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**4.001. Municipal Court, Generally.** The municipal court is the judicial tribunal of the City of Salem, and shall exercise jurisdiction over offenses as provided by this Chapter and the laws of the State of Oregon, and over such other matters as provided by the Salem Revised Code. The municipal judge is the presiding judge of the municipal court and shall have such judicial authority and such powers as are conferred by this Chapter, the Charter of the City of Salem, the laws of the State of Oregon and the U.S. Constitution. (Ord No. 6-08)

**4.005. Definitions.** Unless the context otherwise specifically requires, as used in this Chapter, the following mean:

- (a) City Attorney means the City Attorney, the Deputy City Attorney, or an Assistant City Attorney appearing before the municipal court.
- (b) Counsel means an attorney for a defendant, or an attorney appointed by the municipal court to act as a legal advisor to an indigent defendant who is appearing pro se.
- (c) Defendant means either the person charged with an offense in a proceeding in municipal court, or, if the person is represented, that person's counsel.
- (d) Judge means the municipal judge or a municipal judge pro tempore.
- (e) Municipal court or court means the municipal court of the City of Salem, or any judge exercising the power of a judicial officer in the municipal court.
- (f) Municipal judge means the municipal judge holding elective office of the City of Salem.
- (g) Offense means any matter over which the municipal court has jurisdiction pursuant to SRC 4.010. (Ord No. 6-08)

**4.010. Jurisdiction of Municipal Court.** The municipal court shall have jurisdiction over all offenses made punishable under the ordinances of the City of Salem; all violations, as defined by ORS 153.005(3); and all traffic offenses, as defined by ORS 801.555, that are made punishable under Title 59 of the Oregon Revised Statutes, other than felony traffic crimes. (Ord No. 6-08; Ord No. 28-10)

**4.015. Qualifications of Municipal Judge and Municipal Judges Pro Tempore.**

- (a) No person shall be eligible to the office of municipal judge unless the person is at least 21 years of age, a citizen of the United States, a resident of the City of Salem for one year next preceding election or appointment and an active member in good standing of the Oregon State Bar.
- (b) No person shall be eligible for appointment as municipal judge pro tempore unless the person is at least 21 years of age, a citizen of the United States, and an active member in good standing of the Oregon State Bar. (Ord No. 6-08)

**4.020. Commencement of Term of Office.**

- (a) The term of office for municipal judge shall begin on the first business day in January following the election of the municipal judge.
- (b) The term of office for municipal judge pro tempore shall begin upon the date the municipal judge pro tempore takes the oath of office following appointment by the City Council. A municipal judge pro tempore shall serve a term not to exceed two years. The length of term shall be recommended by the municipal judge and set by the City Council at time of appointment. (Ord No. 6-08)

**4.025. Oath of Office.** Before entering upon the duties of municipal judge or municipal judge pro tempore, whether upon election or appointment, the person must take and subscribe, and submit to the City Recorder, an oath in the following form:

I, \_\_\_\_\_, do solemnly swear or affirm that I will support the Constitution of the United States, the Constitution of the State of Oregon, and the Charter of the City of Salem, and that I will faithfully and impartially discharge the duties of judge of the Municipal Court of the City of Salem, according to the best of my ability.

(Ord No. 6-08)

**4.030. Private Practice of Law by Municipal Judge Prohibited; Municipal Judge Pro Tempore or Partner thereof Prohibited from Acting as Attorney in Municipal Court.**

(a) During his or her tenure of office, the municipal judge shall not engage in the practice of law, and shall devote full time to carrying out the duties of the office of municipal judge.

(b) No municipal judge pro tempore or partner of a municipal judge pro tempore may act as an attorney in the municipal court. (Ord No. 6-08)

**4.035. Municipal Judge Compensation Commission.**

(a) There is hereby created a Municipal Judge Compensation Commission, which shall be comprised of three members. The Commission shall consist of the City Manager, one attorney of good standing who is a member of the Marion or Polk County Bar Association, and one member of the general public of good character. The City Council shall appoint all members, other than the City Manager. The term of office shall be four years.

(b) The Municipal Judge Compensation Commission shall review and make recommendations to the City Council regarding the salary of the municipal judge and compensation for municipal judges pro tempore, based on the following criteria:

(1) The qualifications and skills necessary for office.

(2) The level of responsibility implicit in the office.

(3) The cost of living.

(4) The total compensation, including benefits other than salary.

(5) Budget limitations.

(6) Any other factors the commission may consider to be reasonable, appropriate and in the public interest.

(c) The Municipal Judge Compensation Commission shall meet biennially, commencing with the 2008 calendar year, and shall make a recommendation to the City Council within sixty days of the date the Commission concludes its review. The City Council shall review the recommendation and determine whether to accept the recommendation. If accepted, the recommendation shall become effective during the next fiscal year.

(d) The compensation for the municipal judge, and any municipal judge pro tempore, shall not be diminished during the term of office. (Ord No. 6-08)

**4.040. Authority to Administer Oaths.** In addition to such other powers as may be conferred by law, any judge of the municipal court has the power to administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties. (Ord No. 6-08)

**4.045. Contempt Proceedings.** In the exercise of the power to punish contempt under the Charter of the City of Salem and the laws of the State of Oregon, the municipal court may impose a remedial or

punitive sanction for contempt of court, in the manner provided by ORS 33.015-33.155. (Ord No. 6-08)

**4.050. Disqualification for Prejudice.** No judge of the municipal court shall hear or try any action, matter or proceeding if a party thereto, or an attorney appearing therein, moves the court for a change of judge on grounds of prejudice. The motion shall be supported by an affidavit stating that the judge before whom the action, matter or proceeding is pending is prejudiced against the party or attorney, and that the affiant or the client of the affiant cannot, or believes that the affiant or the client of the affiant cannot, have a fair and impartial trial or hearing before the judge, and that such motion is made in good faith and not for the purpose of delay. The motion shall be filed before, or within five days after, a question of fact arises in the action, matter or proceeding is to be tried or heard, or within ten days after the assignment, appointment and qualification or election and assumption of office of another judge to preside over such action, matter or proceeding. A question of fact arises upon a plea of not guilty by a defendant. No party or attorney shall make more than one application in any action, matter or proceeding. (Ord No. 6-08)

**4.055. Means to Carry Jurisdiction into Effect; Adoption of Suitable Process or Mode of Proceeding.** When jurisdiction on a matter is conferred on the municipal court, all the means to carry such jurisdiction into effect is also given to the municipal judge; and in the exercise of such jurisdiction, if the rules of procedure are not specifically identified or made applicable to the municipal court under this Chapter, any suitable process or mode of proceeding may be adopted by the municipal judge which may appear most conformable to the exercise of such jurisdiction. (Ord No. 6-08)

**4.060. Rules of Procedure.**

- (a) The municipal judge may adopt rules necessary for the prompt and orderly conduct of the business of the municipal court. Rules adopted by the municipal judge pursuant to this section shall be consistent with the provisions of ORS Chapter 153, ORS Chapter 156, and any rules adopted by the Oregon Supreme Court pursuant to ORS 153.033.
- (b) A certified copy of any rule adopted by the municipal judge shall be filed with the City Recorder and shall be published upon the municipal court's website. No rule, or amendment thereof, shall be effective unless so filed, and shall become effective upon the date of filing and publication. The City Recorder shall maintain copies of all rules filed pursuant to this section and shall keep a record of the date of filing. (Ord No. 6-08)

**4.065. Municipal Court Docket.** The municipal court shall maintain a docket, which may be maintained in electronic form. The clerk of the court shall enter the following information in the docket:

- (a) The title of every action or proceeding commenced in the court, with the names of the parties thereto and the time of commencement thereof.
- (b) The date of making or filing any pleading.
- (c) An order allowing a provisional remedy, and the date of issuing and returning the summons or other process.
- (d) The time when each party appears, or a party's failure to do so.
- (e) If defendant waived counsel, the fact of such waiver and the basis for the court's conclusion that such waiver was knowing and voluntary.
- (f) Every postponement of a trial or proceeding, upon whose application and to what time.
- (g) The demand for a jury, if any, or the waiver of the right to jury trial, and by whom made.
- (h) The order for a jury and the time appointed for trial.
- (i) The return of an order for a jury, the names of the persons impaneled and sworn as a jury and the names of all witnesses sworn and at whose request.

- (j) The verdict of the jury and when given or, if the jury disagrees and is discharged without giving a verdict, a statement of such disagreement and discharge.
- (k) The judgment of the court and when given.
- (l) The date on which any judgment is docketed in the docket.
- (m) The fact of an appeal having been made and allowed, and the date thereof, with a memorandum of the undertaking, and the justification of the sureties.
- (n) Satisfaction of the judgment or any part thereof.
- (o) A memorandum of all orders relating to security release.
- (p) All other matters that may be material or specially required by any statute. (Ord No. 6-08)

**4.070. Violations Bureau; Establishment; Authority of Violations Clerk.**

- (a) In addition to, and not in lieu of, any authority conferred upon the municipal court of the City of Salem under ORS 153.800, the municipal judge may establish a violations bureau and designate the clerk or deputy clerk of the municipal court or any other appropriate person to act as a violations clerk for the violations bureau. The violations clerk shall serve under the direction and control of the municipal judge.
- (b) A violations clerk may exercise authority over any violation. The municipal judge shall by order specify the violations that are subject to the authority of the violations clerk.
- (c) Except as provided in subsection (f) of this section, the violations clerk shall accept:
  - (1) Written appearance, waiver of trial, plea of guilty and payment of fine, costs and assessments for violations that are subject to the authority of the violations clerk; or
  - (2) Payment of base fine amounts for violations that are subject to the authority of the violations clerk.
- (d) The municipal judge shall establish schedules, within the limits prescribed by law, of the amounts of penalties to be imposed for first, second and subsequent violations, designating each violation specifically or by class. The order of the municipal judge establishing the schedules shall be prominently posted in the place where penalties established under the schedule are paid. All amounts must be paid to, receipted by and accounted for by the violations clerk in the same manner as other payments on money judgments are received by the City of Salem.
- (e) Any person charged with a violation within the authority of the violations clerk may:
  - (1) Upon signing an appearance, plea of guilty and waiver of trial, pay the violations clerk the penalty established for the violation charged, including any costs and assessments authorized by law.
  - (2) Pay the violations clerk the base fine amount established for the violation. Payment of the base fine amount under this paragraph constitutes consent to forfeiture of the base fine amount and disposition of the violation by the violations clerk as provided by the rules of the municipal court. Payment of the base fine amount under this paragraph is not consent to forfeiture of the base fine amount if the payment is accompanied by a plea of not guilty or a request for hearing.
- (f) A person who has been found guilty of, or who has signed a plea of guilty or no contest to, one or more previous offenses in the preceding 12 months within the jurisdiction of the municipal court shall not be permitted to appear before the violations clerk unless the municipal judge, by general order applying to certain specified offenses, permits such appearance.
- (g) As used in this section, "violation" means any violation, as defined by ORS 153.008, over which the municipal court has jurisdiction pursuant to SRC 4.010. (Ord No. 6-08)

**4.075. Criminal Procedure Statutes to Govern Generally.**

- (a) Except as otherwise specifically provided in ORS Chapter 153, this Chapter and the

criminal procedure statutes of the State of Oregon, a violation proceeding in municipal court shall be commenced and shall proceed to final determination, and the judgment therein shall be enforced, in the manner provided in ORS Chapter 153 and this Chapter.

(b) Except as specifically provided in this Chapter, a misdemeanor proceeding in municipal court shall be commenced and shall proceed to final determination, and the judgment therein shall be enforced, in the manner provided in the criminal procedure statutes of the State of Oregon.

(c) Notwithstanding subsection (a) and (b) of this section, the procedures described in this section shall not apply to violations that govern the parking of vehicles and that are created by ordinance or administrative rule, and the municipal judge shall adopt rules for the conduct of such proceedings. (Ord No. 6-08)

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

(a) The defendant in the trial in the prosecution of any misdemeanor shall have the right to a public trial by an impartial jury.

(b) The Court shall 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 the election is in writing and has been approved by the judge as a knowing and voluntary waiver.

(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. (Ord No. 6-08; Ord No. 59-09)

**4.085. Right to Counsel.**

(a) Any person charged in the municipal court with an offense for which a sentence of imprisonment may be imposed have the right to counsel.

(b) If the defendant appears for arraignment without counsel, the defendant shall be informed by the court that the defendant has a right to have counsel before being arraigned, and shall be asked if the defendant desires the aid of counsel.

(c) If the defendant indicates a desire to obtain counsel, the court shall allow the defendant a reasonable time and opportunity to obtain counsel. If the defendant wishes to waive counsel, the court shall determine whether the defendant has made a knowing and voluntary waiver of counsel. If the court determines the defendant has made a knowing and voluntary waiver of counsel, such fact shall be noted on the municipal court docket for the matter.

(d) If the court accepts a defendant's waiver of counsel, the court may allow an attorney to serve as the defendant's legal advisor, and may, in accordance with SRC 4.090, appoint an attorney as the defendant's legal advisor.

(e) Appointment of counsel, including a legal advisor, is subject to SRC 4.090 and SRC 4.095. (Ord No. 6-08)

**4.090. Court-Appointed Counsel.**

(a) Suitable counsel for a defendant shall be appointed by the municipal court if:

(1) The defendant has been charged with an offense for which a sentence of imprisonment may be imposed or is before the court in any proceeding concerning an order of probation where a sentence of imprisonment may be imposed, including, but not limited to, revoking or amending the order of probation; and

(2) The defendant requests aid of counsel; and

(3) The defendant provides the court with a written and verified financial statement; and

(4) It appears to the court that the defendant is financially unable to retain adequate

representation without substantial hardship in providing basic economic necessities to the defendant or the defendant's dependant family. In making such determination, the court may question the defendant, under oath, regarding the defendant's verified financial statement and any matter bearing upon the defendant's inability to pay for counsel.

(b) Appointed counsel may not be denied to any defendant merely because the defendant's friends or relatives have resources adequate to retain counsel or because the defendant has deposited or is capable of depositing security for release. However, appointed counsel may be denied to a defendant if the defendant's spouse has adequate resources which the court determines should be made available to retain counsel.

(c) The defendant's financial statement under subsection (a) of this section shall include, but not be limited to:

- (1) A list of bank accounts in the name of defendant or defendant's spouse, and the balance in each;
- (2) A list of defendant's interests in real property and those of defendant's spouse;
- (3) A list of automobiles and other personal property of significant value belonging to defendant or defendant's spouse;
- (4) A list of debts in the name of defendant or defendant's spouse, and the total of each; and
- (5) A record of earnings and other sources of income in the name of defendant or defendant's spouse, and the total of each.

(d) Unless otherwise ordered by the court, the appointment of counsel under this section shall continue during all criminal proceedings resulting from defendant's arrest through acquittal or the imposition of punishment. The court may not substitute one appointed counsel for another, except pursuant to the policies, procedures, standards and guidelines adopted by the Public Defense Services Commission under ORS 151.216.

(e) If, at any time after counsel has been appointed, the court finds that the defendant is financially able to pay, or to make partial payment, for counsel, the court may terminate the appointment of counsel and require payment or partial payment for counsel, and order the defendant to pay the City such amounts as the City has paid for assistance of counsel to the person. If, at any time during the criminal proceedings, the court finds that the defendant is financially unable to pay counsel whom the defendant has retained, that court may appoint counsel as provided in this section.

(f) In addition to any criminal prosecution, a civil proceeding may be initiated by the City Attorney within two years of judgment if the City has expended moneys for the defendant's legal assistance and the defendant was not qualified for legal assistance in accordance with this section. Any such civil proceeding shall be subject to the exemptions from execution as provided by Oregon law. (Ord No. 6-08)

#### **4.095. Compensation and Expenses of Appointed Counsel.**

(a) Counsel appointed pursuant to SRC 4.090 shall be paid fair compensation by the City for representation in the case.

(b) Compensation payable to appointed counsel under subsection (a) of this section may not be less than \$50 per hour.

(c) A person determined to be eligible for appointed counsel is entitled to necessary and reasonable fees and expenses for investigation, preparation and presentation of the case for trial, negotiation and sentencing.

(d) Non-Routine Fees; Preauthorization.

- (1) The person or the counsel for the person shall upon written request secure preauthorization to incur fees and expenses that are not routine to representation but

are necessary and reasonable in the investigation, preparation and presentation of the case, including but not limited to nonroutine travel, photocopying or other reproduction of nonroutine documents, necessary costs associated with obtaining the attendance of witnesses for the defense, investigator fees and expenses, expert witness fees and expenses and fees for interpreters and assistive communication devices necessary for the purpose of communication between counsel and a client or witness in the case.

(2) The request must be in the form of a motion to the court. The motion must be accompanied by a supporting affidavit that sets out in detail the purpose of the requested expenditure, the name of the service provider or other recipient of the funds, the dollar amount of the requested expenditure that may not be exceeded without additional authorization and the date or dates during which the service will be rendered or events will occur for which the expenditure is requested.

(3) Entitlement to payment of nonroutine fees and expenses is dependent upon obtaining preauthorization from the court. Preauthorization to incur a fee or expense does not guarantee that a fee or expense incurred pursuant to the preauthorization will be determined to be necessary or reasonable when the fee or expense is submitted for payment.

(e) Review by Court; Certification; Payment.

(1) Upon completion of all services, the appointed counsel shall submit to the court a statement of all necessary and reasonable fees and expenses of investigation, preparation and presentation and legal representation, supported by appropriate receipts or vouchers and certified by the appointed counsel to be true and accurate.

(2) The total fees, expenses and verification submitted by appointed counsel are subject to the review of the court. The court shall determine whether the amount submitted is necessary and reasonable reimbursement for fees and expenses for representation in the case. After such review and determination, the court shall certify to the Director of Finance the amount that the court determines was necessary and reasonable and that the amount is properly payable out of public funds. Upon the receipt of such certification, the amount of the fees and expenses certified by the court shall be paid to the appointed counsel by the City. (Ord No. 6-08)

**4.100. Qualifications of Jurors.** To act as a juror in municipal court, the person shall have the qualifications to serve as a juror in a circuit court proceeding as prescribed in ORS 10.030, and must have been a resident of the City of Salem for not less than three months preceding the date the person is summoned for jury service. (Ord No. 6-08)

**4.105. Master Jury List; Time and Manner of Preparation; Term of Prospective Jurors.**

(a) The municipal judge shall cause to be prepared a master jury list containing names selected at random from the latest jury source lists used by the Marion County and Polk County Circuit Courts; provided, however that the names used for the preparation of the master jury list from such source lists shall be limited to the names of persons residing within the corporate boundaries of the City of Salem, and the number of names in the master jury list from each county is approximately proportional to the population of the City of Salem residing in Marion County and Polk County, as established by the latest census available at the time the master jury list is prepared.

(b) Except as provided in SRC 4.115, a master jury list shall be prepared and certified once each year prior to the last day of January, unless circumstances make such preparation not feasible, in which case the master jury list shall be prepared as soon thereafter as possible. The jury service term shall be the period of time between the filing of the Certification of Master Jury List and the date of the next such filing.

(c) The number of names on the master jury list shall be sufficient to meet the projected need for jurors, but shall be composed of not less than one thousand qualified persons. The master jury list may be prepared and maintained by means of electronic equipment.

(d) In preparing the master jury list, names drawn of persons known or believed to be disqualified as jurors or who are exempt from jury duty under the provisions of the laws of the State of Oregon or who are believed to be unavailable shall be deleted. The master list shall contain the name and residence address of each person named therein.

(e) Any person whose name is selected for the master jury list shall be subject to service as a juror from the effective date of the list as provided in SRC 4.110(b) until the effective date of next term's master jury list, even though the date set for trial may be after certification of the next term's master jury list. (Ord No. 6-08)

**4.110. Certification of Master Jury List.**

(a) When the master jury list is complete, and the municipal judge is satisfied that there are no persons thereon who the municipal judge knows to be incompetent to serve as jurors, the municipal judge shall certify that master jury list in substantially the following form:

I, (name of municipal judge), certify that I am the duly elected (appointed) and acting municipal judge of the City of Salem, Oregon; and that the foregoing master jury list is composed of the names of persons selected in accordance with the provisions of SRC 4.105.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(b) Upon certification of the master jury list, the municipal judge shall cause the same to be filed in the records of the municipal court, at which time, the list shall become effective. (Ord No. 6-08)

**4.115. Selection of Additional Names for Master Jury List.**

(a) The municipal judge may, at any time in the municipal judge's discretion, and shall, whenever the number of the names on the master jury list falls below 350, cause the names of additional persons to be selected as a supplement to the master jury list. The additional names shall be selected using the same source lists and in the same manner as the master jury list, as provided in SRC 4.105.

(b) Upon selection of additional names as provided in subsection (a) of this section, the municipal judge shall certify the supplement to the master jury list of those additional names and file the list in the municipal court records as provided in SRC 4.110. From the date of such filing, the jurors may be chosen to serve during the jury service term of the master jury list. (Ord No. 6-08)

**4.120. Selection of Jury Panel.**

If trial by jury has not been waived pursuant to SRC 4.080, 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 a particular date. (Ord No. 6-08; Ord No. 59-09)

**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 scheduled to appear for jury service, a judge or the clerk of the Court shall question the person as to the person's

competency to act as a juror under SRC 4.100. If a judge or clerk of the court determines that a person so questioned is incompetent to act as a juror, the person shall be discharged from jury service.

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

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

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

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

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

**(d)** If a person fails to return a properly completed juror questionnaire as instructed, a judge may direct the person to appear forthwith and properly complete a questionnaire. If the person fails to appear as directed, the Judge may order the person to appear and show cause for that failure. If the person fails to appear pursuant to the order or appears and fails to show good cause, the person may be punished for contempt.

**(e)** Before or at the time a person reports for jury service, or at the time jurors are being examined by legal counsel pursuant to SRC 4.140, a judge or the clerk of the court may discuss with the person any questions on the juror questionnaire and the grounds for any incompetency of the person to act as a juror. Any pertinent information so acquired may be noted on the form. (Ord No. 59-09)

#### **4.130. Summons of Jurors.**

**(a)** The court shall issue a summons for each person on the final jury panel. Not less than twenty days prior to the date set for trial, the clerk of the court shall cause the summons to be served on each person on the final jury panel by first class mail, or by forwarding the summons to the Chief of Police together with an order signed by the court commanding the Chief of Police to cause personal service to be made upon the person identified on the summons, and make true return thereupon.

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

**(1)** The person fails to attend the court as required or fails to give a valid excuse for not attending;

**(2)** The person fails to give attention to matters before the jury;

**(3)** The person leaves the court without permission of the court while the court is in session; or

**(4)** The person fails to complete jury service without valid excuse. (Ord No. 6-08; Ord No. 59-09)

**4.135. Persons Ineligible for Jury Service; Excuses from Jury Duty.**

(a) When it appears to the court that the person called for jury service is dead or lacks the qualifications to serve as a juror, as established by SRC 4.100, the person's name shall be removed from the jury panel and another name may be selected from the master jury list to replace such person.

(b) The court may excuse a person from jury service upon a showing of undue hardship or extreme inconvenience to the person, the person's family, the person's employer or the public served by the person. In granting excuses, the court shall carefully consider and weigh both the public need for juries that are representative of the full community and the individual circumstances offered as a justification for jury service.

(c) If the person is dead or lacks the qualifications to serve as a juror, that person's name shall be removed from the master jury list; in all other cases, the person's name shall remain on the master jury list, and may later be called for jury service. (Ord No. 6-08)

**4.140. Jury Selection; Peremptory Challenges.**

(a) At the time of trial, the prospective jurors shall be examined as to their qualifications, first by the defendant and then by the City Attorney. After the prospective jurors have been passed for cause, peremptory challenges, if any, shall be exercised as provided in subsection (c) of this section. Each party may take any number of challenges for cause and three peremptory challenges, unless the Judge grants additional peremptory challenges. When two or more defendants are tried together, each must join in any peremptory challenge or it cannot be taken, unless the Judge grants additional peremptory challenges. When several defendants are tried together, the defendants are entitled to the number of challenges they would have had if each defendant had been tried separately. When two or more defendants are tried together, the City is entitled to the same total number of peremptory challenges as the sum of the peremptory challenges the defendants could have exercised.

(b) Peremptory challenges shall be taken in writing by secret ballot as follows:

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

(2) After each challenge, the jury panel shall be filled and the additional juror passed for cause before another peremptory challenge is exercised. Neither party shall be required to exercise a peremptory challenge unless the full number of jurors is in the jury box at the time.

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

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

(d) If the peremptory challenges of the moving party are not already exhausted, the court may for good cause shown permit a peremptory challenge to be taken to any juror before the jury is complete and sworn, notwithstanding the juror challenged may have been previously accepted. (Ord No. 6-08; Ord No. 59-09)

**4.145. Procedure When Less than Six Jurors Remain after Voir Dire.** If, after voir dire, less than six jurors remain, the court may:

(a) Upon its own motion, or the motion of either party, order the Chief of Police, or any police officer of the City of Salem, other than an officer called as witnesses for the trial, to go out

upon the streets and bring before the court up to three persons, who shall, if qualified after voir dire sit as jurors; or

(b) Upon its own motion, or the motion of either party, continue the cause for trial on a later date with a new jury, excusing those jurors still remaining. (Ord No. 6-08)

**4.150. Peremptory and Challenges for Cause to be Exclusive.** No challenges other than peremptory challenges or challenges for cause shall be allowed in the selection of jurors. (Ord No. 6-08)

**4.155. Compensation of Jurors.** Persons summoned as jurors who appear at the time set for selection of the jury and are not empanelled shall receive as compensation for such appearance the sum of \$10. Persons empanelled to serve as jurors shall receive as compensation the sum of \$10 per day of jury service. (Ord No. 6-08)

**4.160. Subpoenas.**

(a) It shall be the duty of any person subpoenaed in any proceeding pending before the municipal court to appear and testify in accordance with such subpoena.

(b) Any person who refuses to appear or to testify as required by subsection (a) of this section may be held in contempt, and the court may issue a warrant for the arrest of such person, and, on being brought before the court, unless the person shows good cause why the person was unable to attend or testify, the court shall impose one or more of the sanctions authorized by ORS 33.105. (Ord No. 6-08)

**4.165. Witness Fees.** Witness fees and mileage shall be paid by the City as provided in ORS 44.415. (Ord No. 6-08)

**4.170. Assessment of Court Costs.**

(a) The court shall, upon conviction and in addition to any other costs authorized by law, collect the unitary assessment required by ORS 137.290.

(b) Court Appointed Counsel Fees as Costs.

(1) Except in the circumstances set forth in ORS 151.505, the court, only in the case of a defendant for whom it enters a judgment of conviction, may include in its sentence thereunder a provision that the convicted defendant pay as costs expenses specially incurred by the city in prosecuting the defendant. Costs include a reasonable attorney fee for counsel appointed pursuant to SRC 4.090 and a reasonable amount for fees and expenses incurred pursuant to preauthorization under SRC 4.095(d). A reasonable attorney fee is presumed to be the amount certified to the Director of Finance under SRC 4.095(e). Costs do not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of the court that must be made by the public irrespective of specific violations of law.

(2) The court may not sentence a defendant to pay costs under this section unless the defendant is or may be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(3) A defendant who has been sentenced to pay costs under this section and who is not in willful default in the payment of costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the immediate family of the

defendant, the court may remit all or part of the amount due in costs, or modify the method of payment under SRC 4.180. (Ord No. 6-08)

**4.175. Standards for Imposing Fines.** In determining whether to impose a fine and its amount, the court shall consider:

- (a) The financial resources of the defendant and the burden that payment of a fine will impose, with due regard to the other obligations of the defendant; and
- (b) The ability of the defendant to pay a fine on an installment basis or on other conditions to be fixed by the court. (Ord No. 6-08)

**4.180. Time and Method of Execution and Satisfaction of Judgment.**

- (a) When a defendant, as a part of a sentence or as condition of probation or suspension of sentence, is required to pay a sum of money, the court may order payment to be made immediately or within a specified period of time or in specified installments. If a defendant is sentenced to a term of imprisonment, any part of the sentence that requires the payment of a sum of money is enforceable during the period of imprisonment from posted bail, security or other assets, if the court expressly finds that the defendant has assets to pay all or part of the amounts ordered.
- (b) When a defendant whose sentence requires the payment of a sum of money for any purpose is also sentenced to probation or imposition or execution of sentence is suspended, the court may make payment of the sum of money a condition of probation or suspension of sentence.
- (c) When a defendant is sentenced to probation or imposition or execution of sentence is suspended and the court requires as a part of the sentence or as a condition of the probation or suspension of sentence that the defendant pay a sum of money in installments, the court, or the clerk of the court shall establish a schedule of payments to satisfy the obligation. A schedule of payments shall be reviewed by the court upon motion of the defendant at any time, so long as the obligation remains unsatisfied.
- (d) When a person sentenced to pay a fine is financially unable to pay or to make suitable arrangements with the court for installment payments, upon application of such person the court may, in its discretion, permit such person to work at community service projects, and satisfy such fine at a reasonable hourly rate set by the municipal judge. Failure to report for work without good cause, or failure to perform assigned tasks faithfully and productively shall be grounds for discontinuance of the privilege, revocation of any probation, and may be punished as contempt of court.
- (e) When a person has been sentenced to a term of imprisonment, and such sentence is to be executed, either upon judgment or upon revocation of probation, the court shall, by warrant, commit the person to the custody of the Marion County jailer. The court may, in the court's discretion, order that the sentence be served on such days as the court may deem appropriate. Prisoners shall be accorded the privileges of credit for good behavior, temporary leave, and credit for work performed provided in ORS 169.110 to 169.120. (Ord No. 6-08)

**4.185. Effect of Nonpayment of Fines, Restitution or Costs or Failure to Comply With Terms of Probation.**

- (a) When a defendant who has been sentenced or ordered to pay a fine, to make restitution or to pay costs, defaults on a payment or installment ordered by the court, or when a defendant who has been placed on probation fails to comply with the terms of such probation, the court, on motion of the city attorney or upon its own motion, may require the defendant to show cause why the default should not be treated as contempt, and may issue a show cause citation or a warrant of arrest for the appearance of the defendant.

- (b) If the court finds that the default in payment or failure to comply with the terms of probation constitutes contempt, the court may impose one or more of the sanctions authorized by ORS 33.105. Notwithstanding ORS 33.105, the term of confinement for contempt for nonpayment of fines, failure to make restitution, or to pay costs shall be set forth in the commitment order, and shall not exceed one day for each \$25 of the fine or restitution or 30 days if the fine or order of restitution was imposed upon conviction of the offense, whichever is the shorter period.
- (c) If it appears to the satisfaction of the court that the default in payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the installments due on the payment, or suspending the fine, restitution, or costs in whole or in part.
- (d) A default in the payment of a fine, restitution, or costs or a default on an installment on a fine, restitution, or costs may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution or garnishment shall not discharge a defendant confined for contempt until the amount of the fine, restitution or costs has actually been collected.
- (e) Except as otherwise provided in this section, proceedings under this section shall be conducted:
  - (1) As provided in ORS 33.055, if the court seeks to impose remedial sanctions as described in ORS 33.015 to 33.155; and
  - (2) As provided in ORS 33.065, if the court seeks to impose punitive sanctions as described in ORS 33.015 to 33.155.
- (f) Confinement under this section may be custody or incarceration, whether actual or constructive. (Ord No. 6-08)

**4.190. Administrative Warrant Defined.** An administrative warrant is an order signed by the municipal judge or a municipal judge pro tempore, directed to a city official charged with the responsibility of enforcing the provisions of the Salem Revised Code authorizing an inspection required or authorized by, or necessary to enforce, any provision of the Salem Revised Code. (Ord No. 6-08)

**4.195. Grounds for Issuance of Administrative Warrant.** An administrative warrant shall be issued only upon a showing of probable cause, which shall be based either on specific evidence that a violation of the Salem Revised Code has occurred or is occurring, or on a showing that reasonable legislative and administrative standards for conducting an inspection are satisfied with respect to a particular property or properties. The administrative warrant shall be supported by an affidavit particularly describing the premises to be inspected and the purpose for which the inspection is made, and shall contain a statement that consent to inspect has been sought and refused or that other facts or circumstances set forth in the affidavit reasonably justify the inability to obtain such consent. (Ord No. 6-08)

**4.200. Issuance of Administrative Warrant.**

- (a) Before issuing an administrative warrant, the judge may examine the applicant and any other witnesses under oath. If the judge is satisfied that probable cause for the inspection exists, the judge shall issue the administrative warrant, particularly describing the premises to be inspected and designating the purpose of, and limitations on, the inspection.
- (b) The official executing or attempting to execute an administrative warrant shall identify himself or herself and his or her authority, and shall read and show the original copy of such warrant at the time and place of execution to the owner or occupant of the premises described in the administrative warrant. (Ord No. 6-08)

**4.205. Limitations on Administrative Warrants.**

(a) An administrative warrant shall be effective for the time specified therein, but in no event for a period of more than 14 days, unless extended or renewed by the judge for good cause shown.

(b) An inspection pursuant to an administrative warrant shall be made between the hours of 8:00 a.m. and 6:00 p.m. and shall be made in the presence of either the owner of the premises or of a lawful occupant thereof over the age of 18 years, unless the judge has specially determined upon a showing that it cannot be effectively executed between those hours and the warrant specifies otherwise.

(c) An inspection pursuant to an administrative warrant shall not be by forcible entry, except that the judge may, by an endorsement on the face of the warrant, expressly authorize execution by forcible entry where the affidavit, or a supplemental affidavit supplied after the warrant has been issued, contains information sufficient to satisfy the judge that reasonable grounds to believe one or more of the following exists:

- (1) A probable violation of any provision of the Salem Revised Code that poses an imminent threat to public health, safety, or welfare; or
- (2) Where prior attempts to serve the warrant have met with refusal by the owner or occupant of the premises to be inspected; or
- (3) Where reasonable attempts have been made to secure the cooperation of the owner of unoccupied premises that are to be inspected, and entry cannot occur without the owner's cooperation or by force, and the owner has refused to cooperate. (Ord No. 6-08)

**4.210. Notice of Inspection by Forcible Entry.**

(a) No forcible entry shall be made pursuant to an administrative warrant unless the owner or occupant of the premises to be inspected has been given at least 24 hours prior notice. Such notice shall be given in writing by personal delivery to the owner or occupant, except as provided in subsection (c) of this section. Notice in person to any person over the age of 18 years who is an occupant of the premises described in the administrative warrant shall be sufficient notice to all occupants. Notice in person to the manager, agent, or other person in charge of any premises occupied by a business or multi-family dwelling unit shall be sufficient notice to the owner.

(b) The notice required in subsection (a) of this section shall include a copy of the administrative warrant, properly endorsed for execution by forcible entry, certified to be a true copy of the original administrative warrant by the judge. Such notice shall specify the name of the city official who is to conduct the inspection, and shall specify the date and time of the intended inspection.

(c) Where at least three diligent attempts, not less than two hours apart, have been made within a 24-hour period to give notice to the owner or occupant, and such notice cannot be given, notice may be given by posting the same in some prominent place upon the exterior of the place described in the administrative warrant, and the administrative warrant may be executed not less than 24 hours thereafter. Notice to the owner shall be made to the address of the owner as set forth in the tax records of the appropriate county, or to the owner's last known address, if different.

(d) This section shall not apply, and no notice need be given, in the case of administrative warrants endorsed for execution by forcible entry upon the grounds specified in SRC 4.205(c). (Ord No. 6-08)

**4.215. Execution of Administrative Warrant by Forcible Entry.**

(a) In execution of a properly endorsed administrative warrant by forcible entry, any city

official acting under the administrative warrant shall be accompanied by a police officer, who shall execute the administrative warrant by gaining entry, and who shall stand by to prevent any interference during the inspection.

**(b)** In the execution of an administrative warrant by forcible entry, the police officer has the same power and authority to use all necessary and proper means to overcome any forcible resistance or to call any other person to the officer's aid in the execution or service of a warrant of arrest. (Ord No. 6-08)

**4.220. Return of Administrative Warrant.** An administrative search warrant must be executed and returned to the judge within ten days from the date issued, unless the judge, before the expiration of such time, extends the time for five days by endorsement thereon. The return shall certify the day and time of execution of the administrative warrant, the names of all city officials, including police officers, assisting in the inspection, the time and manner of giving any notice required by SRC 4.210, and whether or not forcible entry was necessary. After expiration of the time prescribed by this subsection, the warrant, unless executed, is void. (Ord No. 6-08)

**4.225. Interfering with Execution of Administrative Warrant.**

**(a)** It shall be unlawful for any person to in any way hinder, delay, impede, or otherwise interfere with any city official or a police officer acting in the official's or officer's official capacity in the course of executing or attempting to execute an administrative warrant which is facially valid, or of making or attempting to make any inspection authorized by the administrative warrant.

**(b)** Violation of this section is a misdemeanor. (Ord No. 6-08)

**4.230. Emergency Inspection Without Administrative Warrant.** Nothing in SRC 4.190-4.225 shall prohibit, or be construed as prohibiting, an inspection without an administrative warrant in an emergency where immediate access is necessary to protect public health, safety, or welfare. (Ord No. 6-08)