the purpose of recording the proceedings and preserving a record in all cases tried before the municipal court of record, a good quality electronic recording device shall be used. When the recording device is used, a court reporter need not be present at the trial to certify the statement of facts. Proceedings of the court that are appealed shall be transcribed from the recording by an official court reporter. The recording shall be kept and stored for a 20-day period beginning the day after the last day of the proceeding, trial or denial of motion for a new trial, whichever occurs last.
- (2) In lieu of a good quality, electronic device and as deemed necessary by the municipal judge, a court reporter appointed by the court clerk under Texas Government Code Section 30.00010, shall preserve the record. The court reporter may use written notes, transcribing equipment, video or audio recording equipment, or a combination of these methods to record the proceedings of the municipal court of record. The court reporter shall keep the record for a 20-day period beginning the day after the last day of the court proceeding, trial or denial of motion for new trial, or until any appeal is final, whichever occurs last.

- (3) Testimony is not required to be recorded in a case unless requested by the judge or one of the parties.

I. Court Facilities and Seal

- (1) The City Council shall provide courtrooms, jury rooms, offices, office furniture, libraries, law books, and other facilities and supplies that the council determines necessary for the proper operation of the municipal court of record.
- (2) The City Council shall provide the municipal court of record with a seal that contains the phrase "Municipal Court of The City of Lorena, Texas," The seal's use must conform to Article 45.012 of the Code of Criminal Procedure.

J. Complaints and Pleadings

Complaints and pleadings must substantially conform to the relevant provisions of Chapters 27 and 45, Code of Criminal Procedure.

K. Prosecution

Prosecution in the municipal court of record shall be conducted as provided by Article 45.201, Code of Criminal Procedure. Prosecution may be performed by the City Attorney or another lawyer designated as Municipal Prosecutor/Assistant City Attorney.

L. Jury

- (1) A person who is brought before the municipal court of record and who is charged with an offense is entitled to be tried by a jury of six (6) persons. Trial by jury, including the summoning of jurors, must substantially conform to Chapter 45, Code of Criminal Procedure.
- (2) The court clerk shall supervise the selection of persons for jury service.

M. Appeal from Judgment of Conviction

- (1) A defendant has the right of appeal from a judgment or conviction. The State of Texas has the right to appeal as provided by Article 44.01 Code of Criminal Procedure. The County of Criminal Courts or County Criminal Courts of Appeal of McLennan County have jurisdiction of appeals from the municipal courts of record.
- (2) The appellate court shall determine each appeal from a municipal court of record conviction and each appeal from the state on the basis of the errors that are set forth in the appellant's motion for new trial and that are presented in the transcript and statement of facts prepared from the proceedings leading to the conviction or appeal. An appeal from the municipal court of record may not be by trial de novo.

- (3) To perfect an appeal, the appellant must file a motion for new trial not later than the 10th day after the date on which the judgment and sentence are rendered. The motion must be in writing and must be filed with the clerk of the municipal court of record. The motion must set forth the points of error of which the appellant complains. The motion or an amended motion may be amended by leave of court at any time before action on the motion is taken, but not later than the 20th day after the date on which the original or amended motion is filed. The court may for good cause extend the time for filing or amending, but the extension may not exceed ninety (90) days from the original filing deadline. If the court does not act on the motion before the expiration of the Thirty (30) days allowed for determination of the motion, the original or amended motion is overruled by operation of law.
- (4) To perfect an appeal, the appellant must also give notice of the appeal. If the appellant requests a hearing on the motion for new trial, the appellant may give the notice of appeal orally in open court on the overruling of the motion. If there is no hearing, the appellant must give a written notice of appeal and must file the notice with the court no later than the 10th day after the date on which the motion is overruled. The court may for good cause extend that time period, but the extension may not exceed ninety (90) days from the original filing deadline.
- (5) If the defendant is in custody, the appeal is perfected when the notice of appeal is given as provided by article 44.13, Code of Criminal Procedure.
- (6) The transcript preparation fee, which does not include the fee the defendant must pay for the actual transcript of the proceedings, is \$25.00. The clerk shall note the payment of the fee on the docket of the court. If the case is reversed on appeal, the fee shall be refunded to the defendant.

N. Appeal Bond and Record on Appeal

- (1) If the defendant is not in custody, the defendant may not take an appeal until the defendant files an appeal bond with the municipal court of record. The bond must be approved by the court and must be filed not later than the tenth day after the date on which the motion for new trial is overruled. If the defendant is in custody, the defendant shall be committed to jail unless the defendant posts the appeal bond.
- (2) The appeal bond must be in the amount of \$100.00 or double the amount of fines and costs adjudged against the defendant, whichever is greater.
- (3) The bond must:
 - (a) state that the defendant was convicted in the case and has appealed; and
 - (b) be conditioned on the defendant's immediate and daily personal

appearance in the court to which the appeal is taken.

O. Record on Appeal

The record on appeal must substantially conform to the provisions relating to the preparation of a transcript in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure.

P. Transcript

The transcript must substantially conform to the provisions relating to the preparation of a transcript in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure.

Q. Statement of Facts.

(1) A Statement of Facts included in the record on appeal must substantially conform to the provisions relating to the preparation of a Statement of Facts in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure.

(2) The appellant shall pay for the Statement of Facts.

R. Bills of Exception.

Bills of exception must substantially conform to the provisions relating to the preparation of bills of exception in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure.

S. Transfer of Record.

(1) Not later than the 60th day after the date on which the notice of appeal is given or filed, the parties must file the following with the clerk of the municipal court:

- (a) The Statement of Facts;
- (b) A written description of material to be included in the transcript in addition to the required material; and
- (c) Any material to be included in the transcript that is not in the custody of the clerk.

(2) On completion of the record, the municipal judge shall approve the record in the manner provided for record completion, approval, and notification in the court of appeals.

(3) After the court approves the record, the clerk shall promptly forward the record to the appellate court clerk.

T. New Trial

- (1) Each party, on filing the party's brief on appeal with the appellate court clerk, shall deliver a copy of the brief to the municipal judge.
- (2) The trial court shall decide from the briefs of the parties whether the appellant should be permitted to withdraw the notice of appeal and be granted a new trial by the court. The court may grant a new trial at any time before the record is filed with the appellate court.
- (3) If the appellate court awards a new trial to the appellant, the case stands as if a new trial had been granted by the municipal court or record.

U. Certificate of Appellate Proceedings.

- (1) Upon receipt of the certificate of appellate proceedings from the appellate court clerk, the clerk of the municipal court of record shall file the certificate with the papers in the case and note the certificate on the case docket.
- (2) If the municipal court of record judgment is affirmed, to enforce the judgment the court may:
 - (a) Forfeit the bond of the defendant;
 - (b) Issue a *Writ of Capias* for the defendant;
 - (c) Issue an execution against the defendant's property;
 - (d) Order a refund for the defendant's costs; or
 - (e) Conduct an indigency hearing at the court's discretion.

3. JURISDICTION

The provisions of this ordinance shall apply within the City Limits and within the extra-territorial jurisdiction (ETJ) of the City as prescribed by state law.

4. RELATION TO OTHER ORDINANCES

This ordinance shall not be construed to require or allow any act, which is prohibited by any other ordinance. This ordinance is specifically subordinate to any ordinance or regulations of the City pertaining to building and construction safety or to pedestrian and traffic safety.

5. EFFECTIVE DATE

This ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

6. SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this ordinance 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 or sections of this ordinance, and the remainder of this ordinance shall be enforced as written.

7. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED this the 21st day of April 2014 by the City Council of the City of Lorena, Texas.

CITY OF THE LORENA

By: _____
Bill Coleman, Mayor Protem

ATTEST:

Monica Hendrix, City Secretary