

ORDINANCE # 2008-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WELLS, TEXAS, CREATING A MUNICIPAL COURT OF RECORD, APPOINTING A PRESIDING JUDGE OF THE MUNICIPAL COURT OF RECORD, INCLUDING PROCEDURAL PROVISIONS; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. Chapter 30 of the Texas Government Code authorizes a municipality to establish a municipal court of record by ordinance.
2. The City Council determines that the creation of a Municipal Court of Record is necessary to more effectively enforce the ordinances of the City of Wells and to provide more efficient disposition of cases arising in the City of Wells.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WELLS, TEXAS:

The City Code of the City of Wells is amended to include the following:

Sec. 1. Municipal Court of Record Created.

- (a) In accordance with the provisions of applicable state law, there is hereby created the Municipal Court of Record in the City of Wells, Texas. The Municipal Court of Record shall be comprised of as many divisions as the city council deems is necessary.
- (b) The court shall have no term and may sit at any time for the transaction of business of the court. Where the term "municipal court" is used in this Code of Ordinances, it shall mean the municipal court of record created herein. Any provision of the city ordinances or state law that is applicable to a municipal court shall be applicable to the municipal court of record created herein unless the provision is in conflict or inconsistent with Chapters 29 or 30 of the Texas Government Code, as amended, which governs the municipal courts of record.

Sec. 2. Additional Jurisdiction.

The Municipal Court of Record shall also have:

- (a) Concurrent jurisdiction with a justice court in any precinct in which the municipality is located in criminal cases that arise within the territorial limits of the City of Wells and are punishable by fine only;
- (b) Civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, Chapter 214, Local Government Code, or Subchapter E, Chapter 683, Transportation Code;
- (c) Concurrent jurisdiction with a district court or a county court at law under Subchapter B, Chapter 54, Texas Local Government Code, as amended, within the city's territorial limits and

property owned by the city located in the city's extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances;

(d) Authority to issue:

(1) Search warrants for the purpose of investigating a health and safety or nuisance abatement ordinance violation; and

(2) Seizure warrants for the purpose of securing, removing, or demolishing the offending property and removing the debris from the premises.

Sec. 3. Judges Appointment.

(a) The Municipal Court of Record is presided over by the presiding municipal judge who shall be appointed by the city council by ordinance for a term of two years and who must be at minimum: a licensed attorney in good standing in Texas; a citizen of the United States; a resident of the state; and have two or more years experience in the practice of law in this state. A person may not serve as a municipal judge if the person is also employed as an employee of the city. A municipal judge who subsequently accepts other employment with the city vacates the judicial office.

(b) The municipal court judge appointed in accordance with the code of ordinances shall be known as and serve as the "presiding judge." Any alternate municipal court judge appointed under the code of ordinances shall be known as and serve as an "associate municipal judge." Associate municipal judges shall meet the same qualifications as the presiding municipal judge.

(c) The presiding judge and associate municipal judges appointed hereunder are entitled to receive compensation and other benefits as set by the city council.

(d) The compensation of the presiding judge and associate municipal judges may not be diminished during the term of office and may not be based directly or indirectly on fines, fees or other cost that the judges are required by law to collect during a term of office.

(e) A judge of a municipal court of record may be removed from office by the city council for the reasons stated and by the procedures provided for the removal of officials in state law or as provided by Section 1-a, Article V, Texas Constitution.

(f) In the event a vacancy occurs in the office of presiding judge or associate municipal judge, the city council shall appoint a qualified person to fill the office for the remainder of the unexpired term.

Sec. 4. Powers and duties of municipal judges.

(a) If more than one division of the municipal court of record is created, the judge of each division may at any time exchange benches and sit and act for each other in any pending case, matter, or proceeding.

(b) The presiding judge may assign an associate municipal judge to act for the presiding judge who is temporarily unable to act for any reason. An associate municipal judge has all the powers and duties of the office while acting for the presiding judge.

(c) The presiding judge and associate municipal judges shall:

- (1) Hold court within the city at a place designated by the city council;
- (2) Follow all rules of procedure contained in the city ordinances and state law;
- (3) Enter on the docket of the municipal court of record, over which the municipal judge presides, appropriate notations of the disposition of each case;
- (4) Take judicial notice of state law, ordinances and corporate limits of the municipality; and,
- (5) Have authority to preside over any municipal court of record of the city, and may exchange benches with other judges.

(d) The presiding judge and the associate municipal judge have all other powers and duties assigned to a municipal judge by City ordinance, Chapters 29 and 30 of the Texas Government Code, Chapter 45 of the Code of Criminal Procedure, or other state law.

(e) The presiding judge and associate municipal judge may grant writs of mandamus, attachment, or other writs necessary to the enforcement of a jurisdiction of the court and may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court. A municipal judge is a magistrate and may issue administrative search warrants.

(f) The presiding judge shall have the following additional duties and powers:

- (1) Provide for equal distribution of cases and work load among the associate municipal judges;
- (2) Have the power to transfer cases and to assign associate municipal judges to preside over various cases;
- (3) Supervise and control the operation and clerical functions of the court, including the court's personnel during the proceedings of the court; and,
- (4) Provide at least one performance evaluation annually of each associate municipal judge.

Sec. 5. Municipal Court Clerk Appointment.

(a) The city mayor or his designee shall appoint a clerk of the municipal court of record who shall be known as the court administrator and shall appoint such other municipal court clerks as he may, in his discretion, deem appropriate.

(b) The clerk and other court personnel perform their duties under the direction and control of the presiding judge.

(c) The court administrator may hire and remove the personnel authorized in the city's annual budget for the municipal court clerk's office.

- (d) The city council may provide deputy clerks, warrant officers, and other personnel as needed for the proper operation of the courts.

Sec. 6. Municipal Court Clerk Powers and Duties

(a) The court administrator or his deputy shall keep the records of municipal courts of record, issue process, and generally perform the duties of the court that a clerk of the county court exercising criminal jurisdiction is required by law to perform for that court. The clerk shall also 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 state law and city ordinances.

(b) The court administrator shall:

(1) Prepare and maintain accurate dockets and minutes for each municipal court of record created under this article;

(2) Have custody of all documents and papers relating to the business of the municipal court of records;

(3) Supervise the collections of fines imposed by the municipal court of records;

(4) Maintain complaints for all cases in the municipal court of record for which a complaint is required by law;

(5) Have all other powers and duties assigned to the municipal court clerk by the city ordinances, Chapter 30 of the Texas Government Code, or other state law;

(6) Be responsible for full and proper accounting of all fines collected and issue receipt to a person who pays a fine with cash money; and,

(7) Preserve the records of the municipal court of record in accordance with the city records retention schedule.

(c) The court clerk shall acquire and maintain a seal in conformance with state law for the municipal court of record in the city.

(d) The court clerk shall supervise the selection of persons for jury service in the municipal court of record.

(e) Have all other powers and duties assigned to a court clerk by the City ordinances, Chapters 29 and 30 of the Texas Government Code, Chapter 45 of the Code of Criminal Procedure, or other state law.

Sec. 7. Record of proceedings.

Upon request of the judge or upon written request of one of the parties to a trial, proceedings of the municipal court of record, limited to trial testimony and hearings on motions before the court, shall be recorded. For the purpose of recording the proceedings and preserving a record in 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 reporter's record. 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. If the case is appealed, the proceedings shall be transcribed by an official court reporter.

Sec. 8. Appeal; appeal bond; fees

(a) A defendant has the right of appeal from a judgment or conviction in the municipal court of record. The state has the right to an appeal as provided by Article 44.01, Texas Code of Criminal Procedure, as amended.

(b) The appellate court shall determine each appeal from the court on the basis of the errors that are set forth in the appellant's motion for new trial and that are presented in the clerk's record and reporter's record, if any, prepared from the proceedings leading to the appeal. An appeal from the court shall not be by trial de novo.

(c) To perfect an appeal, the defendant must file a motion for new trial not later than 10 days after the date on which the judgment and sentence are rendered. 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 90 days from the original filing deadline. If the court does not act on the motion before the expiration of the 30 days allowed for determination of the motion the original or amended motion is overruled by operation of law.

(d) 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 not 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 90 days from the original filing deadline.

(e) 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 10th 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.

(f) The appeal bond must be in the amount of \$100 or double the amount of the fines and costs adjudged against the defendant, whichever is greater.

(g) The bond must:

- (1) state that the defendant was convicted in the case and has appealed; and
- (2) be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken.

(h) After an order overruling a motion for new trial, the defendant shall give written notice of appeal and pay a fee for the preparation of the clerk's record of \$25.00 not later than ten days after the date on which the motion is overruled. The court 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. The defendant shall pay the fee for the preparation of the clerk's record and the fee for an actual transcription of the proceedings.

(i) The appellant shall pay for any reporter's record containing a transcription of the proceedings unless the court finds, after a hearing in response to an affidavit by the defendant, that the defendant is unable to pay or provide security for the reporter's record. If the court so finds, the court shall order the reporter to prepare the record without charge to the defendant. Before the recorded proceedings are transcribed, the defendant shall, unless found by the court to be unable to pay for the reporter's record, post a cash deposit with the municipal court for the estimated cost of the record. The cash deposit shall be based on an estimate provided by the court reporter or the length of proceedings as indicated by the amount of tape used to electronically record the proceedings, if any, the cost of the court reporter, typing, and other incidental services. The municipal court may post a current schedule of the charges for transcription fees, including deposits. If the cash deposit exceeds the actual cost of the reporter's record, the court reporter shall refund the difference to the defendant. If the cash deposit is insufficient to cover the actual cost of the transcription, the defendant must pay the additional amount to the court reporter before the transcription may be submitted. If a case is reversed on appeal, the court shall promptly refund to the defendant any amounts paid for the reporter's record.

(j) The record on appeal must substantially conform to the provisions relating to the preparation of a record on appeal in the Texas Rules of Appellate Procedure and the Texas Code of Criminal Procedure, as amended.

SEC. 9. Appointment of Presiding Judge

(a) Pursuant to City Code of Ordinances as adopted herein, Forrest K. Phifer is hereby appointed as the Presiding Judge.

SEC. 10. Disposition of pending cases

(a) All cases pending before the Municipal Court on the effective date of this ordinance shall be governed by the procedures contained herein, regardless of any prior filings, pleadings or rulings.

SEC. 11. Preservation of Ordinance in event of invalidity

(a) If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.


SEC. 12. Resolution of conflict

(a) All ordinances and resolution or parts of ordinances or resolutions in conflict with this ordinance are repealed.

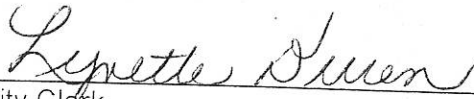
SEC. 13. Date of effect

(a) This Ordinance will take effect immediately, and the City Clerk will publish notice of its adoption in a newspaper of general circulation in the City.

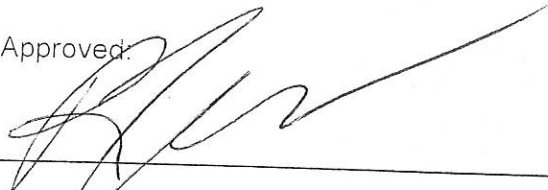
PASSED, APPROVED AND ADOPTED on 2/19/08


Mayor

Attest:


City Clerk

Approved:


City Attorney