

ORDINANCE NO. 021-001

AN ORDINANCE OF THE CITY OF MARLIN, TEXAS, AMENDING ORDINANCE NO. 16-008 OF THE CITY OF MARLIN, TEXAS ADOPTED TO ESTABLISH A MUNICIPAL COURT OF RECORD KNOWN AS THE MUNICIPAL COURT OF RECORD IN THE CITY OF MARLIN; PROVIDING FOR JURISDICTION; PROVIDING FOR THE APPOINTMENT OF A MUNICIPAL JUDGE AND ALTERNATE JUDGES; PROVIDING FOR THE DISPOSITION OF FINES AND ADOPTION OF COURT RULES; PROVIDING FOR THE APPOINTMENT, POWERS, AND THE DUTIES OF THE COURT CLERK AND OTHER COURT PERSONNEL; PROVIDING FOR THE SUPERVISION OF THE COURT CLERK AND OTHER COURT PERSONNEL; PROVIDING FOR THE APPOINTMENT OF A COURT REPORTER AND PRESERVATION OF THE COURT RECORD; PROVIDING FOR REGULAR COURT DATES; PROVIDING FOR THE APPOINTMENT OF A CITY PROSECUTOR, BAILIFF, AND WARRANT OFFICER; PROVIDING FOR APPEALS FROM THE MUNICIPAL COURT OF RECORD; PROVIDING FOR AN AMENDMENT CLAUSE, A SEVERABILITY CLAUSE, DECLARING AN EFFECTIVE DATE; AND PROVIDING FOR AN OPEN MEETINGS CLAUSE.

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

WHEREAS, the City Council recognizes that state law provides for and authorizes the City to create a municipal court of record and that such municipal court of record has been created by prior City ordinance;

WHEREAS, the City Council intends to amend said prior Ordinance No. 16-008 that was adopted to create the Municipal Court of Record in the City of Marlin, Texas in order to provide further guidance and clarity with regard to the operation of the Municipal Court of Record in the City of Marlin, Texas and in order to further provide for a more efficient disposition of the cases arising within the City of Marlin,

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

**Section 1. Findings.** The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

**Section 2. Creation and Establishment of Municipal Court of Record.** The City Council has established the Municipal Court of Record in the City of Marlin, Texas as a municipal court of record in order to provide a more efficient disposition of cases arising in the City, and in order to more effectively enforce the ordinances of the City. The municipal court is and shall be known as the "Municipal Court of Record in the City of Marlin, Texas." The Municipal Court of Record shall be comprised of as many divisions as the City Council deems necessary.

**Section 3. Governing Authority.** The municipal court of record was and has been established pursuant to the authority granted by the Uniform Municipal Courts of Record Act, V.T.C.A., Government Code, Subchapter A (Sec. 30.00001 et. seq.). The terms set forth therein are hereby adopted governing the operation of the Municipal Court of Record in the City of Marlin, Texas.

**Section 4. Jurisdiction.**

(a) The Municipal Court of Record shall have concurrent jurisdiction with any justice court in any precinct in which the City is located in criminal cases that arise within the City and are punishable by fine only. The municipal court of record has the jurisdiction and authority provided by V.T.C.A., Government Code, Sec. 30.00005.

(b) The Municipal Court of Record shall have civil jurisdiction for the purpose of enforcing the City's ordinances enacted under Subchapter A, Chapter 214, Local Government Code; Subchapter E, Chapter 683, Transportation Code; concurrent jurisdiction with a district court or a county court at law under Subchapter B, Chapter 54, Local Government Code, 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 or nuisance abatement ordinances; and authority to issue (a) search warrants for the purpose of investigating health and safety or nuisance abatement ordinance violations, and (b) seizure warrants for the purpose of securing, removing, or demolishing the offending property and removing the debris from the premises.

**Section 5. Appointment of Judge, Temporary Judges; Term; Qualifications.**

(a) The municipal judge shall have all the powers and authority granted by state law, the city charter, and the ordinances of the City and shall perform all the duties as prescribed by the laws of the State of Texas, the City Charter, and the ordinances of this City.

(b) The office of the judge of the Municipal Court of Record shall be filled by appointment by the City Council to serve a term of two (2) years. The person appointed to the office of the judge of the Municipal Court of Record shall be the presiding judge of the Municipal Court of Record in the City of Marlin, Texas. Compensation for the office of municipal judge shall be set from time to time by the City Council.

(c) The presiding judge and any appointed alternate or temporary judges must be a licensed attorney in good standing in the State of Texas, must have two (2) or more years of experience in the practice of law in Texas, and must be a citizen of the United States and a resident of the State of Texas.

(d) The City Council shall from time to time appoint such qualified individuals as may be necessary to serve in the office of the judge of the Municipal Court of Record if the presiding judge is unavailable, unable, or unwilling to serve. The City Council shall set the compensation of the alternate or temporary judge or judges and the length of term of said judge(s).

(e) The presiding judge and any alternate or temporary judge of the office of the municipal judge may be removed:

1. As provided for in the City Charter for the City of Marlin; or
2. for incompetence, corruption, misconduct or malfeasance in office after due notice and opportunity to be heard in his defense; or
3. any improper, unlawful, or professional misconduct, malicious acts, continuous absenteeism, or by a City Council resolution declaring a lack of confidence in the presiding judge and or any alternate or temporary judge, provided that two-thirds (2/3) of the city council vote in favor of said resolution; or absenteeism; or
4. as provided by Section 1-a, Article V, Texas Constitution or by the procedure provided for the removal of the members of a municipal governing body in Subchapter B, Chapter 21, Local Government Code.

(f) In the event of any vacancy in the office of presiding judge or temporary judge, the City Council may appoint any qualified person temporarily or until the end of the existing term.

(g) Prior to assuming office, the presiding judge and any temporary judge of the office of municipal judge shall take the oath of office required by the Constitution and laws of the State of Texas.

(h) The municipal court judge shall continue in office through the expiration of his or her two-year term and shall be the presiding judge of the Municipal Court of Record. Temporary judge(s) shall continue in office through the expiration of their terms.

**Section 6. Disposition of Costs and Fines.** All costs and fines imposed by the Municipal Court of Record shall be paid into the treasury for the use and benefit of the city and as authorized by state law.

**Section 7. Court Rules.** The Code of Criminal Procedure shall govern the trial of cases before the Municipal Court of Record. The Texas Rules of Appellate Procedure as modified by Chapter 30 of the Texas Government Code, as applicable, shall govern the appeal of cases before the Municipal Court of Record. The Texas Rules of Civil Procedure shall govern cases filed within the civil jurisdiction for the Municipal Court of Record for the purpose of enforcing the City's ordinances. The judge of the Municipal Court of Record may issue orders limiting the discovery rules as established under the Texas Rules of Civil Procedure.

**Section 8. Appointment of Court Clerk and Court Personnel; Powers and Duties.**

(a) **Appointment of Municipal Court Clerk and Assistant Clerks.** The City Manager shall appoint the municipal court clerk of the Municipal Court of Record and any assistant court clerks. The City Manager or his/her designee shall supervise the clerk in the performance of his or her duties of a municipal court clerk in accordance with state law, the City ordinances, and the City Charter. The City Manager shall appoint any future court clerks and the City Manager may appoint other court personnel necessary to the operations of the court in the discretion of the City Manager or the City Council. The municipal court clerk of the Municipal Court of Record and any assistant court clerks shall not have been convicted of or have received court deferred

adjudication for any crime of a Class B misdemeanor or higher, to include any crime of moral turpitude.

(b) Municipal Court Duties of the Municipal Court Clerk.

1. The clerk of the Municipal Court of Record shall keep the records of the municipal court of record, issue process, and perform the duties described in V.T.C.A., Government Code § 30.00009 and other duties as set forth in V.T.C.A., Government Code Chapter 30 and as assigned by the Municipal Court Judge;
2. Issue citations for service of process in cases where the Municipal Court of Record has civil jurisdiction for the purpose of enforcing the City's ordinances;
3. The clerk and the deputy clerks shall have all duties and authority as provided by Section 30.00009 of the Texas Government Code, as amended;
4. The court clerk shall acquire and maintain a seal in conformance with state law for the Municipal Court of Record in the City; and
5. The court clerk shall supervise the selection of persons for jury service in the Municipal Court of Record.

(c) Supervision of Municipal Court Clerks. Only during the operation of court proceedings and while the municipal court clerk and any assistant or deputy court clerks are performing Municipal Court Duties, they shall serve under the supervision and at the direction of the municipal court judge. The court clerk and other court personnel are otherwise subject to the daily supervision and direction of the City Manager or his or her designee for all other matters except to the extent that the City Manager's or his or her designee directives expressly conflict with the lawful directives of the municipal court judge related to the clerk's performance of Municipal Court Duties.

(d) Assignment of Other Duties. As an employee of the City of Marlin, the municipal court clerk and all assistant court clerk personnel may be assigned to perform other duties at the discretion of the City Manager.

(e) Removal of Court Clerks. The City Manager, or the City Council as deemed appropriate in the City Council's discretion, shall have the authority to remove the municipal court clerk and other court personnel subject to the City's personnel policies.

**Section 9. Court Reporter; Appointment; Requirements.**

(a) Court Reporter. The City Manager or his/her designee may appoint a court reporter who must meet the qualifications provided for official court reporters and will be compensated in accordance with the agreement appointing the court reporter. The court reporter or court staff may use written notes, transcribing equipment, video or audio recording equipment, or a combination of those methods to record the proceedings in the court.

(b) **Preserving a Court Record.** 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. The court reporter is not required to be present during the proceedings of the Municipal Court of Record provided that the proceedings such as hearings and trials that are required to be recorded are recorded by a good quality electronic recording device. 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, an official court reporter shall prepare the reporter's record.

**Section 10. Establishment of Regular Court Dates.** In order to provide for a more efficient disposition of the cases arising within the City of Marlin and carry out the purposes and intent of this ordinance, the Municipal Court of Record shall conduct its court proceedings and hear and consider scheduled dockets for cases filed with the Municipal Court of Record on the first and fourth Thursday of each month. If either the first or a fourth Thursday falls on an approved City holiday, said proceedings shall be rescheduled by the presiding judge.

**Section 11. City prosecutor.** The duly appointed City Attorney shall serve as prosecutor in the Municipal Court of Record. The City Council shall prescribe the compensation for the prosecutor, which shall be paid out of the City treasury.

**Section 12. Bailiff.** The Chief of Police or his designee shall serve as bailiff to preserve order and decorum while court is in session.

**Section 13. Warrant officer.** The Chief of Police or his designee shall serve as warrant officer to serve all process or papers issued by the Municipal Court of Record.

**Section 14. Appeals.**

(a) A defendant has the right of appeal from a judgment or conviction in a municipal court of record. The state has the right to appeal as provided by Article 44.01 of the Code of Criminal Procedure. The County Court(s) of Falls County, Texas has jurisdiction of appeals from the Municipal Court of Record as authorized under Section 30.00014 (a) of the Texas Government Code.

(b) 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 clerk's record and reporter's record 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.

(c) To perfect an appeal, the appellant must file a written motion for new trial with the municipal clerk not later than the 10th day after the date on which judgment is 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 in custody, the appeal is perfected when the notice of appeal is given as provided by Article 44.13, Code of Criminal Procedure.

(f) The defendant shall pay the fee for an actual transcription of the proceedings.

(g) 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. 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. The bond must state that the defendant was convicted in the case and has appealed and be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken.

**Section 15. Amendment of Conflicting Ordinances.** All ordinances in conflict ordinance are hereby amended as provided herein, and all ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the City, the terms and provisions of this Ordinance shall govern.

**Section 16. Severability.** If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

**Section 17. Effective Date.** This Ordinance shall become effective from and after the date of its passage. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose. Notwithstanding the foregoing, all cases pending in the Municipal Court of Record of and from the effective date of this ordinance shall continue to be processed and adjudicated by the Municipal Court of Record, regardless of the date of offense.

**Section 18. Effective Date.** This Ordinance shall become effective from and after the date of its passage in accordance with Texas Local Gov't Code and the City Charter. Notwithstanding the foregoing, all cases pending in the Municipal Court of Record as of and from the effective date of this ordinance shall continue to be processed and adjudicated by the Municipal Court of Record, regardless of the date of offense.

**Section 19. Open Meetings.** That the City Council has found and determined that the meeting at which this Ordinance is considered is open to the public and that notice thereof was given in accordance with the provisions of the Texas Open Meetings Act, Texas Government Code, Chapter 551, as amended, and that a quorum of the City Council was present.

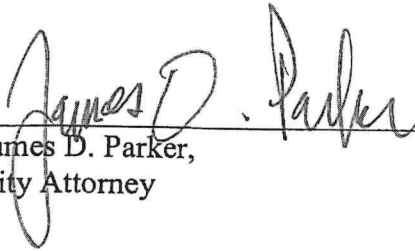
**FIRST READING ON January 12, 2021.**

**FIRST READING ON February 2, 2021.**

**PASSED AND APPROVED** on this 2nd day of February, 2021.



Hon. Carolyn Lofton,  
Mayor



James D. Parker,  
City Attorney

**ATTEST:**



Maryann Waddle  
City Secretary