

**ORDINANCE BILL NO. 59-09**

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2 AN ORDINANCE RELATING TO MUNICIPAL COURT; AMENDING SRC 4.080, SRC  
3 4.120, SRC 4.130, SRC 4.140; REPEALING SRC 4.125; CREATING NEW PROVISIONS;  
4 AND DECLARING AN EMERGENCY

5 *The City of Salem ordains as follows:*

6 **Section 1.** SRC 4.080 is amended to read as follows:

7 **4.080. Right to Trial by Jury.**

8 (a) The defendant in the trial in the prosecution of any misdemeanor offense, for  
9 which a sentence of imprisonment may be imposed shall have the right to a public  
10 trial by an impartial jury.

11 (b) The Court defendant shall be advised by the court advise the defendant of the  
12 right to trial by jury at the time of arraignment, and shall ask whether the  
13 defendant wishes to waive the right. The defendant may elect to waive trial by  
14 jury and agree to a trial by a judge alone, provided that the election is in writing  
15 and has been approved by the judge as a knowing and voluntary waiver, or made  
16 in open court.

17 (c) The jury shall consist of six persons selected in the manner prescribed in this  
18 Chapter. The verdict of the jury shall be unanimous, and shall be in writing, and  
19 signed by the foreperson.

20 **Section 2.** SRC 4.120 is amended to read as follows:

21 **4.120. Selection of Jury Panel; ~~Summons for Jury Duty.~~** (a) If jury trial by jury has  
22 not been waived pursuant to SRC 4.080, ~~the jury panel shall be selected from the master~~  
23 ~~jury list.~~ (b) the clerk of the court shall generate by means of electronic equipment or  
24 other random selection method, a list of not less than twenty-two persons from the master  
25 jury list, who shall comprise the jury panel for the trial a particular date.

26 **Section 3.** The following SRC 4.126 is hereby added to SRC Chapter 4:

27 **4.126. Juror Questionnaire; Eligibility to Serve as Juror; Discharge From Jury**  
28 **Service.**

29 (a) A person whose name is included on the preliminary jury list shall be notified  
30 that he or she has been selected for jury service. Before or at the time a person is

1 scheduled to appear for jury service, a judge or the clerk of the Court shall  
2 question the person as to the person's competency to act as a juror under SRC  
3 4.100. If a judge or clerk of the court determines that a person so questioned is  
4 incompetent to act as a juror, the person shall be discharged from jury service.

5 **(b)** A person may be questioned about the person's competency to act as a juror  
6 either in person or by mail.

7 **(1)** To question a person in person about the person's competency to act as  
8 a juror, a judge or the clerk of the court shall first require the person to  
9 declare by oath or affirmation that the answers to the questions about the  
10 person's competency to act as juror shall be truthful.

11 **(2)** To question a person by mail about the person's competency to act as a  
12 juror, the Municipal Judge may cause to be mailed or delivered, with or  
13 without a juror's summons, a juror questionnaire along with instructions  
14 for completion of the questionnaire and return of the completed  
15 questionnaire by mail or personal delivery to the clerk of the court. A  
16 completed juror questionnaire shall contain the questioned person's signed  
17 declaration that the responses to the questions on the form are true to the  
18 best of the person's knowledge. Notarization of a completed questionnaire  
19 shall not be required.

20 **(3)** Copies of completed questionnaires shall be provided to legal counsel  
21 at the time of trial. The specific address of the juror shall be redacted from  
22 the questionnaire before distribution, but sufficient information shall be  
23 provided to allow legal counsel to identify the area of town where the  
24 juror resides.

25 **(c)** A person who knowingly makes a false statement of material fact in response  
26 to a question regarding the person's competency to serve as a juror may be  
27 punished for contempt.

28 **(d)** If a person fails to return a properly completed juror questionnaire as  
29 instructed, a judge may direct the person to appear forthwith and properly  
30 complete a questionnaire. If the person fails to appear as directed, the Judge may

1 order the person to appear and show cause for that failure. If the person fails to  
2 appear pursuant to the order or appears and fails to show good cause, the person  
3 may be punished for contempt.

4 (e) Before or at the time a person reports for jury service, or at the time jurors are  
5 being examined by legal counsel pursuant to SRC 4.140, a judge or the clerk of  
6 the court may discuss with the person any questions on the juror questionnaire  
7 and the grounds for any incompetency of the person to act as a juror. Any  
8 pertinent information so acquired may be noted on the form.

9 **Section 4.** SRC 4.130 is amended to read as follows:

10 **4.130. Summons of Jurors.**

11 (a) ~~After peremptory challenges have been exercised or waived, as provided in~~  
12 ~~SRC 4.125,~~ The Court shall issue a summons for each person on the final jury  
13 panel. Not less than twenty days prior to the date set for trial, the clerk of the  
14 court shall cause the summons to be served on each person on the final jury panel  
15 by first class mail, or by forwarding the summons to the Chief of Police together  
16 with an order signed by the Court commanding the Chief of Police to cause  
17 personal service to be made upon the person identified on the summons, and make  
18 true return thereupon.

19 (b) Any person summoned to appear as a juror may be punished by the Court for  
20 contempt of court if:

- 21 (1) The person fails to attend the Court as required or fails to give a valid  
22 excuse for not attending;
- 23 (2) The person fails to give attention to matters before the jury;
- 24 (3) The person leaves the court without permission of the court while the  
25 court is in session; or
- 26 (4) The person fails to complete jury service without a valid excuse.

27 **Section 5.** SRC 4.140 is amended to read as follows:

28 **4.140. ~~Time for Selecting Jury Selection; Peremptory Challenges; Voir Dire;~~**  
29 **~~Challenges for Cause.~~**

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1 (a) ~~Jury selection shall occur on the day of trial. At the time of trial, for jury~~  
2 ~~selection, the prospective jurors shall be examined as to their qualifications, first~~  
3 ~~by the court, then by the defendant and then by the City Attorney. After the~~  
4 ~~prospective jurors have been passed for cause, peremptory challenges, if any,~~  
5 ~~shall be exercised as provided in subsection (c) of this section. Each party may~~  
6 ~~take any number of challenges for cause and three peremptory challenges, unless~~  
7 ~~the Judge grants additional peremptory challenges. When two or more defendants~~  
8 ~~are tried together, each must join in any peremptory challenge or it cannot be~~  
9 ~~taken, unless the Judge grants additional peremptory challenges. When several~~  
10 ~~defendants are tried together, the defendants are entitled to the number of~~  
11 ~~challenges they would have had if each defendant had been tried separately.~~  
12 ~~When two or more defendants are tried together, the City is entitled to the same~~  
13 ~~total number of peremptory challenges as the sum of the peremptory challenges~~  
14 ~~the defendants could have exercised.~~

15 (b) Peremptory challenges shall be taken in writing by secret ballot as follows:  
16 ~~Challenges to a prospective juror at time of jury selection shall be for cause only.~~  
17 ~~A prospective juror may be disqualified for cause, upon a showing from the~~  
18 ~~prospective juror's testimony on voir dire that there is a reasonable doubt as to the~~  
19 ~~prospective juror's ability to act as a fair and impartial arbiter of the facts, to give~~  
20 ~~the matter in issue the prospective juror's full and unbiased consideration, or to~~  
21 ~~accord each witness the prospective juror's complete and open attention.~~  
22 ~~Challenge for cause shall be made upon close of voir dire, and shall be exercise~~  
23 ~~first by the defendant and then by the city attorney. The court shall excuse any~~  
24 ~~prospective juror who has been challenged for cause by either party or upon the~~  
25 ~~court's own motion where it appears that grounds exist therefor.~~

26 (1) The defendant may challenge one juror and the City may challenge  
27 one, alternating until the peremptory challenges are exhausted.

28 (2) After each challenge, the jury panel shall be filled and the additional  
29 juror passed for cause before another peremptory challenge is exercised.  
30 Neither party shall be required to exercise a peremptory challenge unless

1 the full number of jurors is in the jury box at the time.

2 (3) The refusal to challenge by either party in order of alteration does not  
3 prevent the adverse party from exercising the party's full number of  
4 peremptory challenges, and refusal of a party to exercise the party's  
5 peremptory challenge in proper turn concludes the party as to the jurors  
6 once accepted by the party. If the party's right of peremptory challenge is  
7 not exhausted, the party's further challenges shall be confined, in the  
8 party's proper turn, to such additional jurors as may be called.

9 (c) Notwithstanding subsection (b) of this section, the defendant and the City  
10 may stipulate to taking peremptory challenges orally.

11 (d) If the peremptory challenges of the moving party are not already exhausted,  
12 the court may for good cause shown permit a peremptory challenge to be taken to  
13 any juror before the jury is complete and sworn, notwithstanding the juror  
14 challenged may have been previously accepted.

15 **Section 6.** SRC 4.125 is hereby repealed.

16 **4.125. Peremptory Challenges; Final Jury Panel.**

17 ~~(a) The defendant and the city attorney are entitled to four peremptory challenges to the~~  
18 ~~jury panel apiece.~~

19 ~~(b) The clerk of the court shall provide a copy of the list of prospective jurors selected for~~  
20 ~~the jury panel to the defendant not less than thirty days before the date set for trial. The~~  
21 ~~defendant shall exercise the defendant's peremptory challenges and return the list to the~~  
22 ~~clerk of the court within three days. The clerk of the court shall then provide the list of~~  
23 ~~prospective jurors to the city attorney, who shall be given three days to exercise the city's~~  
24 ~~peremptory challenges. Should the defendant fail to return the list with peremptory~~  
25 ~~challenges within the three-day period, the defendant shall be deemed to have waived~~  
26 ~~peremptory challenges, and the clerk of the court shall forward the list to the city attorney~~  
27 ~~to exercise the City's four peremptory challenges.~~

28 ~~(c) The names remaining after all peremptory challenges shall be summoned as the final~~  
29 ~~jury panel. In case either party does not exercise all peremptory challenges, the final jury~~  
30 ~~panel shall include all names remaining after the peremptory challenges.~~


1 **Section 7. Severability.** Each section of this ordinance, and any part thereof, is severable, and  
2 if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of  
3 this ordinance shall remain in full force and effect.

4 **Section 8. Emergency Clause.** This act being necessary for the immediate preservation of the  
5 public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in  
6 full force and effect from and after the date of its passage.

7 PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2009 .

8 ATTEST:



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10 City Recorder

11 Approved by City Attorney: \_\_\_\_\_  
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FOR COUNCIL MEETING OF:  
AGENDA ITEM NO.:

November 9, 2009  
9.1 (c)

TO: MAYOR AND COUNCIL  
THROUGH:  LINDA NORRIS, CITY MANAGER  
FROM: C. RANDALL TOSH, CITY ATTORNEY   
SUBJECT: Municipal Court Jury Selection Process

**ISSUE:** Should the City Council enact Ordinance Bill No. 59-09, that would make certain changes to the municipal court jury selection process?

**RECOMMENDATION:** Staff recommends that Council enact Ordinance Bill No. 59-09, making certain changes to the municipal court jury selection process.

**BACKGROUND:** The Salem Municipal Court is established by Section 24 of the Salem Charter. Currently, the Municipal Court hears cases involving violations and misdemeanors, which include both misdemeanors under the City's criminal code and misdemeanors under Oregon's state traffic laws.<sup>1</sup> Defendants in misdemeanor cases brought in municipal court are entitled to the constitutional rights afforded defendants in criminal prosecutions, just as they are in circuit court, including a right to a trial by an impartial jury.<sup>2</sup>

The jury selection process involves choosing the required number of jurors by random selection, from lists designed to provide a pool that represents all members of the community.<sup>3</sup> In selecting a jury from those persons called for jury service, attorneys for the defendant and the prosecutors can make two kinds of challenges: "for cause" and peremptory.

A challenge for cause is one that is based on a demonstration that the juror cannot be impartial in hearing the case. A for cause challenge can be based on such things as a familial relationship between the defendant and the plaintiff, that the prospective juror will be a witness in the case, or that the prospective juror has some objection to the law or to the defendant that would prevent that person from being impartial.

An attorney making a challenge for cause must give a reason in open court that supports the disqualification of the juror from service. In contrast, a peremptory

<sup>1</sup> A misdemeanor is any crime for which the punishment includes a potential sentence of imprisonment for a period not to exceed one year.

<sup>2</sup> Other rights afforded criminal defendants under the U.S. Constitution include the right to confront their accusers; to speedy trial; to court appointed counsel.

<sup>3</sup> These may include such lists as DMV records and voter registration lists.

challenge is one for which no reason must be given. Under the City's jury selection process, defendants and the prosecutors can make any number of challenges for cause, but are limited to four peremptory challenges, unless the court grants additional peremptory challenges in a specific case.<sup>4</sup>

The peremptory challenges are completed more than thirty days before trial to allow summons of the specific jury by the municipal court.<sup>5</sup> The defense attorneys and prosecutors review the jury questionnaires and exercise peremptory challenges based on those questionnaires without an opportunity to speak with the potential jurors.<sup>6</sup> Once peremptory challenges are complete, the municipal court issues summons to the jury panel chosen for a particular case.<sup>7</sup>

In criminal law, the right to a jury trial is a protected and important constitutional right for every defendant. The City's current jury selection system, while providing a jury, limits a defendant's opportunity to fully vet the jury panel. In contrast, the live interview process (called "voir dire") frequently reveals biases, prejudices, or life experiences that might not rise to the level of a "for cause" challenge, but reveal that a particular juror may not be best suited to hear and decide a particular case.

Ordinance Bill No. 59-09 would make certain changes to the City's current jury selection process, making the selection more efficient, and consistent with the jury selection process used in criminal prosecutions in circuit court.

**FACTS AND FINDINGS:** The following is a summary of the major provisions of Ordinance Bill No. 59-09:

- a) Section 1 would amend SRC 4.080 to clarify that a defendant's waiver of the right to trial by jury must be knowing, voluntary, and approved by the municipal judge.
- b) Section 2 would amend SRC 4.120 to provide that jurors will be summonsed for a particular date, rather than a particular trial. This will allow the court to summons a jury pool from which a jury could be selected for the trial that will be "held on that day." This amendment makes the City's jury selection process mirror the process used in the circuit court.
- c) Section 3 would add a new section SRC 4.126, which would allow for a determination of juror competency, authorize the use of a juror questionnaire, provide rights for defendants to have access to the questionnaire when examining jurors, and allow persons to be discharged from jury service based on responses on the questionnaire. This new section would also give the court the

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<sup>4</sup> SRC 4.125(a).

<sup>5</sup> SRC 4.125(b).

<sup>6</sup> SRC 4.125(b).

<sup>7</sup> SRC 4.125(c).

authority to use the contempt power in those cases where a juror is untruthful on a questionnaire, or refuses to respond to a questionnaire.

d) Section 4 would amend SRC 4.130, to eliminate references to the sending of juror summons after peremptory challenges have been made. This is necessary because of the proposed elimination of the "pre-trial" peremptory challenge process currently provided by SRC 4.125. If enacted, Ordinance Bill No. 59-09 would establish a process whereby all challenges, both for cause and peremptory, would be made on the day of trial. This system would be identical to that used for trials in circuit court.

e) Section 5 would amend SRC 4.140, to establish the process for making peremptory challenges at the time of trial. This amendment makes the City's jury selection process mirror the process used in the circuit court process.

f) Section 6 would repeal SRC 4.125, which establishes the City's current system for peremptory challenges.<sup>8</sup>

If enacted, Ordinance Bill No. 59-09 would allow the court to utilize judicial resources more effectively. Because many trials settle, it will be possible to schedule multiple trials on one day, and more efficiently utilize the courtroom time set aside for those trials that are held.

Ordinance Bill No. 59-09 would also assist the municipal court in providing quick resolution of cases. Currently, the municipal court has to schedule trials beyond the timelines recommended by the Oregon Court of Appeals. Because more trials can be scheduled on a given court day, the new jury selection system will allow the municipal court to resolve older cases in a more timely fashion.

Both defense counsel and the City's prosecutors have expressed dissatisfaction with peremptory challenge by pre-trial review of questionnaires, and believe that a better job of selecting an impartial jury can be done by the process used in circuit court, where the attorneys from both sides question the entire panel directly. In addition, the court will be able to better supervise the use of peremptory challenges. The discretion that can be exercised in the use of peremptory challenges is not unlimited, and peremptory challenges cannot be used to eliminate jurors based solely on their race, ethnic background or membership in other protected classes. Under the municipal court's current jury selection process, the court exercises no oversight of the defense's and the prosecution's use of peremptory challenges. The oversight that will be provided by the new system would help to ensure that peremptory challenges are not based on a

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<sup>8</sup>The specifics of the process are as follows: Not less than thirty days prior to trial, the clerk of court mails the list of prospective jurors to the defendant's counsel (or the defendant, if he or she is appearing *pro se*). The defendant's counsel (or the defendant) has three days to exercise his or her peremptory challenges. After the list is returned to the clerk of court, the list is then forwarded to the City's prosecutors, who make their peremptory challenges. The persons remaining on the list after the peremptory challenges have been made are then summonsed for jury service. The defendant's counsel (or the defendant) and the City's prosecutors can only challenge jurors on this final panel for cause.

pattern of impermissible criteria, as the court will be in a better position to see patterns of exclusion in the peremptory challenge process.<sup>9</sup>

Additional benefits of the new process established by Ordinance Bill No. 59-09 would be: (1) saving of a significant amount of staff time (20-30 hours annually) that is required to qualify the jury pool to prepare the jury panel ahead of the peremptory challenges; (2) reduction in mailing cost; (3) better protection of juror personal information; and greater accommodation for police training, because under the current system, officers have sometimes been unable to attend trainings because of previously scheduled trials.

**Conclusion:** Ordinance Bill No. 59-09 would create a new jury selection process and would be one step towards resolving cases efficiently and timely, and creating needed efficiencies in the court process and the use of judicial time. It is recommended that the City Council advance Ordinance Bill No. 59-09 to second reading. Because Ordinance Bill No. 59-09 contains an emergency clause, it will become effective immediately upon passage. This will enable the court to fully implement the new system in time for the next calendar year.

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<sup>9</sup> See, e.g., *State v. Millage*, 125 Or App 92 (1993); *State v. Longo*, 341 Or 580 (2006).