City of Lordsburg
Ordinance No. 2017-03

AN ORDINANCE AUTHORIZING THE MUNICIPAL COURT TO ISSUE BENCH WARRANTS FOR PERSONS THAT FAIL TO APPEAR OR ACT IN ACCORDANCE WITH ORDERS ISSUED BY THE MUNICIPAL COURT, AND AUTHORIZING THE MUNICIPAL COURT TO PERMIT A DEFENDANT THAT IS UNABLE TO PAY ALL OR PART OF AN ASSESSED FINE, FEE OR COST TO PERFORM COMMUNITY SERVICE IN LIEU OF PAYMENT OF ALL OR PART OF THE ASSESSED FINE, FEE OR COST.

WHEREAS, the City of Lordsburg ("the City") understands that it is important to hold persons accountable for failure comply with orders issued by the City's Municipal Court;

WHEREAS, not all persons have the financial means to pay all or part of any fines, fees or costs that may be assessed by the Municipal Court; and

WHEREAS, the City desires to establish a process whereby persons that do not have the financial means to pay all or part of any fines, fees or costs assessed by the Municipal Court can perform community service to satisfy such fines, fees or costs.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LORDSBURG:

Section One: Bench Warrants.

A. Failure to appear or act. If any person who has been ordered by the City's Municipal Judge to appear at a certain time and place or to do a particular thing fails to appear at such specified time and place in person or by counsel when permitted by these rules or to do the thing so ordered, the City's Municipal Court ("Court") may issue a warrant for the person's arrest. Unless the Municipal Judge has personal knowledge of such failure, no bench warrant shall issue except upon a sworn written statement of probable cause. The Court shall not issue a bench warrant for failure to pay fines, fees, or costs unless the defendant has failed to timely respond to a summons issued in accordance with Section Two of this Ordinance.

B. Law enforcement information system. If a bench warrant is issued in a driving while under the influence of intoxicating liquor or drugs proceeding, upon execution of the bench warrant, the Court shall cause the warrant to be entered into a warrant information system maintained by a law enforcement agency. A copy of the warrant shall be docketed in the case file.

C. Execution and return. A bench warrant shall be executed and returned in the same manner as an arrest warrant. The return shall be docketed in the case file.

D. Duty to remove warrant. If the warrant has been entered into a law enforcement information system, upon arrest of the defendant, the person executing the warrant shall cause it to be removed from the system. If the Court withdraws the warrant, the Court shall cause the warrant to be removed from the warrant information system.

Section Two: Payment of fines, fees, and costs.

A. Payment arrangements. The Court shall assess the defendant's ability to pay any fines, fees, or costs at the time of sentencing and shall consider the following types of payment arrangements in the order of priority set forth below.

(1) Full payment at time of sentencing. If the defendant is able to pay the full amount at the time of sentencing, the Court shall require the defendant to do so.

(2) Full payment within thirty (30) days of sentencing. If the defendant cannot pay the full amount at the time of sentencing but will be able to pay within thirty (30) days, the Court shall require the defendant to do so.

(3) Agreement to pay. If the defendant cannot pay the full amount within thirty (30) days after the date of sentencing, the Court may permit the defendant to enter into an agreement to pay in installments. The Court shall retain the authority to enforce an agreement to pay regardless of whether the defendant remains on probation or whether the defendant was placed on probation at all. An agreement to pay shall:

(a) be based on the defendant's individual circumstances;

(b) require the largest possible payment amounts that the Municipal Judge determines the defendant can make successfully;

(c) require the first installment to be due no later than thirty (30) days after the date of sentencing;

(d) schedule subsequent installments in intervals of thirty (30) days or less; and

(e) schedule all payments to be made within the shortest practicable period of time.

(4) Modification of the agreement to pay. The Court may, for good cause shown, modify the agreement to pay up to three (3) times, either by allowing the defendant additional time for payment or by reducing the amount of one or more installments. The Court shall document the good cause shown with written findings in the case file.

B. Community service in lieu of payment. If the Court finds at any time that the defendant is unable to pay all or part of the assessed fines, fees, or costs, the Court shall permit the defendant to perform community service in lieu of payment of all or part of the assessed fines, fees, or costs owed to the Court. The defendant shall receive credit toward the fines, fees, or costs at the rate of the prevailing federal hourly minimum wage or as otherwise required by law. If the defendant performs community service in lieu of payment, all hours must be completed by the deadline set by the Court. If the defendant fails to perform community service as ordered by the Court, the failure to perform community service shall be treated the same as a failure to pay, and the Court shall follow the procedures set forth in Paragraphs C and D of Section Two of this Ordinance.

C. Failure to comply; issuance of summons or bench warrant.

(1) Issuance and content of summons. If the defendant fails to make a payment as ordered by the Court, request a modification of an

agreement to pay before the payment due date, or perform community service by the deadline set by the Court, the Court shall issue a summons within five (5) days of the deadline. The summons shall:

(a) instruct the defendant to either pay or appear at the Court within fifteen (15) days after the date that the summons is issued;

(b) if the summons does not set a specific hearing date and time, state that the defendant may request a hearing before the Municipal Judge and that ability to pay will be addressed at any hearing; and

(c) notify the defendant that a bench warrant shall be issued if the defendant fails to timely respond to the summons.

(2) Service of summons. The Court may serve a summons under this paragraph using any method of service permitted by the Rules of Procedure for the Municipal Courts.

(3) Issuance of bench warrant. If a defendant fails to comply with a summons issued under Subparagraph (C)(1) of Section Two of this Ordinance, the Court shall issue a bench warrant for failure to pay or perform community service no later than five (5) days after the appearance date on the summons. Once the defendant has been arrested or has surrendered on the warrant, the Court shall hold a hearing under Paragraph D of Section Two of this Ordinance, unless the defendant has satisfied all outstanding obligations to the Court by making payment in full or by performing community service in lieu of payment.

(4) Subsequent failure to comply. The first time the defendant misses a payment under an agreement to pay or fails to perform community service by the deadline set by the Court, the Court shall follow the procedure set forth in Subparagraphs (C)(1) through (C)(3) of Section Two of this Ordinance. If the defendant subsequently fails to comply with an order to pay or to perform community service, the Court may issue a bench warrant and is not required to issue a summons prior to issuing a bench warrant. Prior to issuing a bench warrant, the Court may attempt to contact the defendant and make satisfactory arrangements to address the defendant's noncompliance. Once the Court has issued a second bench warrant for failure to comply, the Court shall not grant the defendant an extension or a renewed agreement to pay, except upon a written finding of exceptional circumstances.

D. Failure to comply hearing. The Court shall hold a failure to comply hearing as set forth in a summons, at the defendant's request, or following the defendant's arrest or surrender on a bench warrant, unless the defendant has satisfied all outstanding obligations to the Court by making payment in full or performing community service in lieu of payment. If the defendant has been arrested and remains in custody, the Court shall hold the hearing within three (3) days of the defendant's arrest. The defendant may appear at the hearing through an audio or audio-visual communication under Rule 8-109A NMRA. At the hearing the Court shall determine the basis for the defendant's failure to pay or to perform community service as

ordered by the Court. If the Court finds that the defendant is financially unable to pay, the court may modify the agreement to pay under Subparagraph (A)(4) of Section Two of this Ordinance; convert the unpaid fines, fees, or costs to community service; revoke any unpaid portion of a fine; or grant other appropriate relief. If the Court finds that the defendant has willfully refused to pay or to perform community service, the Court may order the defendant committed to jail under Section 33-3-11 NMSA 1978.

Section Three: To the extent this Ordinance is inconsistent with Rule 8-206 NMRA or Rule 8-206.1 NMRA, the Rules of Procedure for the Municipal Courts shall control.

This Ordinance will be effective 10 days following the adoption of this ordinance.

PASSED, SIGNED, APPROVED AND ADOPTED this 12th day of October, 2017.

Arthur Clark Smith, Mayor

ATTEST:

City Clerk