

ORDINANCE BILL NO. 59-09

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

The City of Salem ordains as follows:

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

4.080. Right to Trial by Jury.

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

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

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

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

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

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

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

(a) A person whose name is included on the preliminary jury list shall be notified 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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