

ORDINANCE NO. 2018-09

AN ORDINANCE OF THE CITY OF BASTROP, TEXAS, AMENDING THE BASTROP CODE OF ORDINANCES BY AMENDING CHAPTER 7, TITLED "MUNICIPAL COURT," ARTICLE 7.01, "GENERAL PROVISIONS," TO ESTABLISH A MUNICIPAL COURT OF RECORD, TO PROVIDE FOR PURPOSE, JURISDICTION, AND DEFINITIONS; TO PROVIDE FOR THE APPOINTMENT OF A MUNICIPAL COURT JUDGE; TO PROVIDE FOR THE APPOINTMENT OF A COURT CLERK; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR PROPER NOTICE AND MEETING.

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

WHEREAS, the City Council is authorized to establish a Municipal Court of Record by ordinance pursuant to Chapter 30 of the Texas Government Code; and

WHEREAS, the City Council hereby determines that the creation of a Court of Record is necessary to more effectively enforce the ordinances of the City; and

WHEREAS, the City Council further determines that the creation of a Municipal Court of Record is necessary to provide a more efficient disposition of cases arising in the municipality for both the State of Texas and the Defendant; and

WHEREAS, the City Council hereby deems it in the public interest to establish a Municipal Court of Record by ordinance, pursuant to Chapter 30 of the Texas Government Code.

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

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. AMENDMENT

Chapter 7, Article 7.01 of the City of Bastrop Code of Ordinances is hereby deleted in its entirety and replaced to read in accordance with *Attachment "A"*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

3. REPEALER

To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

6. EFFECTIVE DATE

This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, Code of Ordinances, and the laws of the State of Texas.

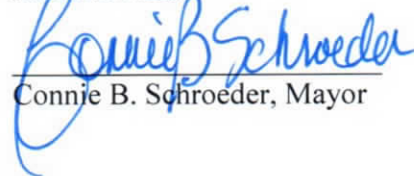
7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

READ & ACKNOWLEDGED on First Reading on this, the 8th day of May 2018.

READ & APPROVED on the Second Reading on this, the 26th day of June 2018.

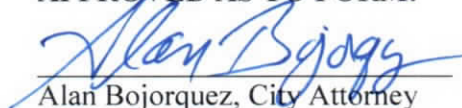
APPROVED:


Connie B. Schroeder, Mayor

ATTEST:


Ann Franklin, City Secretary

APPROVED AS TO FORM:


Alan Bojorquez, City Attorney

Attachment "A"

Bastrop Code of Ordinances

Chapter 7: Municipal Court

Article 7.01: General Provisions

Chapter 7 - MUNICIPAL COURT OF RECORD

ARTICLE 7.01 – MUNICIPAL COURT OF RECORD GENERAL PROVISIONS

Sec. 7.01.001 Municipal Court of Record Created

- (a) There is hereby created the “Municipal Court of Record in the City of Bastrop, Texas.” The Municipal Court of Record shall be comprised of as many divisions as the City Council deems necessary.” 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 arising from alleged actions or inactions occurring after the date of the adoption of this Ordinance shall be filed within the new Municipal Court of Record for disposition.
- (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 the City’s Code of Ordinances, it shall mean the Municipal Court of Record created herein. Any provision of the City’s Charter, 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 with or inconsistent with Chapters 29 or 30 of the Texas Government Code, as amended, which governs municipal courts of record.

Sec. 7.01.002 Jurisdictional Limits of Court

- (a) The Court has all such jurisdiction as is provided to municipal courts by Section 29.003, Texas Government Code.
- (b) The Court has 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 Bastrop and are punishable by fine only.
- (c) The Court has civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, Chapter 214, Texas Local Government Code, or Subchapter E, Chapter 683, Texas Transportation Code.
- (d) The Court has concurrent jurisdiction with a district court or a county court at law under Subchapter B, Chapter 54, Texas 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 and nuisance abatement ordinances.
- (e) The Court has 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. 7.01.003 Municipal Judge Appointment

- (a) 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 the City Council 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.
- (b) Upon the adoption of this Ordinance, the current presiding judge of the Municipal Court of Bastrop shall become the judge of the Municipal Court of Record in the City of Bastrop. The initial term shall expire two years from the date of his/her last appointment by the City Council as judge of the Municipal Court. At the conclusion of the initial term described herein, all succeeding terms of the Municipal Judge shall be two (2) years from the date of the last appointment by the City Council.
- (c) The municipal judge must:
 - (1) be a citizen of the United States;
 - (2) be a resident of this state;
 - (3) be a licensed attorney in good standing;
 - (4) have two (2) or more years of experience in the practice of law in this state; and
 - (5) reside within one (1) hour or a fifty (50) mile radius of the city.
- (d) 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.
- (e) If a vacancy occurs in the office of municipal judge, the City Council shall adopt an ordinance appointing a qualified person to fill the office for the remainder of the unexpired term.
- (f) There may also be 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. In the event of the appointment of any such alternate judge, the regular municipal judge shall be titled and known as "presiding judge." Each alternate judge shall be appointed for a term of two (2) years. If the presiding judge is temporarily absent due to illness, family death, continuing legal or judicial education programs, or any other reason, he/she shall select one of the alternate judge(s) to serve during his/her absence.
- (g) Upon the adoption of this Ordinance, the current alternate judge(s) of the Municipal Court of Bastrop shall become the alternate judge(s) of the Municipal Court of Record in the City of Bastrop. The initial term shall expire two years from the date of his/her

last appointment by the City Council as alternate judge of the Municipal Court. At the conclusion of the initial term described herein, all succeeding terms of the Alternate Municipal Judge shall be two (2) years from the date of the last appointment by the City Council.

- (h) 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 on all parties to the proceeding.
- (i) The municipal judge(s) shall take judicial notice of state law and the ordinances and corporate limits of the municipality.
- (j) The judge(s) of the municipal Court may grant writs of mandamus, injunction, attachment, and other writs necessary to the enforcement of the Court's jurisdiction and may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the Court.
- (k) A municipal judge is a magistrate and may issue administrative search warrants.
- (l) A municipal judge may be removed from office by the City Council:
 - (1) as provided by Section 1-a, Article V, Texas Constitution; or
 - (2) for the reasons and by the procedure provided in Subchapter B, Chapter 21, Texas Local Government Code.

Sec. 7.01.004 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.

Sec. 7.01.005 Municipal Court Clerk Appointment, Powers and Duties

The city manager 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.

Sec. 7.01.006 Preserving 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. When the recording device is used, a court reporter need not be present at the trial to certify the reporter's

record. 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 a final order has been entered in the proceeding, upon completion of the trial, or after the denial of motion for a new trial, whichever occurs last. If a case is appealed, the proceedings shall be transcribed from the recording by an official court reporter.

Sec. 7.01.007 Court Facilities and Seal

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

Sec. 7.01.008 Complaints and Pleadings

Proceedings in the municipal court of record shall commence by complaint, as provided by state law. Complaints and pleadings must substantially conform to the relevant provisions of Chapters 27 and 45, Code of Criminal Procedure.

Sec. 7.01.009 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/Deputy City Attorney.

Sec. 7.01.010 Jury

- (a) 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.
- (b) The court clerk shall supervise the selection of persons for jury service.

Sec. 7.01.011 Appeal from Judgment of Conviction

- (a) A defendant has the right of appeal from a judgment or conviction in the municipal court of record. The State of Texas has the right to appeal as provided by Article 44.01, Code of Criminal Procedure.
- (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 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 shall not be by trial de novo.

- (c) 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.
- (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 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.
- (e) The fee for the preparation of the clerk's record, which does not include the fee the defendant must pay for an 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.

Sec. 7.01.012 Appeal Bond and Record on Appeal

- (a) 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.
- (b) 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.
- (c) The bond must:
 - (1) state that the defendant was convicted in the case and has appealed;
 - (2) be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken; and
 - (3) be in the form of either a cash bond, or surety bond naming two or more good and sufficient sureties as approved by the clerk of the court.
- (d) 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 (10) 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.

- (e) 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.

Sec. 7.01.013 Statement of Facts

- (a) A reporter's record included in the record on appeal must substantially conform to the provisions relating to the preparation of a reporter's record in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure.
- (b) The appellant shall pay for the reporter's record.

Sec. 7.01.014 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.

Sec. 7.01.015 Transfer of Record

- (a) 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:
 - (1) the reporter's record;
 - (2) a written description of material to be included in the clerk's record in addition to the required material; and
 - (3) any material to be included in the clerk's record that is not in the custody of the clerk.
- (b) 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.
- (c) After the court approves the record, the clerk shall promptly forward the record to the appellate court clerk.

Sec. 7.01.016 New Trial

- (a) 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.
- (b) 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.
- (c) 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 of record.

Sec. 7.01.017 Certificate of Appellate Proceedings

- (a) 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.

- (b) If the municipal court of record judgment is affirmed, to enforce the judgment the court may:
 - (1) forfeit the bond of the defendant;
 - (2) issue a Writ of Capias for the defendant;
 - (3) issue an execution against the defendant's property;
 - (4) order a refund for the defendant's costs; or
 - (5) conduct an indigency hearing at the court's discretion.