

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 200705

Amending Chapter 2, Code of Ordinances, entitled "Administration" by repealing Sections 2-1414, 2-1444, 2-1459 and 2-1462 and amending Chapter 44, Code of Ordinances, entitled "Corrections" by repealing Sections 44-1, 44-6, 44-9 and 44-11 and enacting in lieu thereof new sections of like number and subject matter related to municipal court.

WHEREAS, on or about 2017, after an investigation of events in Ferguson, Missouri lead to a study of municipal court practice, the Missouri Supreme Court implemented significant municipal court reforms through Missouri Supreme Court Rule 37; and

WHEREAS, several provisions of the Kanas City Code of Ordinances are inconsistent with Rule 37, which strives to make municipal court practice and fine amounts uniform throughout the state; and

WHEREAS, the Kansas City Municipal Court has not applied the referenced ordinances in the manner stated for a number of years prior to the events of Ferguson, Missouri; and

WHEREAS, the City Council desires to amend those provisions from the Kansas City Code of Ordinances to reflect the actual practices of the Kansas City Municipal Court and the changes made Post-Ferguson by Missouri Supreme Court Rule 37; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 2, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Sections 2-1414, 2-1444, 2-1459 and 2-1462 relating to municipal court and enacting in lieu thereof new sections of like number and subject matter, to read as follows:

Sec. 2-1414. Clerk of court.

There is hereby established a clerk of the municipal court, who shall be appointed by the city manager with the advice and consent of the Municipal Court en banc and shall be a member of the classified service. The clerk shall discharge and perform all duties incident to the office of a court clerk under the direction and supervision of the Municipal Court en banc. The clerk shall give his or her full time to the duties of such clerk's office. The clerk shall receive a salary as provided in the position, classification and compensation pay plan.

Sec. 2-1444. Issuance and service of warrants.

Upon information by the city prosecutor or one of such prosecutor's assistants that a violation of any ordinance or other regulation of the city has been committed, and upon a showing that sufficient facts are stated to show probable cause that an ordinance violation has been committed and reasonable grounds for the court to believe that the defendant will not appear upon the summons, or a showing that has been made to the court that the defendant poses a danger to a victim, the community or any other person, the judge of the municipal court shall at once issue a warrant for the arrest of the person complained against, which shall be served in the manner prescribed by law.

Sec. 2-1459. Appeal by defendant—Procedure.

(a) *Appeal.* An appeal by a defendant must be made within ten days from the date of the judgment of the municipal court imposing a fine or sentence or both upon such defendant. An application for trial de novo shall be filed as provided by law. An application for trial de novo shall not be granted after the defendant satisfies any part of the penalty and costs of the judgment, unless costs were paid after imposition of sentence was originally suspended.

(b) *Suspension of execution of judgment.* The filing of an application for trial de novo or review shall suspend the execution of the judgment of the municipal division. If the applicant for trial de novo withdraws the application, or if before commencement of trial, the court enters a finding that the applicant has abandoned the trial de novo, the case shall be remanded to the municipal division for execution of judgment.

Sec. 2-1462. Probation.

(a) *Definitions.* For purposes of this section:

- (1) *Court* means the municipal court of the city.
- (2) *Probation* means a procedure under which a defendant found guilty of an offense, upon verdict or a plea, is released by the court without imprisonment subject to conditions imposed by the court and subject to the supervision of the municipal court.

(b) *Authority of court.* The municipal court of the city shall have power to place on probation persons convicted of any offense over which it has jurisdiction.

(c) *Eligibility; term.* When any person is convicted of any offense and is sentenced or fined or both sentenced and fined as punishment therefor, the court before whom the conviction was had, if satisfied that the defendant if permitted to go at large would not again violate the law, may place the defendant on probation upon such conditions as the court sees fit to impose. The probation shall be for a specific term which shall be stipulated in the order of record. The court may extend the term of probation;

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however, no more than one extension of any probation may be ordered. In no event shall the duration of probation be for a period of more than two years.

(d) *Effect of appeal.* Probation shall not be granted in any case while an appeal is pending, nor until after the time for appeal has expired.

(e) *Duties of persons on probation.* It is the duty of the defendants granted probation to appear, when directed by the court, during the continuance of the probation, and submit proof as may be directed by the court that defendants have, since the last date at which proof has been furnished, complied with all the conditions of the probation and conducted themselves as peaceable and law-abiding citizens.

(f) *Arrest of person on probation; revocation of probation; second probation.*

- (1) The court granting probation may, at any time before order of discharge order the defendant's appearance in court based upon a properly issued violation notice submitted to the court and the defendant. Such notification shall be sent to the defendant's last known address by regular US mail, personally served or through then authorized electronic format.
- (2) The court may, in its discretion order a probation revoked and direct that the sentence theretofore imposed be commenced and order execution thereof, or the court may, in its discretion, order the continuance of the probation upon such conditions as the court may prescribe. If execution is directed the court may, in its discretion, order the allowance in mitigation of the sentence credit for all or for part of the time the defendant was upon probation.
- (3) After probation has been revoked the court may, in its discretion, reinstate probation.

(g) *Discharge of person on probation.* When a defendant has completed the term of probation prescribed by the court, as amended, modified or extended, and if the probation has not been revoked by the court, the defendant shall automatically be absolutely discharged from the probation, and completion of probation operates as a complete satisfaction of the judgment, and such discharge shall be entered in the record of the municipal court.

(h) *Authority to adopt rules concerning conditions of probation.* The court en banc may adopt general rules and regulations concerning the conditions of probation applicable to cases in the municipal court.

(i) *Supervision of persons placed on probation; duties of probation officers.* The administrator of the municipal court or the administrator's designee shall supervise persons placed on probation. Probation officers shall furnish each person released under their supervision a written statement of the conditions of probation and shall instruct the

person regarding these conditions. The probation officer shall keep informed of the probationer's conduct and condition and use all suitable methods to aid and encourage the probationer and to bring about improvement in such probationer's conduct and conditions. Probation officers shall keep detailed records of their work and shall perform such other duties as may be incidental of those enumerated in this subsection as the court may require. Probation officers shall report, in writing, to the judge granting probation all violations of the conditions of probation, including but not limited to arrests for alleged violations of law, failure to report as directed and failure to make payments as directed.

(j) *Presentence investigation.* The administrator of the municipal court or the administrator's designee shall, at the request of the court, make or cause to be made a presentence investigation and report to the court before the imposition of sentence or the granting of probation. The report of the presentence investigation may contain any prior criminal record of the defendant and such information about the defendant's characteristics, financial condition, social history, and the circumstances affecting the defendant's behavior as may be helpful in imposing sentence or in granting probation or in the placement in the appropriate treatment court. The administrator of the municipal court or the administrator's designee shall secure such other information as may be required by the court and, whenever practicable and needed, such investigation shall include a physical and mental examination of the defendant.

(k) *Report of cases.* The administrator of the municipal court shall file with the city council at the end of each fiscal year, a summary of all probation cases processed during such fiscal year.

Section 2. That Chapter 44, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Sections 44-1, 44-6, 44-9 and 44-11 relating to municipal court and enacting in lieu thereof new sections of like number and subject matter, to read as follows:

Sec. 44-1. Powers of the city manager regarding prisoners.

- (a) The city manager or the manager's designee shall have the power to:
- (1) Inquire into the nature of any case brought before the municipal division courts of the city, and may recommend that any person convicted thereby shall be pardoned;
 - (2) Authority to transport or designate an authorized agent to transport inmates to and from a correctional facility as designated by the city manager or the manager's designee pursuant to an inmate housing agreement;
 - (3) Establish rules and regulations under which and specify the conditions upon which, any prisoner may be allowed to go on work release or be assigned outside the buildings and enclosures of any correctional facility.

Such prisoner shall remain, while on work release, in the legal custody and under the control of city manager or the manager's designee and shall be subject at any time to be placed or taken back within the enclosures of the correctional facility for violation of any conditions of such work release or assigned outside work;

- (4) Enforce such powers, regulations and conditions, and to retake and re-imprison any prisoner so trusted to the correctional facility.
- (5) Promulgate rules and procedures that shall govern the safety, security and the health of inmates committed to the custody of the City.

(b) Whenever the term municipal correctional institution is used in the city's code of ordinances, it shall mean a correctional facility and any other facility for the inmate population as designated by the City Manager or his/her designee.

Sec. 44-6. Discharge of prisoner

The correctional facility shall discharge all prisoners who have satisfied the judgment of the court either through completion of sentence or payment of fine, or both, subject to applicable laws and regulation then in effect.

Sec. 44-9. Parole.

(a) *Definition.* For purpose of this section, the term parole means the release of a prisoner prior to the expiration of the prisoner's term. Such release is based upon conditions imposed by the sentencing judge of the court.

(b) *Recommendation for parole of disabled prisoners.* Whenever it shall be reported to the city manager or the manager's designee that any person confined in the correctional facility is disabled, or is afflicted with any contagious disease, mental illness, sickness or infirmity, the city manager or the manager's designee may recommend that such person be placed on parole.

(c) *Recommendation of parole for other prisoners.* The city manager or the manager's designee may also recommend parole for prisoners not in the categories described in subsection (b) of this section. Such may include but shall not be limited to the following: in the event of overcrowding at a correctional facility, city manager or the manager's designee may unconditionally or conditionally release from custody unsentenced prisoners or sentenced prisoners nearing the end of their sentence who have behaved meritoriously and had no significant problem while incarcerated. In addition, the city manager or the manager's designee may allow early release of prisoners who have served at least one-third of their sentence and who have meritoriously participated in a program established to encourage good behavior and to facilitate such early releases. Any such program shall pinpoint prisoners who, through initiative, hard work and

participation in self-improvement programs, have earned such consideration. A detailed administrative procedure shall be established to implement any such program.

(d) *Concurrence of circuit court.* Whenever a prisoner is confined in a correctional facility by virtue of sentencing by a judge other than a municipal judge, no parole or early release shall be granted without the express written concurrence of the judge so sentencing the prisoner.

(e) *Municipal judges.* Whenever a prisoner is confined in a correctional facility by virtue of sentencing by a municipal judge, no early release shall be granted if the municipal judge at the time of sentencing specified that the prisoner shall not be released early. Any early release shall be subject to any conditions specified by the municipal judge at the time of sentencing.

Sec. 44-11. Authority of clerk of the municipal division courts to establish prisoner assistance programs.

The clerk of the municipal division courts or such clerk's designee shall have the authority to establish any prisoner assistance programs which would benefit the city's prisoner population, including but not limited to the following: drug and alcohol counseling, general educational development (GED) or other educational programs with the goal of all programming to be the reduction in recidivism rates and criminal justice system contacts.

Approved as to form and legality:

Alan Holtkamp
Assistant City Attorney