

CITY OF SHERWOOD, OREGON

ORDINANCE NO. 605

AN ORDINANCE PRESCRIBING PROCEDURES WITH RESPECT TO OFFENSES UNDER THE ORDINANCES OF THE CITY OF SHERWOOD, TRIABLE IN THE MUNICIPAL COURT OF THE CITY OF SHERWOOD, PROVIDING FOR SECURITY OF COSTS, PROVIDING FOR APPOINTMENT OF COUNSEL FOR INDIGENT ACCUSED, PROVIDING FOR ASSESSMENT OF COSTS IN CRIMINAL CASES, PROVIDING FOR JURY TRIAL PROCEDURES, ESTABLISHING INDIGENT DEFENDANT'S DEFENSE FUND, ESTABLISHING GENERAL PROVISIONS AND PROCEEDINGS IN CRIMINAL ACTIONS AND DECLARING AN EMERGENCY

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THE CITY OF SHERWOOD DOES ORDAIN AS FOLLOWS:

Section 1: This Ordinance shall be known as the "SHERWOOD CRIMINAL PROCEDURE ORDINANCE" and may be cited as such.

Section 2: Filing Complaint by Private Person as Commencement of an Action. In Municipal Court, a criminal action is commenced by the filing of the complaint therein, verified by the oath of the person commencing the action, who is thereafter known as the complainant.

Section 3: Complaint is Deemed an Indictment to Determine Sufficiency. The complaint shall be deemed an indictment within the meaning of ORS 132.510 to 132.570, 132.590, 132.610 to 132.690, 132.710 and 132.720, which sections prescribe what is sufficient to be stated in such pleading and the form of stating it, except that the sufficiency of a Uniform Traffic Citation shall not be controlled by said sections.

Section 4: Security for Costs: Before filing or receiving the complaint in a criminal action, the Municipal judge may require the complainant to deposit as security for costs and disbursements the sum of \$25.00.

Section 5: Costs in Criminal Cases - Indigent Defendant's Defense Fund.

(a) The Municipal Court shall assess the sum of \$5.00 as and for costs in every case of finding of guilt by the court, in every case of a guilty plea, and in each instance of bail forfeiture on a charge of violation of a municipal ordinance, except that no costs shall be assessed in cases where the fine imposed is less than \$5.00. In every case of a finding of guilty by a jury, the Municipal Court shall assess the sum of \$40 as and for costs.

(b) All costs collected shall be paid over to the City Recorder. There is hereby established as a subsidiary of the general fund of the City of Sherwood, a special account designated "Indigent Defendant's Defense Fund." The City Recorder shall credit all costs collected to such designated "Indigent Defendant's Defense Fund" until there has been accumulated therein the sum of \$250 and shall credit additional costs collected as may be necessary to maintain a balance in said fund of approximately \$250. Any overplus of funds so collected shall be credited to the general fund of the City of Sherwood.

Section 6: When Warrant of Arrest Issues. Upon the filing of the complaint, the Municipal Court shall issue a warrant of arrest for the defendant named therein.

Section 7: Issuance, Requisites, Execution and Return of Warrant of Arrest. A warrant of arrest in a criminal action in a Municipal Court is issued, directed and executed in all respects as the warrant mentioned in ORS 133.140, except that it shall be made returnable only before the judge who issues it.

Section 8: Citations to Misdemeanants.

(a) City police officers may, if an arrest is made without a warrant, or if a person is arrested by a private citizen and is turned over to a peace officer, or if the municipal judge before whom a complaint is filed authorizes it, issue a citation in lieu of continuing custody in those cases in the form and manner authorized by Chapter 244 Oregon Laws of 1969. (ORS 133.045 through 133.110 and ORS 156.050).

(b) If any person wilfully fails to appear before the Municipal Court of the City of Sherwood pursuant to a citation issued and served under the authority of Chapter 244, Oregon Laws of 1969, and subsection (a) of this section and a complaint is filed, he shall be deemed guilty of a violation of this ordinance and shall upon conviction, be punished by a fine of not more than \$500 or by imprisonment in the County or Municipal jail for not more than six (6) months, or both.

Section 9: Reading Complaint to Defendant; Defendant to Plead.

When the defendant appears or is brought before the municipal judge, the complaint shall be read to him and he shall plead thereto at that time or within such additional time as the municipal judge may grant for entry of plea.

Section 10: Right of Counsel, Obtaining Counsel, Court Appointment of Counsel.

(1) When a defendant who is charged with a violation of a municipal ordinance for which a jail sentence may be imposed, appears before the municipal court without counsel, he shall be informed by the court that it is his right to have counsel before any further proceedings are had and shall be asked if he desires the aid of counsel.

(2) The court shall allow the defendant a reasonable time to obtain counsel and shall adjourn the proceeding for that purpose or shall, in accordance with subsection (3) of this section, appoint counsel to represent him unless the defendant waives counsel and the court approves the waiver.

(3) Counsel for a defendant shall be appointed by the municipal court if:

(a) The defendant is charged with violation of a municipal ordinance for which a jail sentence may be imposed; and

(b) The defendant requests the aid of counsel; and

(c) The defendant states under oath, in writing, his financial circumstances showing lack of ability to obtain counsel, and

provides such other information required by the court as to his inability to obtain counsel, and

(d) The court determines that the defendant is without means wherewith to obtain counsel.

(4) Unless otherwise ordered by the Municipal Court, the counsel appointed under this section shall continue to represent the defendant on appeal to the Circuit Court. The court may substitute one appointed counsel for another at any stage of the proceedings when the interest of justice requires such substitution.

(5) If at any time after the appointment of counsel the court finds that the defendant is financially able to obtain counsel or to make partial payment for the services of counsel, the court may terminate the appointment of counsel or may require such partial payment. If, at any time during the proceedings, the court finds that the defendant is financially unable to pay counsel, the court may appoint counsel to represent defendant as provided in this section.

(6) Counsel appointed pursuant to subsection (3) of this section shall, after the court so orders, be paid fees by the City for the services rendered in conducting the defense as follows:

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| A. When a plea of guilty is entered prior to trial on merits  | \$25.00  |
| B. When a plea of not guilty is entered and adversary trial on the merits is conducted  | \$25.00  |
| C. When the defendant is charged with more than one offense for which jail sentence may be imposed and the defendant is tried on all charges concurrently | \$50.00  |
| D. After an appeal and trial on the merits is had in the Circuit Court  | \$50.00. |

Section 11: Defendant's Plea; Refusal to Plead. The defendant may plead the same pleas as upon an indictment. His plea shall be oral and entered in the docket. If the defendant refuses to plead, the municipal judge shall enter the fact, together with the plea of not guilty on his behalf.

Section 12: Trial by Court or Jury. Upon a plea other than a plea of guilty, if the defendant does not then demand a trial by jury, the municipal judge shall proceed to try the issue unless continued for cause.

Section 13: Injured Person Must Appear or be Subpenaed. No judgment of conviction or acquittal can be given in a criminal action in municipal court unless the person injured appears or is subpenaed to attend the trial as a witness.

Section 14: Right of Trial by Jury. In all prosecutions for any crime or offense defined and made punishable by any provision of the City Charter of Sherwood or ordinance of the City of Sherwood, the defendant shall have the right of trial by jury of six in number.

Section 15: Preparation of Jury List: The City Recorder shall during

during the first fifteen (15) days of each calendar year make a list of the most competent permanent citizens of the City by selecting names by lot from the latest tax rolls or registration books used at the last city election, or both, and this shall be denominated "Preliminary Jury List". From the preliminary jury list the names of those persons who are not qualified to act as jurors in accordance with the requirements of §10.030, ORS and the names of those persons who are entitled to exemption from jury duty as prescribed in § 10.040, ORS, shall be deleted and the remaining names shall constitute the jury list. The names of those persons deleted from the preliminary jury list shall be placed on a separate list denominated "Rejected Prospective Jurors" and opposite each such name the reason for removing the same shall be set forth.

The total number of names on the jury list shall be not less than 50 nor more than 250. The jury list shall contain the Christian name and surname, place of residence and occupation of each person named therein, and the list thus prepared shall be certified by the City Recorder and placed on file in his office within 10 days from the date it is prepared.

Section 16. Jury Box. - The City Recorder shall keep in her office a sufficient box carefully secured which is denominated the "Jury Box". After the jury list is filed, the City Recorder shall destroy all jury ballots remaining in the box and shall prepare and deposit in such box separate ballots containing the name, place of residence and occupation of each person embraced in the list, and folded as nearly alike as practicable so that the names cannot be seen.

Section 17. Selection of Jury from Jury List. - When a jury is demanded in the Municipal Court for the City of Sherwood, the jury must be drawn and selected from the jury list of the City. When a jury is to be selected from the list, the Municipal Judge or the City Recorder must draw from the Jury Box, in the presence of the defendant or his counsel (attorney at law) twelve (12) ballots, or any greater number if necessary, until the names of 12 persons who are deemed able to attend at the time and place required are obtained. The Municipal Judge or City Recorder must make and file the list of the 12 names thus drawn.

If it appears to the Municipal Judge or the City Recorder that a person whose name is drawn is dead or has removed from the City, the ballot must be destroyed. If it appears to the Municipal Judge or Recorder, or if he has good reason to believe, that a person whose name is drawn is temporarily absent from the City or is unwell or so engaged as to be unable to attend at the time and place required without great inconvenience, the ballot must be laid aside without the name thereon being entered on the list drawn and returned to the box when the drawing is completed. A person whose name is drawn is deemed able to attend and his name is deemed to be entered on the list except as otherwise herein provided.

When the drawing is completed, from the 12 names drawn the parties must select a jury by striking from the list 3 names alternately, commencing with the defendant. The remaining 6 must be summoned as jurors in the case, and neither party is entitled thereafter to a peremptory challenge as to any of the six jurors.

The names of the six jurors so selected must be inserted in the Order to Summon a Jury, together with the names of the parties,

date, time and place at which the trial is to be held, and the Order shall require the jurors to appear at said date, time and place. The Order shall be signed by the Municipal Judge or the City Recorder and a copy thereof directed to the Chief of Police or to any policeman authorized to act in his behalf, commanding him to summon the said persons in accordance with said order, and he shall make his return of service to the court at its opening.

Section 18: When a jury is demanded in the Municipal Court for the City of Sherwood and the method of selection of six jurors by striking above described is elected not to be followed by the City or by the defendant then the Municipal Judge or the City Recorder shall draw from the jury box 12 ballots or any greater number, if necessary, until the names of 12 persons who are deemed able to attend at the time and place required are obtained. This drawing need not be in the presence of the defendant or his legal counsel. The 12 persons so drawn from the jury box shall be summoned to appear at the time and place set for the trial. The City and the defendant shall be entitled to take challenges for cause and shall be entitled to two peremptory challenges and no more. The manner in which ~~persons~~ shall be examined and challenges taken shall be the same as is provided by Oregon Revised Statutes for the selection of jurors in Circuit Court cases.

Section 19: If a person duly summoned to attend as a juror fails to attend as required or to make valid excuse therefor he may be fined by the Municipal Judge of the City of Sherwood in a sum not to exceed \$15.00. Those persons who are summoned as jurors and who actually serve as a juror in a case before the Municipal Court of the City of Sherwood shall be entitled to a juror's fee in the sum of \$5.00 per day of service.

Section 20: State Statutes to Govern: When not governed by this ordinance or by the City Charter, all proceedings prior to judgment with respect to criminal actions in Municipal Court for the violation of the City ordinance shall be governed by applicable general rules of the State governing justice of the peace and justice courts.

Section 21: Emergency: Inasmuch as the ordinances of the City of Sherwood do not now include procedures with respect to the commencement of an action by private persons, security for costs, providing for costs in criminal cases, appearance of the injured person, appointment of counsel for indigents and providing for the payment of court-appointed lawyers, and it is necessary for the health, peace and safety of the people of the City of Sherwood that immediate provision be made therefor, an emergency is hereby declared to exist and this ordinance shall be effective upon its passage by the Council and approval by the Mayor.

PASSED: By the Council, by unanimous vote of all Council members present, after being read by caption three times and in body once, this 26th day of October, 1970.

*Marjorie Stewart*  
Recorder - City of Sherwood

APPROVED: By the Mayor this <sup>11<sup>th</sup></sup> ~~26th~~ day of <sup>NOV.</sup> ~~October~~, 1970.

*[Signature]*  
Mayor - City of Sherwood