

COUNCIL BILL NO. 2007-508

ORDINANCE NO. 2007-213

AN ORDINANCE repealing Article II, Municipal Court, of Chapter 42, Courts, of the Code of Ordinances of the City of Joplin, and enacting in lieu thereof a new Article II, Municipal Court, of Chapter 42, Courts, of the Code of Ordinances of the City of Joplin to implement certain fee changes.

WHEREAS, the State has passed legislation that allows the court to impose certain new fees, and,

WHEREAS, the City has costs associated with these services, and,

WHEREAS, the Council of the City of Joplin desires to establish these fees to meet the reasonable expenditures of this function.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Joplin, Missouri, as follows:

Section 1. That Article II, Municipal Court, of Chapter 42, Courts, be repealed and a new Article II, Municipal Court, of Chapter 42, Courts, of the Code of Ordinances of the City of Joplin be enacted in lieu thereof to read as follows:

CHAPTER 42 COURTS
ARTICLE II. MUNICIPAL COURT*
DIVISION 1. GENERALLY

Sec. 42-31. Judgment for costs against prosecutor; liability of city for costs.

If, upon trial before the municipal judge or the court to which an appeal is taken from the municipal court, it appears to the satisfaction of the court then trying the cause that the prosecution was malicious or without probable cause, the court shall so state in its findings and the court shall enter judgment for costs against the prosecutor or party at whose insistence the complaint was made, and shall issue execution therefor. The city shall in no event be liable for any costs or fees to any municipal judge or chief of police or for any costs assessed against any city employee or officer in any cause tried before the municipal judge of the city.

Sec. 42-32. Rules of practice and procedure.

The rules for practice and procedure in the municipal court shall be as established and set forth in Rule 37 of the Rules of the Supreme Court of the State of Missouri.

Sec. 42-33. Stay of assessment of costs.

The municipal judge shall have the authority to stay the assessment of costs in any case where, in his opinion, the interest of justice would be served by staying such assessment of costs.

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Sec. 42-34. Monthly report of uncollected fines.

The clerk of the municipal court shall furnish a detailed monthly report of all uncollected fines, upon which shall be shown the reason for any delinquent collections. Copies of the report shall be made and delivered to the city manager, and one shall be retained in the files of the municipal court.

Sec. 42-35. Court costs and other fees.

(a) In addition to any fine that may be imposed in all cases filed in municipal court by the municipal judge, there shall be assessed as court costs the amount of \$12.00. However, \$1.00 of such fee shall be deposited in the judicial education fund for the purpose of providing continuing education and certification for the municipal judge and associate municipal judge, and judicial education and training for the court administrator and all full-time court clerks. This fund shall be administered as provided in RSMo 479.260.

(b) In addition to the scheduled fines and all other courts costs, an additional \$1.00 shall be charged on all violations of municipal ordinance and deposited in the peace officers standards and training fund as described in RSMo 590.140. No fee as described in this subsection shall be collected in any proceeding when the proceeding or defendant has been dismissed by the court.

(c) In addition to the scheduled fines and all other courts costs, an additional \$2.00 shall be charged on all violations of municipal ordinance and deposited in the law enforcement training fund as described in RSMo 590.140. However, nothing in this subsection shall become effective until July 1, 1998. No fee as described in this subsection shall be collected in any proceeding when the proceeding or defendant has been dismissed by the court.

(d) The costs set forth in subsections (a) through (c) of this section are in addition to costs assessed to fund the crime victims' compensation fund pursuant to RSMo 595.045. No fee as described in this subsection shall be collected in any proceeding when the proceeding or defendant has been dismissed by the court.

(e) In addition to all other court costs described in this section, additional costs of \$2.00 shall be assessed as costs in all cases filed in municipal court. The judge may waive assessment of such costs in those cases where the defendant is found by the judge to be indigent and unable to pay the costs. Such costs shall be collected by the clerk and disbursed at least monthly for deposit in a fund for the provision of operating expenses for shelters for battered persons pursuant to RSMo 479.261 in such proportion as the city council shall from time-to-time decide. The funds shall stand appropriated upon receipt for such use. No fee as described in this subsection shall be collected in any proceeding when the proceeding or defendant has been dismissed by the court.

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(f) In addition to the costs otherwise described in this section, a warrant issuance fee of \$25.00 shall be assessed against any person whose failure to appear in court as ordered necessitates the issuance of a warrant.

(g) In addition to the warrant issuance fee, an arrest fee of \$50.00 shall be assessed against any person who is physically arrested pursuant to such warrant.

(h) In addition to the costs otherwise described in this section, an inmate security surcharge fee of \$2.00 shall be assessed as costs in each court proceeding filed. No such fee shall be collected in any proceeding in court when the proceeding or the defendant has been dismissed by the court or when costs are to be paid by the state, county, or municipality. Funds shall be utilized to develop biometric (identification) verification systems to ensure that inmates can be properly identified and tracked within the local jail system. Upon installation of the biometric verification system, funds may be used for the maintenance of the biometric verification system, and to pay for any expenses related to the custody and housing and other expenses for prisoners. State law references: RSMo 488.5026.

Sec. 42-36. Reimbursement of costs associated with alcohol- and drug-related traffic offenses.

In addition to any other penalties and costs provided by law or ordinance, the court may order any person convicted of an alcohol- or drug-related traffic offense to reimburse the city for the costs associated with the arrest of such person. Such costs shall include the reasonable cost of making the arrest, including the cost of any chemical tests made to determine the alcohol or drug content of the person's blood, and the costs of processing, charging, booking and holding such person in custody. A schedule of such costs shall be established by the city police department and filed with the clerk of the municipal court, and the court may impose costs in accordance with the schedule; provided, the court may order the costs reduced in a case if the court determines the costs are excessive.

Sec. 42-37. Search warrants; procedures.

(a) The municipal judge shall have authority to issue search warrants for searches or inspections to determine the existence of violation(s) of chapters 18, 26, 29A, 29B, 30, 54, 58, 62, 98, 102 and 122 of the Joplin City Code of Ordinances. The municipal judge shall also have authority to issue warrants for the entry onto property to seize property or to otherwise enforce any of the provisions of the Code of Ordinances.

(b) Warrants and searches or inspections made pursuant thereto shall conform to and be governed by the following provisions:

(1) The prosecuting attorney of the city or his designee may make application to the municipal court for the issuance of a warrant.

(2) The application shall:

a. Be in writing;

b. State the time and date of the making of the application;

c. Identify the property or places to be entered and searched in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

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d. State facts sufficient to show probable cause for the issuance of a search warrant to search for violations of chapters 18, 26, 29A, 29B, 30, 54, 58, 62, 98, 102 and 122 of this Code of Ordinances;

e. Be verified by the oath or affirmation of the applicant; and

f. Be filed in the municipal division of the Jasper County, Missouri, Circuit Court.

(3) The application shall be supplemented by written affidavits verified by oath or affirmation. Such affidavits shall be considered in determining whether there is probable cause for the issuance of the warrant and in filling out any deficiencies in the description of the property or places to be entered or searched. Oral testimony shall not be considered.

(4) The judge shall hold a nonadversary hearing to determine whether sufficient facts have been stated to justify the issuance of a warrant. If it appears from the application and any supporting affidavits that there is probable cause to inspect or search for violations of chapters 18, 26, 29A, 29B, 30, 54, 58, 62, 98, 102 and 122 of this Code, a warrant shall immediately be issued to search for such violations. The warrant shall be issued in the form of an original and two copies.

(5) The application and any supporting affidavits and a copy of the warrant shall be retained in the records of the municipal judge.

(6) The warrant shall:

a. Be in writing and in the name of the issuing authority;

b. Be directed to any police officer or deputy in the city;

c. State the time and date the warrant is issued;

d. Identify the property or places to be searched or entered in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

e. Be limited to a search or inspection for violations of chapters 18, 26, 29A, 29B, 30, 54, 58, 62, 98, 102 and 122 of this Code.

f. Command that the described property or places be searched and that any photographs of violations found thereof or therein be brought, within ten days after filing of the application, to the judge who issued the warrant, to be dealt with according to law; and

g. Be signed by the municipal judge, with his title of office indicated.

(7) A warrant issued under this section may be executed only by a police officer or deputy of the city. The warrant shall be executed by conducting the search or entry commanded.

(8) A warrant shall be executed as soon as practicable and shall expire if it is not executed and the return made within ten days after the date of the making of the application.

(9) After execution of the warrant, the warrant, with a return thereon signed by the officer making the search, shall be delivered to the judge who issued the warrant. The return shall show the date and manner of execution and the name of the possessor and of the owner of the property or places searched or entered when he is not the same person, if known.

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(10) A warrant shall be deemed invalid:

- a. If it was not issued by a judge of the municipal division of the Jasper County, Missouri, Circuit Court; or
- b. If it was issued without a written application having been filed and verified; or
- c. If it was issued without probable cause; or
- d. If it was not issued with respect to property or places within the city; or
- e. If it does not describe the property or places to be searched, entered or seized with sufficient certainty; or
- f. If it is not signed by the judge who issued it; or
- g. If it was not executed within the time prescribed by subsection (b)(8) of this section.

(c) Definition. For purposes of this section the term municipal judge shall include the associate municipal judge.

Sec. 42-38. Court may compel testimony, witness immunity; exception; penalty.

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before the municipal judge, the judge may issue, in accordance with subsection (b) of this section, upon the written request of the prosecuting attorney, an order requiring such individual to give testimony or provide other information which the individual refuses to give or provide on the basis of the individual's privilege against self-incrimination. When such an order is issued, the witness may not refuse to comply with the order on the basis of the witness's privilege against self-incrimination, but after complying with the order and giving the testimony or producing the evidence compelled by the order, no such person shall be criminally prosecuted or subjected to any criminal penalty for or on account of any act, transaction, matter or thing which is the subject matter of the inquiry in which the person testifies or produces evidence, except a prosecution for perjury, giving a false or misleading statement or contempt committed in answering or failing to answer, or in producing or failing to produce evidence in accordance with the order.

(b) A prosecuting attorney may be granted an order compelling a witness to testify and produce evidence upon the approval of a verified application for witness immunity. The judge hearing the application for witness immunity may not preside over the subsequent trial or any ancillary proceeding for which the immunity applies. Such application shall offer proof that:

- (1) Such individual has refused or is likely to refuse to testify or provide other information on the basis of the individual's privilege against self-incrimination; and either
- (2) The testimony or other information to be provided by such individual is necessary to the investigation or prosecution and is otherwise unobtainable; or
- (3) The testimony or other information to be provided by such individual is necessary for the prosecutor to prove a defendant's guilt beyond a reasonable doubt.

(c) If a person refuses to testify on the basis of such person's privilege against self-incrimination after being given an order to testify under this section or produce evidence or other

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information, such person shall be adjudged in contempt and committed to the city jail until such time as the person purges himself or herself of this contempt by testifying or producing evidence and information as ordered, or the trial for which the person's testimony was requested has concluded.

(d) A trial shall be continued a reasonable period of time to allow the application for an order to compel testimony pursuant to this section. In the event of a trial continuance, the application shall be made to a municipal judge not hearing the cause. If a witness is committed to the city jail for contempt, the defendant and any attorney shall be available for the resumption of the trial on one day's notice. In no event shall the person held in contempt be confined for more than 30 days.

Sec. 42-39. Imposition of sentence, conditions of probation; compensation of victims; free work, public or charitable.

(a) The court shall have the discretion upon finding or plea of guilt to impose such sentence as authorized by Charter and Code, and consistent with the Statutes and Court Rules of Missouri.

(b) The Judges of the municipal division (municipal court) in Joplin, Missouri may place a defendant on probation for the violation of any ordinance of the city, specifically including the offense of operating or being in physical control of a motor vehicle while under the influence of intoxicating liquor or narcotic drugs. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to insure that the court will be aware of any further law violations. When a defendant is placed on probation, he/she shall be given a certificate explicitly stating the conditions on which he/she is being released. Persons found guilty or pleading guilty to ordinance violations and placed on probation by the municipal court judges shall contribute a service fee to the municipal court in the amount of \$50.00 per month to pay the cost of their probation supervision provided by a probation or compliance officer employed by the city. The court may exempt a person from all or part of the foregoing fee if it finds any of the following factors to exist:

(1) The offender has diligently attempted, but has been unable, to obtain employment which provides him sufficient income to make such payments;

(2) The offender is a student in a school, college, university or course of vocational or technical training designed to fit the student for gainful employment. Certification of such student status shall be supplied to the court by the education institution in which the offender is enrolled;

(3) The offender has an employment handicap, as determined by a physical, psychological or psychiatric examination acceptable to or ordered by the court;

(4) The offender's age prevents him from obtaining employment;

(5) The offender is responsible for the support of dependents, and the payment of such fee constitutes an undue hardship on the offender;

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(6) There are other extenuating circumstances as determined by the court to exempt or partially reduce such payments; or

(7) The offender has been transferred outside the state under an interstate compact adopted pursuant to law.

(c) In addition to such other authority as exists to order conditions of probation, the court may order such conditions as the court believes will serve to compensate the victim, any dependent of the victim, or society. Such conditions may include, but shall not be limited to:

(1) Restitution to the victim or any dependent of the victim, in an amount to be determined by the court;

(2) The performance of a designated amount of free work for a public or charitable purpose, or purposes, as determined by the court;

(3) The assessment of shock jail time, so long as such jail time is within the range of punishment authorized by ordinance of law for the offense charged;

(4) The assessment of a shock fine so long as such amount is within the range of punishment authorized by ordinance or law for the offense charged;

(5) Completion of alcohol or substance abuse education, evaluation or treatment programs at the expense of the defendant; and

(6) Completion of anger management, evaluation or treatment programs at the expense of the defendant.

(d) The defendant may refuse probation conditioned on the performance of free work. If he/she does so, the court shall decide the extent or duration of sentence or other disposition to be imposed and render judgment accordingly. Any county, city, person, organization, agency, or employee of a county, city, organization or agency charged with the supervision of such free work or who benefits from its performance shall be immune from any suit by the defendant or any person deriving a cause of action from him/her if such cause of action arises from such supervision of performance, except for an intentional tort or gross negligence. The services performed by the defendant shall not be deemed employment within the meaning of the provisions of Chapter 288, RSMo.

(e) The court may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the probation term.

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(f) The court may suspend either the imposition or execution of sentence as a condition of probation.

(g) The court may adopt by order, rules to implement the sentencing alternatives that it deems appropriate.

(h) The court may supervise the conditions of confinement, and may adopt by order, the term and conditions of release as it deems fit, including compassionate release or parole in

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the event of illness or injury of the inmate or death or injury of a family member of the inmate, work release, credit for good behavior and release on parole during periods of jail over-crowding, emergency, or disaster, and so forth.

(i) Any person who shall violate a term or condition of confinement, release, or parole, shall be subject to contempt.

Sec. 42-40. Report of delinquent citations.

In addition to issuance of a warrant, pursuit of civil remedies, and other penalties as allowed by law, any violation for which a warrant has been issued that has not been cleared for a period of six months may be reported to a collection agency. The municipal judge may enter into such appropriate agreements with collection agencies for the payment of their services, not to exceed one-fourth of the amount of any fine, costs or recoupment, and \$1.00 for each jail day to be served.

Secs. 42-41--42-50. Reserved.

Section 2. That this ordinance shall become effective on January 1, 2008.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 15th day of October, 2007.

Jon Tupper, Mayor

ATTEST:

Barbara L Hogelin, City Clerk

APPROVED AS TO FORM:

Brian W Head, City Attorney