

AN ORDINANCE AMENDING CHAPTER 72 OF THE HAMILTON CITY CODE RELATING TO MUNICIPAL COURT AND ISSUANCE OF ADMINISTRATIVE SEARCH WARRANTS, AND SETTING AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF HAMILTON, MISSOURI AS FOLLOWS TO WIT:

SECTION 1: That Chapter 72 of the Hamilton City Code is revised in its entirety to read as follows:

Chapter 72 -- Municipal Court and Issuance Administrative Search Warrants

ARTICLE I - In General

72.010. Municipal Cases to be heard by Associate Circuit Judge.

The City of Hamilton, Caldwell County, Missouri hereby elects to have all violations of its municipal ordinances heard and determined by the Associate Circuit Judge of Caldwell County, Missouri or such other judge as shall be assigned by the presiding judge of the 43rd Judicial Circuit of Missouri, pursuant to the provisions of Section 479.040, Revised Statutes of Missouri. Court shall be held at the Courtroom of the Associate Circuit Judge in Kingston, Missouri at such reasonable times and places as designated by the Associate Circuit Judge.

72.020 Municipal Division – Circuit Court

The Division of the Circuit Court of Caldwell County, Missouri, which hears and determines violations of the ordinances of the City of Hamilton shall be known as the "Municipal Division of the Circuit Court of Caldwell County, Missouri".

72.030 Rules Governing Practice and Procedure in the Municipal Division.

The rules governing the procedure and practice in the Municipal Division shall be those established and promulgated by the Supreme Court of Missouri, and subsequent rules as the Supreme Court shall from time to time establish and promulgate; and any provision in these ordinances which shall be in conflict with such rules is hereby repealed.

72.040. Fines and Costs — Where Paid.

In cases of violations of ordinances of the City submitted to, heard and determined before the Judge, all fines shall be paid to and deposited at least monthly into the City Treasury and all court costs shall be accounted for and remitted to the State Treasury in the same manner as provided by law for costs in misdemeanor cases.

72.045 Fines and Costs — Report.

The Supreme Court by administrative rule may provide for uniform procedure and reporting forms for the collection and transmittal of fines and costs. Until modified or otherwise provided

by such administrative rule, the Judge hearing and determining violations of City ordinances, shall cause the Clerk of the Municipal Division, within the first ten (10) days of every month, to make out a list of all the cases heard or tried before the Judge during the preceding month, giving in each case the name of the defendant, the fine imposed, if any, the amount of costs, the names of defendants committed and the cases in which there was application for trial de novo, respectively. Such Clerk or the Judge shall verify such lists and statements by affidavit, and file the same forthwith with the Clerk of the City, who shall present the same before the Board of Aldermen at its first session thereafter. The Official collecting fines, shall, within the ten (10) days aforesaid, pay to the City Treasurer the full amount of all fines collected by him/her during the preceding month if not previously paid to the City Treasurer.

72.050. Violations Bureau – Duties – Court Costs.

The Associate Circuit Judge may establish a Violations Bureau in the City of Hamilton, and shall establish such a Bureau when a request therefor is made by the Board of Aldermen of the City of Hamilton. The Violations Bureau shall operate under the supervision of the Circuit Court, and the Associate Circuit Judge hearing and determining violations of the ordinances of the City of Hamilton, and shall be operated in accordance with the rules of the Supreme Court and the rules of the Circuit Court. All expenses incident to the operation of the Violations Bureau, including salaries of clerical personnel, shall be paid by the City of Hamilton. The City shall provide suitable quarters for the Violations Bureau. The Violations Bureau shall accept pleas of guilty to certain violations of traffic ordinances designated by the Associate Circuit Judge and shall accept payments of fines established by the Associate Circuit Judge and court costs assessed on said pleas of guilty.

72.060 City Ordinances – Evidence – Judicial Notice

In the trial of violations of the ordinances of the City, a copy of a City ordinance which is certified by the Clerk of the City shall constitute prima facie evidence of such ordinance. If such certified copy is on file with the Clerk of the Municipal Division and readily available for inspection by the parties, the Judge may take judicial notice of such ordinance without further proof.

72.100. Prosecutions by information.

All ordinance violation prosecutions shall be instituted by information and may be based upon a complaint. Proceedings shall be in accordance with the Supreme Court Rule governing practices and procedures in proceedings in municipal divisions of circuit courts.

72.110. Warrants.

All warrants issued by the Judge shall be directed to the chief of police or any other City police officer or to the Sheriff of Caldwell County. The warrant shall be executed at any place within the limits of the County and not elsewhere unless the warrant is endorsed in the manner provided for warrants in criminal cases and, when so endorsed, shall be served in other counties as provided for in warrants in criminal cases.

72.120. Arrest without warrant, procedure.

Any police officer of the City shall, without a warrant, make arrests of any person who commits an offense in his presence, but such officer shall, before the trial, file a written complaint with the Judge. If arrest is made without a warrant then the arresting officer may require as a condition for release execution of a bond in a stated amount with sufficient solvent sureties or the deposit with the Court of the sum in cash or negotiable bonds of the United States or of this State or any political subdivision thereof, or may accept bond in accordance with a bail schedule furnished by the Court.

72.130. Jury trials.

- A. Any person charged with an ordinance violation shall be entitled to a trial by jury to the extent provided by law, but all cases shall be tried by the Judge unless a timely and proper demand for Jury Trial is made.
- B. Whenever a defendant accused of a violation of a municipal ordinance has the right to a trial by jury and demands such trial by jury, the Judge shall certify the case to the Presiding Judge of the Circuit Court serving the City for assignment in the manner provided by State law. Proceedings in the case shall be had as if the case was originally commenced under the practice and procedure applicable before Circuit Judges with there being no right of trial de novo; but the sufficiency of plaintiff's petition shall be adjudged according to the procedures under Chapter 517, RSMo.

72.140. Duties of City Prosecuting Attorney.

The City Prosecuting Attorney shall prosecute violations of the City's ordinances before the municipal judge. The City Prosecuting Attorney shall be named by the Board of Aldermen. The salary or fees of the attorney and his/her necessary expenses incurred in such prosecutions shall be paid by the City.

72.150. Summoning of witnesses.

- A. It shall be the duty of the Judge to summons all persons whose testimony may be deemed essential as witnesses at the trial, and to enforce their attendance by attachment, if necessary. The fees of witnesses shall be the same as those fixed for witnesses in trials before Associate Circuit Judges and shall be taxed as other costs in the case. When a trial shall be continued by a Judge it shall not be necessary to summon any witnesses who may be present at the continuance; but the Judge shall orally notify such witnesses as either party may require to attend before him on the day set for trial to testify in the case, and enter the names of such witnesses on his docket, which oral notice shall be valid as a summons.
- B. Policeman Or Other Officer As Witness. If prosecutions before the Judge for misdemeanors arising under ordinances of the City, any Policeman or other executive officer shall be a competent witness in the case; but no such Policeman or executive officer shall be entitled to any witness fee in such case.

C. Arresting Officers To Attend As Witnesses Without Summons. Officers shall attend upon notice as witnesses against persons whom they have caused to be arrested, without being summoned to do so; and, upon their failure to appear at the time of the trial, may be attached and punished for contempt as witnesses summoned.

72.170. Commitment to Jail.

If in the opinion of the Judge the City has no suitable and safe place of confinement, the defendant may be committed to the County jail, and it shall be the duty of the Sheriff, if space for the prisoner is available in the County jail, upon receipt of a warrant of commitment from the Judge to receive and safely keep such prisoner until discharged by due process of law. The City shall pay the board of such prisoner at the same rate as allowed by law to the Sheriff for the keeping of other prisoners in his custody. The cost of such board shall be taxed as costs in the case.

72.180. Parole and probation.

If the Judge grants a parole or probation to any person, he may impose in connection therewith to the extent authorized by law such terms and conditions as the Judge deems reasonably necessary to promote the purposes to be served by such grant, including insuring that the defendant will not again violate the law. Such conditions may include without limitation the following:

1. Restitution to the victim or any dependent of the victim in a stated amount.
2. The performance of a designated amount of free work for a public or charitable purpose or purposes; PROVIDED, that the defendant may refuse parole or probation conditioned on the performance of free work, in which case the Judge shall decide the extent or duration of sentence or other disposition to be imposed and shall render judgment accordingly. If performance of free work is imposed by the judge and accepted by the defendant then the Judge shall designate the person or entity to be charged with supervision of such work.
3. Except in cases classified as infractions under State law, require the defendant to submit to a period of detention in an appropriate institution at whatever time or intervals within the period of probation, consecutive or not consecutive, but the aggregate total of such detention shall not exceed the shorter of fifteen (15) days or the maximum term of imprisonment authorized for the violation under State law.

Terms and conditions of parole and probation may be modified or enlarged by the Judge at any time prior to expiration or termination of the term thereof.

72.190. Trial de Novo.

In any case tried before the Judge, except where there has been a plea of guilty or the case has been tried with a jury, the defendant shall have a right of trial de novo before a Circuit Judge or upon assignment before an Associate Circuit Judge. An application for a trial de novo shall be filed within ten (10) days after judgment and shall be filed in such form and perfected in such manner as provided by Supreme Court Rule. In any case tried with a jury before an Associate

Circuit Judge a record shall be made and appeals may be had upon that record to the appropriate Appellate Court. The record shall be kept in a manner provided by State law or Supreme Court Rule.

72.200. Recognizances and forfeitures.

In the case of a breach of any recognizance entered into before the Judge, the same shall be deemed forfeited and the Judge shall cause the same to be prosecuted against the principal and surety, or either of them, in the name of the City as plaintiff. Such action shall be prosecuted before a Circuit Judge or Associate Circuit Judge. All monies recovered in such actions shall be paid over to the City Treasury for the general revenue fund of the City.

72.210. Disqualification and change of judge.

A change of judge shall be ordered upon the filing of a written application therefore by any party not later than ten (10) days before the date set for trial PROVIDED, that if the designation of the trial judge occurs less than ten (10) days before trial, or if the Judge in the exercise of discretion so allows, then the application may be filed at any time prior to trial.

72.215 Failure To Appear Before the Court

- A. It shall be unlawful for any person to fail to appear at the proper time and plea or answer a charge against him/her in the Court upon being first duly summoned.
- B. The punishment for violation of this Section shall be in addition to the forfeiture of any security which was given or pledged for the person's release.
- C. Nothing in this Section shall prevent or limit any Court's exercise of its power to punish for contempt.
- D. Nothing in this Section shall apply to an "minor traffic violation" as defined under the City Code.

ARTICLE II Fines and Court Costs

72.240. Court costs. When a defendant pleads guilty or is found guilty, in addition to any fine that may be imposed by the Municipal Judge in any case filed in Hamilton City Municipal Division of the 43rd Judicial Circuit Court, and in addition to all other fees authorized or required by law, there shall be assessed as costs the following, there shall be assessed and collected as costs the following:

1. Costs of Court in the amount of fifteen dollars (\$15.00) for municipal ordinance violations or, after adjustment by the Supreme Court, the amount set by the Supreme Court for municipal ordinance violations.
2. Law Enforcement Officer training fee. In all cases, except those for non-moving traffic violations, costs for the training of Police Officers in the amount of three dollars (\$3.00). No such fee shall be collected when the proceedings against the defendant have been dismissed.

a. Two dollars (\$2.00) of each such Court cost shall be transmitted monthly to the Treasurer of the City or other official collecting monies due the City, and used to pay for Law Enforcement Officer training as provided by Sections 590.100 to 590.180, RSMo. The City shall not retain for training purposes more than one thousand five hundred dollars (\$1,500.00) of such funds for each certified Law Enforcement Officer or candidate for certification employed by the City. Any excess funds shall be transmitted quarterly to the City's General Fund.

b. One dollar (\$1.00) of each such Court cost shall be sent to the State Treasury to the credit of the Peace Officers Standards and Training Commission Fund created by Section 590.178, RSMo.

3. Crime Victims' Compensation Fund. An additional sum of seven dollars fifty cents (\$7.50) shall be assessed and added to the basic costs in Subparagraph (1) of this Section, provided that no such cost shall be collected in any proceeding when the proceeding or the defendant has been dismissed by the Court. All sums collected pursuant to this Subparagraph shall be paid at least monthly as follows:

a. Ninety-five percent (95%) of such fees shall be paid to the Director of Revenue of the State of Missouri for deposit as provided in Section 595.045.5, RSMo.

b. Five percent (5%) shall be paid to the City Treasury.

4. There may also be assessed a four dollar (\$4.00) cost per case for each criminal case, including violations of any County or municipal ordinance, for the purpose of providing operating expenses for shelters for battered persons as set out in Section 488.607, RSMo.

5. There shall be assessed a seven dollar (\$7.00) surcharge for the Statewide Court Automation Fund.

6. Other costs, such as for the issuance of a warrant, a commitment or a summons, as provided before the Associate Circuit Judge in criminal prosecutions.

7. Actual costs assessed against the City by the County Sheriff for apprehension or confinement in the County Jail or costs assessed against the City by any other detention facility.

8. Mileage, in the same amount as provided to the Sheriff in criminal violations, for each mile and fraction thereof the officer must travel (both directions) in order to serve any warrant or commitment or order of this Court.

9. Any other reasonable cost as may be otherwise provided by ordinance including, but not limited to, costs of confinement, including any necessary transportation related thereto, medical costs incurred by the City while a defendant is in City custody, and costs related to the arrest and testing of any person for any intoxication-related traffic offense as set out in Section 125.070(10) hereof.

10. A surcharge of three dollars (\$3.00) shall be assessed and collected payable to the Sheriff's Retirement Fund created in Section 57.955, RSMo.

11. Reimbursement of certain costs of arrest.

a. Upon a plea or a finding of guilty of violating the provisions of Sections 577.010 or 577.012, RSMo., or any ordinance of the City of Hamilton involving alcohol- or drug-related traffic offenses, the Court may, in addition to imposition of any penalties provided by law, order the convicted person to reimburse the Law Enforcement Department for the costs associated with such arrest.

b. Such costs hereby authorized shall include the reasonable cost of making the arrest, including the cost of any chemical test made as authorized or required by law or ordinance 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.

c. The Chief of Law Enforcement may establish a schedule of such costs hereby authorized and shall submit the same to the Judge. However, the Court may order the costs reduced if it determines that the costs are excessive.

12. No costs shall be assessed if the Municipal Judge finds the defendant to be indigent and unable to pay the costs.

When an application for trial de novo is tendered for filing, the Municipal Court Clerk shall assess and collect as additional court costs a fee of thirty dollars (\$30.00).

If a Traffic Violations Bureau is established, all costs set forth above shall be assessed and collected for each guilty plea processed therein.

72.250. Same, assess against prosecuting witness. The costs of any case action may be assessed against the prosecuting witness and judgment be rendered against him that he pay the same and stand committed until paid in any case where it appears to the satisfaction of the municipal judge that the prosecution was commenced without probable cause and from malicious motives.

72.260. Installment payment of fine. When a fine is assessed for violation of an ordinance, the Judge may, in his discretion, provide for payment of same on an installment basis under such terms and conditions as he may deem appropriate.

ARTICLE II. ADMINISTRATIVE SEARCH WARRANTS

72.300 ADMINISTRATIVE SEARCH WARRANTS

1) Search Warrant Defined--Who May Issue, Execute.

a) An administrative search warrant is a written order of the Judge permitting the entry of City Officials on or into private property, structure or improvement to enforce the City's housing, zoning, health and safety regulations when government entry on or into such property is otherwise authorized by Missouri law. A warrant may issue only in conformance with this

Section and only for the enforcement of the City's housing, zoning, health and safety regulations, specifically:

- i) To inspect private property to determine or prove the existence of physical conditions in violation of a specified regulation,
- ii) To seize property or photograph, copy or record evidence of property or physical conditions found thereon or therein, and
- iii) To abate such physical conditions.

b) The Judge having original and exclusive jurisdiction to determine violations against the ordinances of the City and may issue an administrative warrant when:

- i) The property to be entered is located within the City, and
- ii) The owner or occupant of the property or place to be entered:
 - 1) Has refused to allow same after official request by the City, or
 - 2) Is not available, after reasonable investigation and effort, to consent to such search or inspection.

c) Any such warrant shall be directed to the Chief of Police or any other Police Officer of the City and shall be executed by the Chief of Police or said Police Officer in conjunction with the Code Enforcement Officer or other appropriate City Official.

2) Who May Apply For Warrant--Contents Of Application.

a) Any Code Enforcement Officer, Police Officer or attorney of the City may make application to the Judge for the issuance of an administrative warrant.

b) The application shall:

- i) Be in writing;
- ii) State the time and date of the making of the application;
- iii) Identify the property or places to be entered, searched, inspected or seized in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;
- iv) State that the owner or occupant of the property or places to be entered, searched, inspected or seized:
 - 1) Has been requested by the City to allow such action and has refused to allow such action, or
 - 2) Is not available, after reasonable investigation and effort, to consent to such search or inspection;

v) State facts sufficient to show probable cause for the issuance of a search warrant as provided in Subsection (C) of this Section to:

1) Search or inspect for violations of an ordinance or Code Section specified in the application; or

2) Show that entry or seizure is authorized and necessary to enforce an ordinance or Code Section specified in the application and/or abate an ordinance violation and that due process has been afforded prior to the entry or seizure;

vi) Be verified by the oath or affirmation of the applicant; and

vii) Be signed by the applicant and filed in the Municipal Court.

c) The application may be supplemented by a written affidavit verified by oath or affirmation. Such affidavit shall be considered in determining whether there is probable cause for the issuance of a search warrant and in filling out any deficiencies in the description of the property or place to be searched or inspected. Oral testimony shall not be considered.

d) The application may be submitted by hand delivery, mail or facsimile or other electronic means.

3) Determination Of Probable Cause--Issuance--Contents Of Warrant--Execution And Return.

a) Determination of probable cause/issuance.

i) The Judge shall determine whether probable cause exists to inspect or search for the purposes noted herein.

ii) In doing so the Judge shall determine whether the action to be taken by the City is reasonable in light of the facts stated. The Judge shall consider the goals of the ordinance or Code Section sought to be enforced and such other factors as may be appropriate including, but not limited to, the physical condition of the specified property, the age and nature of the property, the condition of the area in which the property is located, the known violation of any relevant City ordinance or Code Section, the passage of time since the property's last inspection and the authority authorizing government entry onto private property. The standard for issuing a warrant need not be limited to actual knowledge of an existing violation of a City ordinance or Code Section.

iii) If it appears from the application and any supporting affidavit that there is probable cause to inspect or search the private property for the enforcement of the City's housing, zoning, health and safety regulations, a search warrant shall immediately be issued.

iv) The warrant shall issue in the form of an original and two (2) copies and the application, any supporting affidavit and one (1) copy of the warrant as issued shall be retained in the records of the Court.

v) A search warrant shall expire if it is not executed within ten (10) days after the date of the making of the application.

b) Contents of search warrant. The search warrant shall:

i) Be in writing and in the name of the City;

ii) Be directed to any Police Officer in the City;

iii) State the time and date the warrant was issued;

iv) Identify the property or places to be searched, inspected or entered upon in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

v) Identify the regulation sought to be enforced;

vi) Command that the described property or places be entered upon for one (1) or more specified enforcement purposes as provided herein, including inspection or abatement;

vii) Direct that any evidence of any suspected ordinance violations be seized, recorded or photographed and a description of such property be returned within ten (10) days after issuance of the warrant to the Clerk of the Municipal Court to be dealt with according to law;

viii) Be signed by the Judge with his/her title of office indicated.

c) Execution. A search warrant issued under this Section shall be executed only by a City Police Officer, provided however, that one (1) or more designated City Officials may accompany the officer and the warrant shall be executed in the following manner:

i) Copies of the warrant shall be given to the officer executing the warrant. Copies may be transmitted by hand delivery, mail or by facsimile or other electronic means.

ii) The warrant shall be executed by conducting the search, inspection, entry, abatement or seizure as commanded and shall be executed as soon as practicable and in a reasonable manner but in no less than ten (10) days after issuance of the warrant.

iii) The officer may summon as many persons as he/she deems necessary to assist him/her in executing the warrant and such persons shall not be held liable as a result of any illegality of the search and seizure.

iv) The officer shall give the owner or occupant of the property searched, inspected or entered upon a copy of the warrant or shall leave a copy of the warrant at the property if the owner or occupant is not available.

v) In the event that a warrant authorizes abatement of a nuisance or other conditions, the Police Officer is not required to stay on the property during the entire length of time that it takes for the abatement to be completed.

d) Itemized receipt/disposition of seized property.

i) If any property is seized incident to the search or abatement, the officer shall give the person from whose possession it was taken, if the person is present, an itemized receipt for the property taken. If no such person is present, the officer shall leave the receipt at the site of the search or abatement in a conspicuous place.

ii) A copy of the itemized receipt of any property taken shall be delivered to an attorney for the City within two (2) working days of the search.

iii) The disposition of property seized pursuant to a warrant under this Section shall be in accordance with an applicable City ordinance or Code Section, but in the absence of same, then with Section 542.301 RSMo.

e) Return required after execution of search warrant.

i) After execution of the search warrant, the warrant, with a return thereon signed by the officer making the search, shall be delivered to the Court.

ii) The return shall show the date and manner of execution and the name of the possessor and of the owner, when not the same person, if known, of the property or places searched or seized.

iii) The return shall be accompanied by any photographs, copies or recordings made and by any property seized, along with a copy of the itemized receipt of such property required by this Section; provided however, that seized property may be disposed of as provided herein and, in such a case, a description of the property seized shall accompany the return.

iv) The Court Clerk, upon request, shall deliver a copy of the return to the possessor and the owner, when not the same person, of the property searched or seized.

4) Warrant Invalid, When.

a) A search warrant shall be deemed invalid:

i) If it was not issued by the Judge;

ii) If it was issued without a written application having been filed and verified;

- iii) If it was issued without sufficient probable cause in light of the goals of the ordinance to be enforced and such other factors as provided in Subsection (C) hereof;
- iv) If it was not issued with respect to property or places in the City;
- v) If it does not describe the property or places to be searched, inspected, entered upon or seized with sufficient certainty;
- vi) If it is not signed by the Judge who issued it; or
- vii) If it was not executed within ten (10) days after the date of the issuance of the warrant.

b) An officer making a search pursuant to an invalid warrant, the invalidity of which is not apparent on its face, may use such force as he/she would be justified in using if the warrant were valid.

SECTION 2: This ordinance repeals any prior ordinance or parts of any prior ordinance that might be in conflict herewith.

SECTION 3: This ordinance shall be in full force and effect from and after the date of its passage and approval.


SECTION 4: That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Aldermen hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

A copy of this Ordinance has been made available for public inspection prior to its adoption by the Board of Aldermen and this bill was read by title in the open meeting two times prior to its final passage.

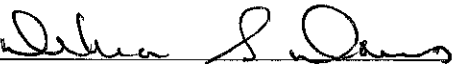
Adopted by the Board of Aldermen this 8th day of June, 2016.

Sherria Kavanaugh, President
of Board of Aldermen

Approved on this 8th day of June, 2016.



Winford Gilliam, Mayor

Attest: 
Debra Davis, City Clerk