

CHAPTER 17
MUNICIPAL COURT

ARTICLE I. IN GENERAL

Sec. 17-1. Jurisdiction

The municipal court of the city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city. Search warrants shall not issue out of the municipal court. (Ord. No. 594, § 1, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4104.

Sec. 17-2. Appointment qualification and compensation of municipal judge.

The municipal court shall be presided over by a municipal judge. The judge shall be selected in the manner provided by statute, shall be a citizen of the United States and at least eighteen (18) years of age. The municipal judge shall receive a monthly or annual salary set by ordinance of the city. (Ord. No. 594, § 2, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4105.

Sec. 17-3. Powers and duties of municipal judge generally.

- (a) The municipal judge shall have the power to administer the oaths and enforce due obedience to all orders, rules and judgments made by the court, and may fine or imprison for contempt committed in court or for failure to obey process issued by the court, in the same manner and to the same extent as the district court.

State law reference--Kansas Code of Procedure for Municipal Courts, K.S.A. 12-4101 et seq.

- (b) The municipal judge shall have the power to hear and determine all cases properly brought before the court, to grant continuances, to sentence those found guilty to a fine or confinement in jail, or both, to commit accused persons in default of bond, to determine applications for parole, to release on probation, to grant time in which a fine may be paid, to correct a sentence, to suspend imposition of a sentence, to set aside a judgment, to permit time for post trial motions and to discharge accused persons.

- (c) The municipal judge shall maintain a docket in which the court shall enter every cause commenced before the court. Said docket shall contain the names of the accused persons and complainant, the nature or character of the offense, the date of trial, the names of all witnesses sworn and examined, the finding of the court, the judgment

and sentence, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in each case. (Ord. No. 594, § 3, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4106.

Sec. 17-4. Municipal judge pro tem generally and filling vacancy in office of judge.

In the event the municipal judge is temporarily unable to preside due to absence, illness or disqualification, the court shall designate an attorney or other qualified person to act as judge pro tempore. In the event the municipal judge fails to appoint a judge pro tempore, the judge pro tempore shall be appointed in the same manner as the municipal judge is selected. The judge pro tempore shall receive compensation as shall be provided by ordinance, payable in the same manner as the compensation of the regular municipal judge.

In the event a vacancy shall occur in the office of municipal judge, a successor shall be appointed to fill the unexpired term in the same manner as the municipal judge was appointed. (Ord. No. 594, § 4, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4107.

Sec. 17-5. Compensation for judge pro tem and prosecutor pro tem.

In the event the municipal judge recuses himself from a municipal court matter due to a conflict of interest, a municipal judge pro tem shall receive as compensation for services performed as presiding judge the sum of sixty-five dollars (\$65.00) per hour or an hourly amount negotiated by the municipal judge as approved by the mayor. (Code 1976, § 15-403, Ord. No. 1370, § 1, 3/27/00, Ord. No. 1418, § 1, 4-22-02)

In the event the city prosecutor recuses himself from a municipal court matter due to a conflict of interest, a prosecutor pro tem shall receive as compensation for legal services the sum of forty-five dollars (\$45.00) per hour or an hourly amount negotiated by the city attorney as approved by the mayor. (Code 1976, § 15-403, Ord. No. 1370, § 1, 3/27/00, Ord. No. 1418, § 1, 4-22-02)

Sec. 17-6. Clerk of the municipal court.

- (a) The governing body may provide for the office of clerk of the municipal court. The municipal judge shall appoint such clerk or if no clerk is provided for, the judge shall also serve as clerk. The clerk shall issue all process of the court, administer oaths, file and preserve all papers, docket cases and set same for trial and shall perform such further acts as may be necessary to carry out the duties and responsibilities of the court. The clerk shall receive, account for and pay to the city treasurer monthly all fines and forfeited bonds paid into the court. The clerk shall make reports to the judicial administrator and furnish the information when requested by him or her or a

departmental justice on such forms furnished by the judicial administrator, and approved by the supreme court.

- (b) The clerk of the municipal court, or the municipal judge if no clerk is appointed, shall, within ten (10) days after selection, and before entering upon the duties of office, execute to the city such bond as the governing body may require, which shall be approved by the governing body and filed in the office of the city clerk, conditioned for the faithful performance of the duties required of him or her by law, and for the faithful application and payment of all moneys that may come into his or her hands in the execution of the duties of the office. The city shall pay the cost of such bond. (Ord. No. 594, § 5, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4108.

Sec. 17-7. Courtroom, supplies, records; sessions, time, place.

The city shall provide at the expense of the city a suitable courtroom for the municipal court, together with all necessary supplies and records. Court will be held on each Thursday of each month, commencing at 6:00 p.m. in the municipal courtroom at 9000 West 62nd Terrace, Merriam, Kansas; provided, that special settings may be held in the discretion of the court in order to facilitate the orderly administration of justice. (Ord. No. 594, § 6, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4109.

Sec. 17-8. Prosecutor.

- (a) The city attorney, in person or by assistants (hereinafter referred to as the “city prosecutor”), shall prosecute all causes in the municipal court. (Ord. No. 594, § 7, 3-18-74; Ord. 1414, § 1, 1-28-02).
- (b) In the event that the city prosecutor recuses himself or herself from the prosecution of a municipal court matter due to a conflict of interest on such case, the city attorney shall, with approval of the mayor, be authorized to appoint a prosecutor pro tempore as an assistant to the city attorney to handle such case at the municipal court level and through any and all appeals of such case. (Ord. 1414, § 1, 1-28-02).
- (c) The city prosecutor or prosecutor pro tempore shall be authorized, upon written approval of the mayor on a case by case basis, to request the assistance of area law enforcement agencies when deemed necessary. (Ord. 1414, § 1, 1-28-02).

State law reference--Similar provisions, K.S.A. 12-4110.

Sec. 17-9. Law enforcement officers; employment; powers.

The governing body may employ law enforcement officers who shall have power to execute all process issued by any municipal judge within the state and delivered to him for that

purpose, to detain persons, to place them in custody, and to arrest them, pursuant to the terms of this chapter and the Kansas Code of Procedures for Municipal Courts.

The powers of law enforcement officers with respect to the Code of Criminal Procedure shall not be reduced by the code of procedure for the municipal court of the city as set out herein. (Ord. No. 594, § 8, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4111.

Sec. 17-10. Costs.

No person shall be assessed costs for the administration of justice in any municipal court case, except for witness fees and mileage as set forth in section 17-66 of this code. (Ord. No. 594, § 9, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4112.

Secs. 17-11--17-20. Reserved.

ARTICLE II. COMMENCEMENT OF PROSECUTION, ARREST, ETC.

Sec. 17-21. Complaint.

The prosecution for the violation of municipal ordinances shall be commenced by the filing of a complaint with the municipal court. A complaint shall be in writing and shall be signed by the complainant. More than one violation may be charged in the same complaint. (Ord. No. 594, § 10, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4201, 12-4202.

Sec. 17-22. Complaint; how used; issuance of warrant; refusal to issue; effect.

(a) A copy of the complaint shall be served together with a notice to appear or a warrant, by the law enforcement officer upon the accused person, and forthwith, the complaint shall be filed with the municipal court, except that a complaint may be filed initially with the municipal court, and if so filed, a copy of the complaint shall forthwith be delivered to the city attorney. The city attorney shall cause a notice to appear to be issued, unless he has good reason to believe that the accused person will not appear in response to a notice to appear, in which case he may request that a warrant be issued. Such warrant will be issued if the complaint is positively sworn to and the municipal judge has probable cause to believe that:

- (1) There has been the commission of a violation of a municipal ordinance;
- (2) The accused person committed such violation; and

- (3) The accused person will not appear in response to a notice to appear.
- (b) If the city attorney fails either to cause a notice to appear or to request a warrant to be issued, on a complaint initially filed with the municipal court, the municipal judge may, upon affidavits filed with the court alleging the violation of an ordinance, order the city attorney to institute proceedings against any person. Any such municipal judge shall be disqualified from sitting in any case wherein such order was entered and is further prohibited from communicating about such case with the municipal judge pro tem appointed by the municipal judge to preside therein. (Ord. No. 594, § 11, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4203.

Sec. 17-23. Notice to appear; contents; form.

A notice to appear shall describe the offense charged, shall summon the accused person to appear, shall contain a space in which the accused person may agree, in writing, to appear at a time not less than five (5) days after such notice to appear is given, unless the accused person shall demand an earlier hearing. A notice to appear may be signed by a municipal judge, the clerk of the municipal court, the city attorney, or any law enforcement officer of the city. (Ord. No. 594, § 12, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4204.

Sec. 17-24. Notice to appear; when used; service; return.

- (a) A notice to appear shall be used in all cases involving the violation of a municipal ordinance, except when a warrant is issued.
- (b) The notice to appear shall be served upon the accused person by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the last known address of said person. A notice to appear may be served by any law enforcement officer within the state and, if mailed, shall be mailed by a law enforcement officer of the municipality of its issuance or the clerk of the municipal court. Upon service by mail, the law enforcement officer shall execute a verification to be filed with a copy of the notice to appear. (Ord. No. 594, § 13, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4206, 12-4207.

Sec. 17-25. Contents of warrants.

A warrant shall contain the name of the accused person, or if unknown, any name or description by which he may be identified with reasonable certainty, shall describe the nature

of the violation of an ordinance of the city, shall command that the accused person be arrested, shall be signed by the judge of the municipal court, and shall state the amount of the appearance bond to be required. (Ord. No. 594, § 14, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4208.

Sec. 17-26. When warrant may be issued.

A warrant may be issued:

- (a) When an accused person fails to appear as required in a notice to appear after its service.
- (b) In all other cases where a complaint has been filed and the municipal judge determines that a warrant should be issued.

No warrant shall issue unless the complaint giving rise to its issue is supported by oath or affirmation. (Ord. No. 594, § 15, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4209.

Sec. 17-27. Service of warrants.

A warrant may be directed to any law enforcement officer within the state and may be executed any place within the state, by the arrest of the accused person. The officer need not have the warrant in his possession at the time of the arrest, but upon request, he shall show the warrant to the accused person as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the accused person of the offense charged, of the fact that a warrant has been issued, and the amount of the bond required. (Ord. No. 594, § 16, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4210.

Sec. 17-28. Detention; service of complaint and summons.

- (a) A law enforcement officer may detain a person when:
 - (1) He has a warrant commanding that such person be arrested; or
 - (2) He has reason to believe that a warrant for the person's arrest has been issued by the municipal court; or
 - (3) He has probable cause to believe that the person is committing or has committed a violation of an ordinance, and the law enforcement officer has probable cause to believe that such person will not be apprehended or

evidence of the violation of the ordinance will be irretrievably lost unless such person is immediately detained; or

- (4) Any violation of an ordinance has been or is being committed by such person in his view.
- (b) A law enforcement officer having detained a person pursuant to the preceding paragraph, except subsection (a) (1), or (a) (2) thereof, may release the person or may prepare and serve upon such person a complaint and notice to appear, as provided by K.S.A. 12-4204 or 12-4205, and shall then release such accused person from such detention, except in such instances where the law enforcement officer has power and authority to arrest such accused person as herein-after set forth. (Ord. No. 594, § 17, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4211.

Sec. 17-29. Arrest powers of law enforcement officer.

A law enforcement officer of the city may arrest a person when:

- (a) He has a warrant commanding that such person be arrested; or
- (b) The law enforcement officer has no warrant, but a warrant for the person's arrest has been issued by a municipal court in this state; or
- (c) The law enforcement officer, having no warrant, detained such person pursuant to subsection (c) or (d) of K.S.A. 12-4211, and
 - (1) Such person refuses to give his written promise to appear in court when served with a notice to appear; or
 - (2) Such person is unable to identify himself to the reasonable satisfaction of the law enforcement officer; or
 - (3) Such person is not a resident of the state; or
 - (4) The law enforcement officer has probable cause to believe that such person may cause injury to himself or others or may damage property unless immediately arrested. (Ord. No. 594, § 18, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4212.

Sec. 17-30. Persons under arrest; procedures; right to post bond.

Any person arrested by a law enforcement officer shall be taken immediately by said law enforcement officer to the police station of the city, or the office in the city designated by the municipal judge. At that time, such person shall have the right to post bond for his

appearance, in accordance with K.S.A. 12-4301 and 12-4302. However, if the law enforcement officer has probable cause to believe that such person may cause injury to himself or others, or damage to property, and there is no responsible person or institution to which such person might be released, such person shall remain in the protective custody of the law enforcement officer, in the city or county jail for a period not to exceed six (6) hours, at which time such person shall be given an opportunity to post bond for his appearance. While so held in protective custody, every person shall be permitted to consult with counsel or other persons on his behalf. Any person who does not make bond for his appearance shall be placed in the city or county jail, to remain there until he makes bond for his appearance, or appears before the municipal court at the earliest practical time ; provided, however, any such person who has not made bond and who has not appeared before the municipal court within twelve (12) hours after being arrested shall be released on his personal recognizance to appear at a later date. (Ord. No. 594, § 19, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4213.

Secs. 17-31--17-40. Reserved.

ARTICLE III. APPEARANCES AND CONDITIONS OF RELEASE

Sec. 17-41. Appearance bonds; methods of securing.

- (a) A person having the right to post bond for his appearance shall, in order to do so, execute in writing a promise to appear at the municipal court at a stated time and place. Such appearance bond shall be in an amount as determined by the municipal judge, and may be secured by any one of the following methods, and when so secured, said person shall be released from custody.
- (b) The methods of securing the appearance of an accused person are as follows:
 - (1) Payment of cash, except that the municipal judge may permit negotiable securities or a personal check in lieu of cash.
 - (2) The execution of an appearance bond by a responsible individual residing within the State of Kansas, as surety with the approval of the municipal judge.
 - (3) A guaranteed arrest bond certificate issued by either a surety company authorized to transact such business within the state, or an automobile club authorized to transact business in this state by the commissioner of insurance, except that such "guaranteed arrest bond certificate" must be signed by the person to whom it is issued and must contain a printed statement that the surety guarantees the appearance of such person and, in the event of failure of such person to appear in court at the time of trial, will pay any fine or forfeiture imposed upon such person not to exceed an amount to be stated on such certificate.

- (4) In lieu of giving security in the manner provided by (1), (2) and (3) above, the accused person may deposit with the arresting law enforcement officer or the clerk of the municipal court a valid license to operate a motor vehicle in the state in exchange for a receipt therefor issued by the law enforcement officer or the clerk of the municipal court, the form of which shall be approved by the division of vehicles of the state department of revenue. Said receipt shall be recognized as a valid temporary Kansas operator's license authorizing the operation of a motor vehicle by the accused person to the date of the hearing stated on the receipt. Said license and written copy of the notice to appear shall be delivered by the law enforcement officer of the municipal court as soon as reasonably possible. If the hearing on any such charge is continued for any reason, the municipal judge may note on the receipt the date to which such hearing has been continued, and said receipt shall be recognized as a valid temporary Kansas operator's license, as herein provided, until such date, but in no event shall such receipt be recognized as a valid Kansas operator's license for a period longer than thirty (30) days from the date for the original hearing. Any person who deposited his operator's license to secure his appearance, in lieu of giving a bond as provided in (1), (2) and (3) above, shall have such license returned to him upon the giving of the required bond pursuant to (1), (2) and (3) above or upon final determination of the charge against him.

In the event the accused person deposits a valid license to operate a motor vehicle in this state with the municipal court and thereafter fails to appear in court on the date set for appearance, or any continuance thereof, and in any event within thirty (30) days from the date set for the original hearing, the municipal judge shall forward the operator's license of such person to the division of vehicles with an appropriate explanation attached thereto. Upon receipt of the operator's license of such person the division of vehicles may suspend such person's privilege to operate a motor vehicle in this state until such person appears before the municipal court, or the municipal court makes a final disposition thereof, and notice of such disposition is given by the municipal court to the division, or for a period not exceeding six (6) months from the date such person's operator's license is received by the division, whichever is earlier.

Any person who applies for a duplicate or new operator's license to operate a motor vehicle in this state prior to the return of his original license, where such license has been deposited in lieu of the giving of a bond as provided in this section, shall be guilty of a misdemeanor punishable as set forth in K.S.A. 8-5125. (Ord. No. 594, § 20, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4301.

Sec. 17-42. Personal recognizance.

A law enforcement officer may release an accused person from custody without security for his appearance pursuant to a court rule or upon order of the municipal judge. (Ord. No. 594, § 21, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4302.

Sec. 17-43. Failure to appear.

"Failure to appear" is willfully incurring a forfeiture of an appearance bond and failing to surrender oneself within thirty (30) days following the date of such forfeiture by one who is charged with an offense and has been released on bond for appearance before the municipal court of this City for trial or other proceeding prior to conviction, or willfully incurring a forfeiture of an appearance bond and failing to surrender oneself within thirty (30) days after a conviction of an offense has become final by one who has been released on an appearance bond by said municipal court. Any person who is released upon his or her own recognizance, without surety, or who fails to appear in response to a summons, traffic citation or notice to appear, is a person released on bond for appearance within the meaning of this section. Failure to appear is a violation of the Municipal Code of the City of Merriam, Kansas. (Ord. No. 594, § 22, 3-18-74) (Ord. No. 1144, § 1, 10-19-92)

State law reference--Similar provisions, K.S.A. 12-4303.

Sec. 17-44. Schedule of fines.

- (a) The municipal judge shall establish a schedule of fines which shall be imposed for the violation of certain ordinances upon a voluntary entry of appearance and upon a plea of guilty or no contest to a complaint alleging such violation. The following traffic violations are specifically excluded from such schedule:
- (1) Reckless driving;
 - (2) Careless driving;
 - (3) Driving while under the influence of intoxicating liquor or drugs;
 - (4) Driving without a valid license issued or on a suspended or revoked license;
 - (5) Offenses arising from a motor vehicle collision or accident; and
 - (6) A second moving violation within the previous twelve-month period.
- (b) The municipal judge shall authorize the clerk of the municipal court or some other person to accept such voluntary appearance and plea of guilty or no contest and to accept the payment of the fine imposed by the schedule.

- (c) For violation of ordinance traffic infractions as defined by Kansas law, the fine establishment aforesaid by the municipal judge shall not be less than five dollars (\$5.00) nor more than five hundred dollars (\$500.00).
- (d) The schedule of fines and persons authorized to accept such pleas shall be conspicuously displayed in the office where such voluntary appearance, plea of guilty or no contest and payment of fines occurs. (Ord. No. 594, § 25, 3-18-74; Ord. No. 981, § 1, 12-17-84)

State law reference--Similar provisions, K.S.A. 12-4305.

Secs. 17-45--17-55. Reserved.

ARTICLE IV. PROCEEDINGS AFTER ARREST AND PRIOR TO TRIAL

Sec. 17-56. Matters before trial.

Every person charged with violation of an ordinance shall receive a copy of the complaint, and shall not be required to plead until he or she shall have had a reasonable time to examine the same, to obtain counsel and to determine his plea. (Ord. No. 594, § 23, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4401.

Sec. 17-57. Appearance of accused person.

The municipal judge may compel the appearance of an accused person or, upon request, may permit appearance, pleas and satisfaction of the judgment and sentence of the court by counsel or by mail. (Ord. No. 594, § 24, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4402.

Sec. 17-58. Time of arraignment.

Accused persons shall be arraigned:

- (a) At the time specified in the notice to appear, or in the appearance bond; or
- (b) If no date be specified, then on the earliest date when the court convenes. (Ord. No. 594, § 26, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4403.

Sec. 17-59. Conduct of arraignment.

Arraignment shall be conducted in open court by stating to the accused person the substance of the charge and calling upon him to plead thereto. Arraignment for purposes of accepting

plea of not guilty may be accomplished by telephone, mail or appearance by counsel. (Ord. No. 594, § 27, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4404.

Sec. 17-60. Appointment of counsel.

If the municipal judge has reason to believe that if found guilty, the accused person might be deprived of his liberty and is not financially able to employ counsel, the judge shall appoint an attorney to represent the accused person.

Financial inability to employ counsel shall be determined by the methods provided in K.S.A. 22-4504 as now or hereafter amended. (Ord. No. 594, § 28, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4405.

Sec. 17-61. Pleas and failure to appear.

- (a) A plea of guilty is an admission of the charge and every material fact alleged therein.
- (b) A plea of no contest is a formal declaration that the accused person does not contest the charge. When such a plea is entered, a finding of guilty may be adjudged thereon. The plea cannot be used against the accused person as an admission in any other action based on the same act.
- (c) A plea of not guilty denies and puts into issue every material fact alleged in the charge.
- (d) If the accused person refuses to plead, the court shall enter a plea of not guilty.
- (e) If the accused person fails to appear, the court shall declare the appearance bond to be forfeited and may issue a warrant for the arrest of the accused person. (Ord. No. 594, § 29, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4406.

Sec. 17-62. Procedure upon plea of guilty.

If the accused person pleads guilty, the municipal judge may hear evidence touching on the nature of the case, or otherwise ascertain the facts thereof, and after such hearing, may refuse to accept the plea or may accept the plea, assess the punishment and enter the proper judgment. (Ord. No. 594, § 30, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4407.

Sec. 17-63. Motions.

The Kansas Code of Criminal Procedure shall govern, insofar as applicable, the filing and disposition of motions. Motions may be oral or written. (Ord. No. 594, § 31, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4408.

Sec. 17-64. Continuances.

The municipal judge may grant a continuance of the trial or any hearing upon a showing of good cause, except as set out in section 17-81 of this Code. (Ord. No. 594, § 32, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4409.

Sec. 17-65. Discovery and depositions.

The accused person shall be permitted to inspect all matters relevant to the case. Depositions shall not be taken or used except by written agreement of both parties filed with the court or by order of the court upon such conditions as the court may prescribe. (Ord. No. 594, § 33, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4410.

Sec. 17-66. Subpoenas; witnesses expenses; abuse of subpoenas, costs.

- (a) All parties shall be entitled to the use of subpoenas to compel attendance of witnesses within the state. The municipal judge or clerk shall issue a subpoena which may be served by any law enforcement officer upon the named person. Disobedience may constitute contempt.
- (b) Fees and mileage of witnesses shall be two dollars and fifty cents (\$2.50) per day or any part thereof for an appearance of ten cents (\$0.10) per mile actually driven over ten (10) miles. The fees and mileage for the attendance of witnesses shall be borne by the party calling the witness, except that if an accused person is found not guilty, the city shall pay all such expenses; provided, the municipal judge may direct that fees and mileage of witnesses subpoenaed by the accused person be charged against such person, if the judge finds that there has been an abuse of the use of subpoenas by the accused person. (Ord. No. 594 § 34, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4411.

Secs. 17-67--17-80. Reserved.

ARTICLE V. TRIALS AND PROCEEDINGS INCIDENT THERETO

Sec. 17-81. Plea of not guilty; time; continuance.

An accused person entering a plea of not guilty, or for whom the court entered a plea of not guilty, shall be tried on the earliest practical day set by the court, unless trial is continued for good cause; provided, that an accused person in custody shall be tried on the earliest day that the municipal court convenes unless trial is continued upon motion of the accused person or counsel and for good cause. (Ord. No. 594, § 35, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4501.

Sec. 17-82. Trials--Generally.

All trials in municipal court shall be to the municipal judge or the municipal judge pro tem. (Ord. No. 594, § 36, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4502.

Sec. 17-83. Same--Trial; order of presentation.

The order of trial shall be:

- (a) Opening statement of prosecution, unless waived;
- (b) Evidence by the prosecution;
- (c) Opening statement of accused person, unless waived;
- (d) Evidence by the accused person, unless waived;
- (e) Rebuttal evidence, unless waived; and
- (f) Closing arguments, unless waived. (Ord. No. 594, § 37, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4503.

Sec. 17-84. Rules of evidence.

The rules of evidence prescribed in the Code of Civil procedure shall apply to this chapter. (Ord. No. 594, § 38, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4504.

Sec. 17-85. Amendments to complaint.

Amendments to the complaint may be permitted by the court before trial. Once the trial commences, the court may permit a complaint to be amended before judgment, if no additional or different offense is charged, and if substantial rights of the accused person are not prejudiced. (Ord. No. 594, § 39, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4505.

Sec. 17-86. Joinder of two or more accused persons.

Where two (2) or more persons are separately or jointly accused by a complaint of a violation of an ordinance arising out of the same general state of circumstances, such persons may be tried separately or jointly; provided, that where an accused person, so requests, he shall be tried separately. (Ord. No. 594, § 40, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4506.

Sec. 17-87. Judgment.

If the accused person is found not guilty, judgment shall be rendered immediately. If the accused person is found guilty, sentence shall be imposed and judgment rendered without unreasonable delay. (Ord. No. 594, § 41, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4507.

Sec. 17-88. Judgment docket.

When a judgment is rendered, the municipal judge or clerk of the municipal court shall enter such judgment on the docket; however, the omission of this duty shall not affect the validity of the judgment. (Ord. No. 594, § 42, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4508.

Sec. 17-89. Sentence; possible disposition.

- (a) Whenever an accused person is found guilty of the violation of an ordinance, the municipal judge may:
- (1) Release the accused person without imposition of sentence;
 - (2) Release the accused person on probation after the imposition of sentence, without imprisonment or the payment of a fine or a portion thereof, subject to conditions imposed by the court; or
 - (3) Impose such sentence of fine, imprisonment, or both, as may be authorized for the ordinance violation.

- (b) Whenever an accused person is found guilty of the violation of an ordinance and there is evidence that the act constituting the violation of the ordinance was substantially related to the possession, use or ingestion of a cereal malt beverage or an alcoholic beverage by such person, the judge may:
- (1) Order any of the dispositions authorized by subsection (a); or
 - (2) Order such person to attend and satisfactorily complete a suitable educational or training program directed to the effects of alcohol or other chemical substances when ingested by humans; or
 - (3) Any appropriate combination of paragraphs (1) and (2) of this subsection. (Ord. No. 594, § 43, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4509.

Sec. 17-90. Sentence; imprisonment; fine.

- (a) When a sentence of imprisonment is pronounced, the municipal judge or the clerk of the municipal court shall prepare and deliver to the chief of police a copy of the entry of judgment, duly certified by such judge or clerk, which shall be sufficient authority to such chief of police to execute the sentence and confine the accused person to jail for the time specified, or until further order of the court.
- (b) When a fine is levied as punishment, the municipal judge or clerk of the municipal court shall issue a statement getting forth the amount of the fine and the manner of payment. Failure to pay in the manner specified may constitute contempt of court. (Ord. No. 594, § 44, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4510.

Sec. 17-91. Parole.

- (a) The municipal judge may parole any person confined to jail as a result of a conviction of a violation of a city ordinance. The judge may set such conditions and restrictions as he sees fit to impose for a term not exceeding one year and may at any time discharge such person for good cause shown.
- (b) After notice and hearing, the municipal judge may terminate such parole for violation of conditions by directing the chief of police to execute the sentence and again confine the accused person to jail for the time specified by the court which shall not exceed the initial sentence imposed, less the time served. (Ord. No. 594, § 45, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4511.

Sec. 17-92. Setting aside judgment.

The municipal judge, on motion of the accused person or on the court's own motion, shall set aside a judgment if the complaint does not charge a violation of a city ordinance, or if the court was without jurisdiction of the offense. The motion for setting aside the judgment shall be made within ten (10) days after the finding of guilty, or within such further time as the court may fix during the ten-day period. (Ord. No. 594, § 46, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4512.

Sec. 17-93. Correction of errors.

The municipal judge may correct an illegal sentence at any time. Clerical mistakes in judgments or orders may be corrected by the court at any time. (Ord. No. 594, § 47, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4513.

Sec. 17-94. Expungement of certain convictions.

- (a) Except as provided in subsection (b), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction if two (2) or more years have elapsed since the person:
- (1) Satisfied the sentence imposed; or
 - (2) Was discharged from probation, parole or a suspended sentence.
- (b) In the case of a conviction for the violation of a city ordinance which would also constitute a violation of any of the items enumerated in subsection (a) of K.S.A. 8-285, and any amendments thereto, no person may petition for expungement until five (5) or more years have elapsed since the person:
- (1) Satisfied the sentence imposed; or
 - (2) Was discharged from probation, parole or a suspended sentence.
- (c) When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The petition shall state :
- (1) The defendant's full name;
 - (2) The full name of the defendant at the time of arrest and conviction, if different than (1);

- (3) The defendant's sex, race, and date of birth;
- (4) The crime for which the defendant was convicted;
- (5) The date of the defendant's conviction; and
- (6) The identity of the convicting court.

A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas adult authority.

- (d) At the hearing on the petition, the court shall order the petitioner's conviction expunged if the court finds:
 - (1) That the petitioner has not been convicted of a felony in the past two (2) years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;
 - (2) That the circumstances and behavior of the petitioner warrant the expungement; and
 - (3) That the expungement is consistent with the public welfare.
- (e) When the court has ordered a conviction expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of expungement to the Federal Bureau of Investigation, the Kansas Bureau of Investigation, the secretary of corrections and any other criminal justice agency who may have a record of the conviction. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:
 - (1) Upon conviction for any subsequent crime the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;
 - (2) In any application for employment:
 - a. As a detective with a private detective agency, as defined by K.S.A. 75-7b01;
 - b. As security personnel with a private patrol operator, as defined by K.S.A. 75-7b01; or

- c. With a criminal justice agency, as defined by K.S.A. 22-4701, the petitioner, if asked about previous convictions, must disclose that the conviction took place;
 - (3) The court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed; and
 - (4) The conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged.
- (f) Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such violation or is given a suspended sentence for such a violation, the person shall be informed of the ability to expunge the conviction.
 - (g) Subject to the disclosures required pursuant to subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of an offense has been expunged under this statute may state that he or she has never been convicted of such offense.
 - (h) Whenever the record of any conviction has been expunged under the provisions of this section or K.S.A. 12-4515, 21-4616, 21-4617 or the statutory predecessor of such sections, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:
 - (1) The person whose record was expunged;
 - (2) A criminal justice agency, private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
 - (3) A court, upon a showing of subsequent conviction of the person whose record has been expunged;
 - (4) A person entitled to such information pursuant to the terms of the expungement order; or
 - (5) A prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense.

State law reference--Similar provisions, K.S.A. 12-4516.

Secs. 17-95--17-105. Reserved.

ARTICLE VI. APPEALS**Sec. 17-106. Generally.**

An appeal may be taken to the district court of the county, from the municipal court as follows:

- (a) By the accused person in all cases; and
- (b) By the city upon questions of law.

The appeal shall stay all further proceedings upon the judgment appealed from. (Ord. No. 594, § 49, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4601.

Sec. 17-107. Procedure.

An appeal to the district court may be taken as provided in K.S.A. 22-3609. The appearance bond may continue in effect throughout the appeal; however, the municipal judge may require a separate appeal bond. Hearing and judgment on appeal shall be as provided in K.S.A. 22-3610 and 22-3611. (Ord. No. 594, § 50, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4602.

Secs. 17-108 --17-120. Reserved.**ARTICLE VII. MISCELLANEOUS PROVISIONS****Sec. 17-121. Amendments by supreme court.**

The state supreme court shall have power to supplement or amend the provisions of this chapter insofar as they pertain to forms of process, pleadings, motions and practice and procedure in municipal courts. Such supplements and amendments shall not abridge, enlarge or modify any substantive right and shall take effect upon their being filed with the clerk of the supreme court and published in the supreme court reports. (Ord. No. 594, § 51, 3-18-74)

State law reference--Similar provisions, K.S.A. 12-4701.