

ORDINANCE NO. 2019-\_\_ - \_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 66, "MUNICIPAL COURT," OF THE CITY'S CODE OF ORDINANCES BY REPEALING SAID CHAPTER AND REPLACING IT WITH A NEW CHAPTER 66 TO BE TITLED "MUNICIPAL COURT OF RECORD"; ESTABLISHING THE JURISDICTION OF THE MUNICIPAL COURT; PROVIDING FOR THE APPOINTMENT, QUALIFICATIONS, TERM, SALARY, AND POWERS AND DUTIES OF MUNICIPAL COURT JUDGES; PROVIDING FOR A PRESIDING JUDGE; PROVIDING FOR THE FILLING OF VACANCIES AND REMOVAL OF JUDGES; PROVIDING FOR A MUNICIPAL COURT CLERK; PROVIDING FOR A COURT REPORTER; PROVIDING FOR A CITY MARSHAL; PROVIDING FOR PROSECUTION AND APPEALS; PROVIDING FOR COSTS AND FEES; AMENDING APPENDIX A, "SCHEDULE OF FEES"; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, state law provides that the City Council of the City of McKinney may establish a municipal court of record by ordinance; and

**WHEREAS**, the City Council of the City of McKinney finds and determines that the creation of a municipal court of record is necessary to provide for the more efficient disposition of cases arising within the City of McKinney.

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

Section 1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City of McKinney and they are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. From and after the effective date of this Ordinance, Chapter 66, "Municipal Court" of the Code of Ordinances of the City of McKinney, Texas, is hereby repealed in its entirety and replaced with a new Chapter 66, to be labeled "Municipal Court of Record," to read as follows:

**"CHAPTER 66 - MUNICIPAL COURT OF RECORD**

**ARTICLE I – IN GENERAL**

**Sec. 66-1. Creation and Name.**

- (a) The City Council hereby finds and determines that the creation of a municipal court of record is necessary to provide for the more efficient disposition of cases arising within the City.
- (b) The City Council hereby creates a municipal court of record, as provided by Section 30.00003(d) of the Texas Government Code, as amended, to be known as the "Municipal Court of Record in the City of McKinney, Texas", and hereby establishes within said municipal court of record "Division No. 1" and "Division No. 2".

**Sec. 66-2. Jurisdiction.**

The municipal court of record shall have the jurisdiction and authority provided by Section 30.00005 of the Government Code, as amended, including but not limited to:

- (a) Jurisdiction over criminal cases arising under ordinances authorized by Sections 215.072, 217.042, 341.903, and 551.002, Texas Local Government Code, as amended;
- (b) 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 municipality and are punishable only by fine;
- (c) 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;
- (d) 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; and
- (e) 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.

All cases pending on the docket of the Municipal Court of McKinney, Texas, as of the effective date of this ordinance shall remain pending on the docket of the Municipal Court of Record of the City of McKinney, Texas, and the Municipal Court of Record shall have jurisdiction over such cases.

## **ARTICLE II – MUNICIPAL COURT JUDGE**

### **Sec. 66-3. Appointment of Judge or Judges.**

The judge or judges of the municipal court shall be appointed by the City Council.

### **Sec. 66-4. Qualifications.**

The municipal court of record shall be presided over by an appointed municipal judge who is:

- (a) A resident of the state;
- (b) A citizen of the United States;
- (c) A licensed attorney in good standing; and
- (d) Have two (2) or more years of experience in the practice of law in this state.

### **Sec. 66-5. Term.**

All individuals appointed to serve as municipal judge for the court of record shall serve a term of two (2) years, subject to removal under Section 66-10 below. A special judge may be appointed through a contract to provide limited services for a defined period, not as a Term.

**Sec. 66-6. Salary.**

A municipal judge is entitled to a salary, the amount of which shall be determined by the City Council, including a determination made through its delegation of employee compensation to the City Manager. The salary may not be based directly or indirectly on fines, fees, or costs collected by the court.

**Sec. 66-7. Powers and Duties.**

The municipal judge shall take judicial notice of state law and the ordinances and corporate limits of the City. The municipal judge shall have all powers assigned by state law, including the power to grant writs of mandamus, attachment and other writs necessary to the enforcement of the jurisdiction of the court of record and may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court of record. The municipal judge is a magistrate and may issue administrative search warrants.

**Sec. 66-8. Presiding Judge.**

- (a) If there is more than one municipal judge, City Council shall appoint one of the judges as the presiding judge.
- (b) The presiding judge shall:
  - (1) Maintain a central docket for cases filed within the territorial limits of the City over which the municipal court of record has jurisdiction;
  - (2) Provide for the distribution of cases from the central docket to the individual municipal judges to equalize the distribution of business in the courts;
  - (3) Request the municipal court clerk to summon jurors needed for cases that are set for trial by jury;
  - (4) Temporarily assign judges or substitute judges to exchange benches and to act for each other in a proceeding pending in a court if necessary, for the expeditious disposition of business in the courts; and
  - (5) Supervise and control the operation and clerical functions of the administrative department of each court, including the court's personnel, during the proceedings of the court.
  - (6) Establish local rules of the court, as necessary.

**Sec. 66-9. Vacancies.**

If a vacancy occurs in the office of a municipal judge of the court of record, the City Council shall by ordinance appoint a qualified person to fill the office for the remainder of the unexpired term. The City Council may appoint one or more qualified persons to be available to serve for a municipal judge who is temporarily absent due to illness, family death, continuing legal or judicial education programs, or any other reason. The municipal court judge shall select one of the qualified persons appointed by the city council to serve during the absence of the municipal court judge. The substitute judge, while serving as a municipal court judge, has all the powers and shall discharge all the duties of a municipal court judge. A substitute judge must meet the qualifications prescribed for the municipal court judge. The City Council shall set the compensation for the substitute judge.

**Sec. 66-10. Removal of Judge.**

A municipal judge may be removed from office at any time for the reasons stated and consistent with Section 30.000085 of the Texas Government Code, as amended, or for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.

**ARTICLE III – MUNICIPAL COURT CLERK**

**Sec. 66-11. Municipal Court Clerk; Powers and Duties.**

- (a) The City Manager shall appoint a clerk of the municipal court of record who shall be known as the “Municipal Court Clerk.” The municipal court clerk may hire, direct, and remove the personnel authorized in the city’s annual budget for the clerk’s office, including court support personnel and marshals, as may be necessary or appropriate, in accordance with the ordinances, policies, and procedures of the City and subject to the final approval of the City Manager.
- (b) The municipal court 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. The clerk shall perform the duties in accordance with state law and city ordinances.
- (c) The municipal court clerk shall further:
  - (1) prepare and maintain accurate dockets and minutes for each municipal court of record created under this chapter;
  - (2) maintain custody of all documents and papers relating to the business of the municipal court;
  - (3) supervise the collection of fines, fees, and costs imposed by the municipal court;
  - (4) maintain complaints for all cases in the municipal court for which a complaint is required by law;
  - (5) supervise the selection of persons for jury service in the municipal court of record. Trial by jury, including the summoning of jurors, must substantially conform to Chapter 45, Code of Criminal Procedure.
  - (6) have all other powers and duties assigned to the municipal court clerk by city ordinance, Chapter 30 of the Texas Government Code, and the Constitution and laws of the State of Texas;
  - (7) be responsible for the full and proper accounting of all fines, fees, and costs collected, and issue a receipt to any person who pays a fine, fee or cost with cash money;
  - (8) preserve the records of the municipal court in accordance with any city records retention schedule; and

- (9) acquire a seal in conformance with state law for the municipal court of record. The appearance and use of the seal must substantially conform to Article 45.012, Code of Criminal Procedure, but must also include the phrase “Municipal Court of/in McKinney, Texas”.

#### **ARTICLE IV – COURT REPORTER**

##### **Sec. 66-12. Court reporter; position created.**

The City Manager shall appoint a court reporter to preserve a record in cases tried before the municipal court. The court reporter must meet the qualifications provided by law for official court reporters. The court reporter shall be compensated by the municipality in the manner determined by the City Manager. 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 of the court. The court reporter or court staff is not required to record testimony in any case unless the judge or one of the parties requires a record in writing, and files the request with the court before trial. If a record is made, it shall be kept for the 20-day period beginning the day after the last day of the court proceeding, trial or denial of motion for new trial, whichever occurs last. The court reporter is not required to be present during proceedings of the municipal court of record, provided that proceedings that are required to be recorded are recorded by a good quality electronic recording device. If a case is appealed, the proceedings shall be transcribed from the recording by an official court reporter.

#### **ARTICLE V – CITY MARSHAL**

##### **Sec. 66-13. City marshal; position created.**

There is hereby created and established the office of city marshal for the city, to be filled by a qualified person appointed by the city manager. The city marshal and all persons serving as deputy city marshals shall be required to hold certification as a peace officer from the state commission on law enforcement officers' standards and education. The city marshal shall serve at the pleasure of the city manager, and he or she shall report to and be supervised by the municipal court clerk, or such other person designated by the city manager. The city marshal, with approval of the city manager and in accordance with the annual budget, may appoint one or more deputies to assist in the discharge of his or her duties.

##### **Sec. 66-14. Duties of city marshal.**

The city marshal, acting under the direction of the city manager or his or her designee, shall perform the following duties:

- (a) Execute warrants of arrest, subpoenas and other legal process issuing out of the municipal court of the city;
- (b) Execute other warrants of arrest, subpoenas, summons, and other legal process as determined by the municipal court clerk;
- (c) Serve as bailiff and security officer of the municipal court of the city and shall promptly and faithfully execute writs and process issues by the court; and
- (d) Perform such other duties as may be within the authority of certified peace officers or as may be determined by the city manager or his or her designee.

**Sec. 66-15. Authority, eligibility for retirement.**

- (a) The city marshal (and any deputy city marshals) shall serve as a peace officer and shall have full police authority in the exercise of assigned duties.
- (b) The city marshal (and any deputy city marshals) shall not be members of the city's police department; however, the city marshal (and any deputy city marshals) is eligible for membership in the Texas Municipal Retirement System. The city marshal (and any deputy city marshals) is considered a paid law enforcement officer for the purpose of "survivors' assistance benefits."

**Sec. 66-16. Oath of office.**

The city marshal (and any deputy city marshals) shall be required to take an oath of office before entering upon the discharge of duties. The oath shall be subscribed by the person taking it and shall be filed and preserved in the office of the city secretary.

**ARTICLE VI – PROSECUTION AND APPEALS**

**Sec. 66-17. Prosecution.**

Prosecutions in the municipal court of record shall be conducted as provided in Article 45.201, Code of Criminal Procedure. Complaints and pleadings must substantially conform to the relevant provisions of Chapters 27 and 45, Code of Criminal Procedure

**Sec. 66-18. Appeals.**

- (a) In the event of an appeal, the appellant shall pay a transcript preparation fee in the amount of \$25. The transcript preparation fee does not include the fee for an actual transcript of the proceedings. 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 appellant. In addition to the transcript preparation fee, the fee for the actual transcript of the proceedings and statement of facts must be paid by the appellant.
- (b) A defendant has the right of appeal from a judgment or conviction in the municipal court and the state has the right to appeal as provided by Article 44.01, Code of Criminal Procedure. Such appeals shall be in accordance with and conform to Chapter 30 of the Texas Government Code.

**ARTICLE VII – COSTS AND FEES**

**Sec. 66-19. Collection by clerk.**

All costs and jury fees assessed by this article shall be collected by the clerk of the municipal court and paid over to the city for the use and benefit of the city.

**Sec. 66-20. Enforcement of collection.**

The enforcement of the collection of the costs and jury fees assessed by this article shall be in the same manner now provided for the enforcement of the collection of fines assessed in the municipal court.

**Sec. 66-21. Administrative fees.**

- (a) All persons requesting attendance to a driver safety course must pay a processing fee as specified in appendix A of the Code of Ordinances which may be amended from time to time.
- (b) All persons convicted of a misdemeanor offense or a misdemeanor criminal offense including ordinance violations relating to pedestrians or parking of motor vehicles are required to pay a municipal court building security fee as a court cost, pursuant to Vernon's Ann. C.C.P. art. 102.017, and as specified in appendix A of the Code of Ordinances which may be amended from time to time.
- (c) All persons and/or agencies requesting a list of those who have paid a processing fee for a driver safety course must pay a fee as specified in appendix A of the Code of Ordinances which may be amended from time to time for each request.
- (d) All persons convicted of a misdemeanor offense including, but not limited to an ordinance violation, are required to pay a juvenile case manager fee as a court cost, pursuant to Code of Criminal Procedure, article 102.0174, as amended. The fee assessed shall be the fee specified in appendix A of the Code of Ordinances which may be amended from time to time by ordinance and is consistent with article 102.0174 of the Code of Criminal Procedure, as amended.
- (e) All persons requesting expunction of one or more criminal conviction are required to pay a filing fee per criminal case as specified in appendix A of the Code of Ordinances which may be amended from time to time and an expunction fee as specified in appendix A of the Code of Ordinances which may be amended from time to time, per agency to be notified pursuant to the expunction request.
- (f) All persons shall pay a fee for each complaint or citation reported by the municipal court to the state department of public safety pursuant to chapter 706 of the Texas Transportation Code, as amended. The fee assessed shall be the fee specified in appendix A of the Code of Ordinances which may be amended from time to time by ordinance and is consistent with section 706.006 of the Texas Transportation Code, as amended.
- (g) Pursuant to chapter 132 of the Texas Local Government Code, as amended, all persons shall pay a processing fee for credit card payments for any costs, fines or fees owing under this Ordinance and paid through the Internet, which processing fee shall be set at the maximum percentage allowed by state law under said chapter. By the adoption hereof, the City Council authorizes the City Manager and the Court to collect such payments by credit card, including through the Internet.

**Sec. 66-22. Municipal court technology fund.**

- (a) There is hereby created and established a municipal court technology fund, hereinafter referred to as the "fund," pursuant to Vernon's Ann. C.C.P. art. 102.0172. The fund may be maintained in an interest-bearing account.
- (b) The municipal court technology fund fee shall be in the amount as determined from time to time by city council. The fee shall be assessed and collected from the defendant upon conviction for a

misdemeanor offense in the municipal court as a cost of court. A defendant is considered convicted if: a sentence is imposed on the person; the person is placed on community supervision, including deferred adjudication community supervision; or the court defers final disposition of the person's case. The fee shall be collected on conviction for an offense committed on or after September 1, 1999.

- (c) The court clerk shall collect the fee and pay the fee to the finance director of the city, who shall deposit the fee into the municipal court technology fund. The fund shall be administered by or under the direction of the city council. The fund shall be used only to finance the purchase of technological enhancements for the municipal court of the city, including:
  - (1) Computer systems;
  - (2) Computer networks;
  - (3) Computer hardware;
  - (4) Computer software;
  - (5) Imaging systems;
  - (6) Electronic kiosks;
  - (7) Electronic ticket writers; or
  - (8) Docket management systems.

**Sec. 66-23. Applicability of state law.**

- (a) The imposition and collection of the costs and fees in the municipal court of the city shall be as provided by the Texas Code of Criminal Procedure, as amended, or any other applicable state law, which provisions are hereby incorporated by reference in this section.
- (b) Except for those costs and fees remitted to the state, all costs and fees collected by the clerk of the municipal court shall be paid over to the city for the use and benefit of the city.

**Sec. 66-24. Collections fee.**

- (a) Pursuant to article 103.0031, Texas Code of Criminal Procedure, the city may enter into a contract with a private attorney or a public/private vendor.
- (b) The fee shall be 30 percent of any outstanding balance due on a case after 60 days of which the debt, fine, fee, forfeited bond, or court cost must be paid in full as determined by the court, by which the accused promised to appear or was notified, summoned, or ordered to appear, or the date on which a penalty or fee is due under a rule or order adopted under Chapter 233, Local Government Code, ordinance, policy, procedure, or rule of the McKinney Municipal Court.
- (c) All cases in which the fee has been assessed shall be forwarded to the attorney/vendor for collection services.
- (d) The fee does not apply to a case that has been dismissed, satisfied through time-served credit or community service, or if the court has determined that the defendant is indigent.
- (e) The city may not use the additional 30 percent collection fee authorized by subsection (b) Art. 103.0331 for any purpose other than compensating the private attorney or vendor who earns the fee.”



Section 3. That Appendix A, entitled "Schedule of Fees," of the Code of Ordinances, City of McKinney, Texas, Chapter 66, Section 66-21, entitled "Administrative Fees," is hereby amended to read as follows:

"Sec. 66-21. Administrative fees.

Driver Safety Course, processing fee\10.00

Municipal Court building security fee\3.00

Request for list of those who have paid a processing fee for defensive driving, for each request\15.00

Juvenile case manager fee\5.00

Request for expunction of one or more criminal conviction:

Filing fee, per criminal case\30.00

Expunction fee, per agency\5.00

Omnibase fee for each complaint or citation reported\30.00

Child safety fund fee\5.00

Copies\0.10/sheet

Rewritable CD (CD-RW)\1.00

Non-rewritable CD (CD-R)\1.00

Digital Video Disc (DVD)\3.00

Labor for programming\28.50/hour

Labor for locating, compiling, and reproducing\15.00/hour

Overhead charge-20% of labor charge\calculated

Postage and shipping charge-Actual cost\calculated

Other costs-Actual charge\calculated"

Section 4. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 5. All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 6. All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage

that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.

Section 7. Any provision of any prior ordinance of the City, whether codified or uncodified, which are in conflict with any provision of the Ordinance, are hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City, whether codified or uncodified, which are not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section 8. If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 9. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney following the City Council's adoption hereof as provided by law.

Section 10. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE \_\_\_ DAY OF \_\_\_\_\_, 2019.**

CITY OF MCKINNEY, TEXAS

\_\_\_\_\_  
GEORGE C. FULLER  
Mayor

CORRECTLY ENROLLED:

\_\_\_\_\_  
EMPRESS DRANE  
City Secretary

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney